



FINANCIAL SERVICES ACT 2008

FINANCIAL SERVICES (EXEMPTIONS) REGULATIONS 2009

Approved by Tynwald

2009

Coming into operation

1st January 2010

The Financial Supervision Commission, after carrying out the consultations required by section 44(5) of the Financial Services Act 2008¹, makes these Regulations under sections 44(2) and (3) of that Act.

1. Title

The title of these Regulations is the Financial Services (Exemptions) Regulations 2009.

2. Commencement

If approved by Tynwald, these Regulations come into operation on 1st January 2010.

3. Interpretation

(1) In these Regulations —

"the Act" means the Financial Services Act 2008;

"the Order" means the Regulated Activities Order 2009²;

"section 4" means section 4 of the Act (prohibition of regulated activity except in accordance with a licence);

(2) (a) References in these Regulations to activities of Class 3 which are defined in the Collective Investment Schemes Act 2008³ have the same meanings as in that Act;

¹ 2008 c.8

²

³ 2008 c.7

- (b) other expressions have the meanings given by Schedule 3.
- (3) References in these Regulations to a numbered class or to a numbered paragraph of such a class, are to the class of regulated activities so numbered in Schedule 1 to the Order or to the paragraph so numbered of that class as the case may be.

4. Exemptions : general

Schedule 1 exempts from the requirements of section 4 of the Act (prohibition of regulated activity except in accordance with a licence) the persons, and in the circumstances, there specified.

5. Exemption : Use of equipment on the Island

Schedule 2 exempts from the requirements of section 4 the persons, and in the circumstances, there specified.

6. Revocation

The Financial Services (Exemptions) Regulations 2008⁴ are revoked.

MADE [date]

Deleted: temporary business continuity services

Deleted: carrying on a regulated activity in the Island for the purposes of temporary business continuity services for a person established in a country or territory outside the Island, where arrangements for mutual co-operation and exchange of information are in force between the Commission and a regulator in that country or territory

Chairman

Chief Executive

⁴ SD 368/08

Regulation 4.

SCHEDULE 1

EXEMPTIONS FROM LICENSING

CLASS 1 – DEPOSIT TAKING

Company officers and employees

1. In relation to a regulated activity of Class 1, section 4 does not apply to an individual who –
 - (a) is not an employee, director or other officer of a company licensed to carry on activities of Class 1 ("the licenceholder"), but
 - (b) is an employee, director or other officer of another company in the same group as the licenceholder, and
 - (c) carries on that activity under the direction of and in the course of business of the licenceholder.

CLASS 2 – INVESTMENT BUSINESS

Liquidators, receivers etc.

- 2.1 In relation to a regulated activity of Class 2, section 4 does not apply to a person whilst acting in his capacity as –
 - (a) liquidator or provisional liquidator of a company;
 - (b) a receiver or manager appointed in respect of any of the assets of a company;
 - (c) a trustee in bankruptcy;
 - (d) the trustee of a composition or scheme of arrangement if appointed or approved by the High Court;
 - (e) receiver of a patient; or
 - (f) personal representative of a deceased person.

Certificates of deposit

- 2.2 In relation to a regulated activity of Class 2, section 4 does not apply to a person whose activities within that class are restricted solely to certificates of deposit.

Tied agents of friendly societies

- 2.3 In relation to an activity falling within paragraph (3) or (7) of Class 2, section 4 does not apply to a person whilst acting as a tied agent of a body which is registered as a friendly society under an enactment having effect in the Island or any part of the United Kingdom, where that person –
- (a) does not in the course of his business receive clients' money;
 - (b) does not carry on any activity falling within Class 2 other than arranging deals for or giving advice to existing members of the friendly society or members of organisations associated with that friendly society (for example trade unions); and
 - (c) does not deal in or give advice on any product which is not offered by the friendly society to which he is tied.

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Enduring powers of attorney

- 2.4 In relation to an activity falling within paragraph (2), (3) or (4) of Class 2, section 4 does not apply to a person whilst acting under an enduring power of attorney where –
- (a) that power has been registered under section 6 of the Powers of Attorney Act 1987²; and
 - (b) the attorney has entered into a discretionary management agreement with either –
 - (i) a licenceholder, or
 - (ii) a person authorised to undertake that activity by an overseas regulator,

Deleted: under the Financial Services and Markets Act 2000 (an Act of Parliament)³

Bearer instruments – 'post office' facility

- 2.5 In relation to an activity falling within paragraph (1) to (5) of Class 2, section 4 does not apply to a person whilst safeguarding bearer instruments of title to investments, subject to the condition that any such instrument is removed from the possession of that person by close of business on the business day following the receipt of the instrument.

Company pension schemes

- 2.6 In relation to a regulated activity of Class 2, section 4 does not apply to a person whose activities within that class are restricted to pension schemes, the beneficiaries of which are employees, former employees or the dependants of employees or former employees of –

² 1987 c.5

⁴ SD 603/99 as amended by SD 407/00, 87/03, 347/03 and 806/07

- (a) the person by whom the activity is carried on, or
- (b) a company in the same group as that person.

Nominee companies

- 2.7 (1) In relation to an activity falling within paragraph (2), (3) or (5) of Class 2, section 4 does not apply to a nominee company which is a wholly-owned subsidiary of a person licensed to carry on that activity ("the licenceholder"), where —
- (a) the licenceholder is permitted by its licence to control clients' money or assets;
 - (b) the activity is carried on by the nominee company solely on behalf of companies which are in the same group as the nominee company and are licensed to carry on that activity;
 - (c) the nominee company complies with the provisions of the Rule Book relating to clients' money and investments; and
 - (d) the nominee company arranges for an annual audit report complying with the requirements of sub-paragraph (2) to be sent to the Commission, which may be provided by the auditors to the licenceholder where the nominee company is not audited and its clients' money and investment recording is undertaken by that licenceholder;
- (2) The requirements referred to in sub-paragraph (1)(d) are that the report —
- (a) states whether, in the auditor's opinion —
 - (i) the nominee company has maintained throughout the year systems adequate to enable it to comply with the provisions of the Rule Book relating to clients' money and investments,
 - (ii) the nominee company was in compliance with those provisions at the balance sheet date; and
 - (iii) reconciliations of clients' money and clients' investments have been performed in accordance with those provisions; and
 - (b) where one or more of the requirements specified in sub-paragraph (a) have not been met, include a statement specifying the relevant requirements and the extent to which they have not been met; or

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- (c) where the auditor is unable to form an opinion as to whether one or more of those requirements have been met, specify those requirements and give the reasons why the auditor has been unable to form an opinion.

Company officers and employees

- 2.8 In relation to a regulated activity of Class 2, section 4 does not apply to an individual who —
- (a) is not an employee, director or other officer of a company licensed to carry on activities of Class 2 ("the licenceholder"), but
 - (b) is an employee, director or other officer of another company in the same group as the licenceholder, and
 - (c) carries on that activity under the direction of and in the course of business of the licenceholder.

Public authorities

- 2.9 In relation to regulated activity of Class 2, section 4 does not apply to —
- (a) a Department,
 - (b) a Statutory Board, or
 - (c) a local authority or joint board.

CLASS 3 – SERVICES TO COLLECTIVE INVESTMENT SCHEMES

Nominee companies

- 3.1 In relation to a regulated activity of Class 3, section 4 does not apply to a nominee company which is a wholly-owned subsidiary of a person licensed to carry on an activity falling within paragraphs (1) to (5) or (11) of Class 3, where —
- (a) the nominee company complies with the provisions of the Rule Book relating to clients' money and clients' investments; and
 - (b) the nominee company arranges for an annual audit report complying with the requirements of paragraph 2.7(2) to be sent to the Commission.

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Managers etc. of exempt schemes and exempt-type schemes

- 3.2 (1) In relation to a regulated activity falling within paragraph (11) of Class 3 consisting of services provided to an exempt scheme or an exempt-type scheme ("the scheme"), section 4 does not apply to a person carrying on that activity where —

- (a) the exempt person provides those services to no more than one exempt scheme or exempt-type scheme, and
 - (b) the conditions specified in sub-paragraph (2) are met.
- (2) The conditions referred to in sub-paragraph (1)(b) are that, in accordance with an agreement between the exempt person and a person licensed to carry on activities falling within paragraph (12) of Class 3 ("the licenceholder") —
- (a) the exempt person is responsible for providing sufficient information to the licenceholder about the exempt person and the scheme to enable the licenceholder to satisfy itself that the criteria in sub-paragraph (3) are met; and
 - (b) the licenceholder is responsible for satisfying itself, on the basis of information provided pursuant to (a) above and any other information in the possession of the licenceholder, that those criteria are met.
- (3) The criteria referred to in sub-paragraph (2) are that —
- (a) the exempt person continues to comply with the requirements of paragraph (1)(a); and
 - (b) the scheme continues to comply with the requirements of paragraph 1(1)(a) and (b) of Schedule 3 to the Collective Investment Schemes Act 2008.

Exempt managers of experienced investor funds and professional investor funds

- 3.3 (1) In relation to a regulated activity of Class 3, section 4 does not apply to the manager of a scheme which is —
- (a) an experienced investor fund within the meaning of the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999⁴; or
 - (b) a professional investor fund within the meaning of the Financial Supervision (Professional Investor Fund) (Exemption) Order 1999⁵;

where the conditions specified in sub-paragraph (2) are met.

- (2) The conditions referred to in sub-paragraph (1) are that, in accordance with an arrangement between the manager and a person licensed to carry on activities falling within paragraph (9) of Class 3 ("the licenceholder") —

⁵ SD 602/99 as amended by SD 81/03

- (a) all activities of the manager in relation to the scheme that would (apart from this paragraph) constitute regulated activities of Class 3 are delegated to the licenceholder;
- (b) no activity of the manager in relation to the scheme, other than the termination of a delegation under condition (a) above, may be carried on by the manager without the prior written approval of the licenceholder;
- (c) the manager may only introduce subscribers to the scheme where a director of the licenceholder is also a director of the manager;
- (d) the licenceholder may perform any function or activity on behalf of or in the name of the manager that a manager would normally undertake as manager of a scheme of the kind referred to in paragraph (1)(a) or (b), as the case may be.

Company officers and employees

- 3.4 In relation to a regulated activity of Class 3, section 4 does not apply to an individual who —
- (a) is not an employee, director or other officer of a company licensed to carry on activities of Class 3 ("the licenceholder"), but
 - (b) is an employee, director or other officer of another company in the same group as the licenceholder, and
 - (c) carries on that activity under the direction of and in the course of business of the licenceholder.

Liquidators and receivers

- 3.5 In relation to a regulated activity of Class 3, section 4 does not apply to an individual whilst acting in the capacity of liquidator or receiver of a company or limited partnership.

CLASS 4 – CORPORATE SERVICES

Directorships - professional

- 4.1 In relation to a regulated activity falling within paragraph (6) of Class 4, section 4 does not apply to a specified person provided that the person adheres to any continuing professional development requirements of his professional body and is in good standing with that body.

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Directorships - de minimis activities

4.2 In relation to an activity falling within paragraph (6) of Class 4, section 4 does not apply to an individual who is not, and does not act as, a director or alternate director of more than 10 companies.

Group officers

4.3 (1) In relation to an activity falling within paragraph (6) of Class 4, section 4 does not apply to an individual who is an officer of a company which is part of a group, for or in respect of another company which is a member of that group.

(2) This exemption only applies to an individual who is, and acts as, a director or alternate director of companies comprising no more than 3 groups.

Corporate officers

4.4 In relation to an activity falling within paragraph (6) or (7) of Class 4, section 4 does not apply to a person whose business consists solely of acting as director or secretary of a client company and which is -

- (a) a subsidiary of a body corporate that is licensed to carry on activities of Class 4; or
- (b) wholly beneficially owned by a sole trader that is licensed to carry on activities of Class 4; or
- (c) wholly beneficially owned by all the partners of a partnership, that is licensed to carry on activities of Class 4.

Nominee services

4.5 In relation to an activity falling within paragraph (9) of Class 4, section 4 does not apply to a person acting as a nominee shareholder or nominee member of a company, where -

- (a) that person is a wholly owned subsidiary of the holder of a licence to carry on a regulated activity, and
- (b) the first-mentioned activity is wholly incidental to that regulated activity.

Company officers and employees

4.6 (1) In relation to a regulated activity of Class 4, section 4 does not apply to an individual who -

- (a) is an employee, director or other officer of a company licensed to carry on activities of Class 4 ("the licenceholder"), and

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(a) . company C is -¶

(i) . the holding company of company A, and¶

(ii) . the holder of a licence authorising it to carry on activities falling within paragraph (6), (7)

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(b) . the activities of company A are restricted to activities falling within paragraphs (6), (7) or (9)

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- (b) carries on that activity in the course of his employment or as holder of that office, as the case may be.
- (2) In relation to a regulated activity of Class 4, section 4 does not apply to an individual who –
 - (a) is not an employee, director or other officer of a company licensed to carry on activities of Class 4 ("the licenceholder"), but
 - (b) is an employee, director or other officer of another company in the same group as the licenceholder, and
 - (c) carries on that activity under the direction of and in the course of business of the licenceholder.
- (3) In relation to a regulated activity of Class 4, section 4 does not apply to an individual who –
 - (a) is an employee, director or other officer of a company licensed to carry on that activity ("licenceholder A"), and
 - (b) carries on that activity under the direction of, and in the course of a business carried on by, another person licensed to carry on that activity ("licenceholder B") pursuant to arrangements made between licenceholder A and licenceholder B.
- (4) In relation to an activity falling within paragraph (6) of Class 4, section 4 does not apply to an individual who is appointed as director of a company pursuant to arrangements between the company and a person licensed to carry on activities of Class 4 ("the licenceholder") which comply with the conditions specified in sub-paragraph (5).
- (5) The conditions referred to in sub-paragraph (4) are that the arrangements –
 - (a) require that the licenceholder be and remain satisfied that the individual is suitable and competent for the office he holds;
 - (b) require that the licenceholder be and remain satisfied that the individual understands the duties and responsibilities pertaining to the office he holds under the relevant laws;
 - (c) require that the licenceholder be satisfied, and continue to satisfy the Commission, that the individual is a fit and proper person to carry on the activity;

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- (d) provide that the arrangements shall be terminated if the requirements of conditions (a) to (c) cease to be fulfilled; and
- (e) have not been terminated pursuant to condition (d) or otherwise.

Domestic services

- 4.7 (1) In relation to an activity falling within paragraphs (1), (3), (7), (10), (12) or (14) of Class 4, section 4 does not apply to a person who is resident in the Island and where the company which is the subject of the activity –
- (a) is resident in the Island;
 - (b) has a permanent establishment in the Island; and
 - (c) carries on as its sole or principal trade or business –
 - (i) the holding of assets which are beneficially owned by persons who are resident in the Island; or
 - (ii) the supply of any goods or services in or from the Island; or
 - (iii) the manufacture in the Island of any goods.
- (2) For the purpose of this paragraph –

"beneficially owned" includes ultimate ownership through a trust or company or a series of trusts or companies;

"company" does not include an open-ended investment company;

"permanent establishment" means a fixed place of business through which the business of the company is wholly or partly carried on;

"resident" means a resident in the Island for the purposes of income tax.

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Liquidators, receivers etc.

- 4.8 In relation to a regulated activity of Class 4, section 4 does not apply to a person whilst acting in his capacity as –
- (a) liquidator or provisional liquidator of a company;
 - (b) a receiver or manager appointed in respect of any of the assets of a company; or
 - (c) receiver of a patient.

Deleted: *De minimis activities*
4.4 . (1) . In relation to an activity falling within paragraph (6) of class 4, section 4 does not apply to an individual who is not, and does not act as, a director or alternate director of more than 10 companies.
. (2) . For the purpose of this paragraph, in determining the number of companies in respect of which an individual is a director no account shall be taken of a company which is –
(a) . licensed to carry on a regulated activity, or
(b) . referred to in paragraph 4.1. .

Administration for licenceholder

4.9 In relation to a regulated activity of Class 4, section 4 does not apply to a person who carries on the activity solely on behalf of a person licensed to carry on that activity.

CLASS 5 –TRUST SERVICES

Corporate trustees, protectors and enforcers

5.1 In relation to an activity falling within paragraph (1), ~~(2)~~, ~~(5)~~ or ~~(6)~~ of Class 5, section 4 does not apply to a company ("company A") acting as trustee or protector in relation to an express trust, or as enforcer in relation to a purpose trust, for which another company ("company B") provides trust administration services where –

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- (a) company B is –
 - (i) the holding company of company A, and
 - (ii) licensed to carry on activities falling within paragraph (1), ~~(2)~~, ~~(5)~~ or ~~(6)~~ of Class 5; and
- (b) the activities of company A are restricted to activities falling within paragraphs (1), ~~(2)~~, ~~(5)~~ and ~~(6)~~ of Class 5 which company B is permitted to carry on by virtue of its licence.

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Company officers and employees

- 5.2 (1) In relation to a regulated activity of Class 5, section 4 does not apply to an individual who –
 - (a) is an employee, director or other officer of a company licensed to carry on activities of Class 5 ("the licenceholder"), and
 - (b) carries on that activity in the course of his employment or as holder of that office, as the case may be.
- (2) In relation to a regulated activity of Class 5, section 4 does not apply to an individual who –
 - (a) is not an employee, director or other officer of a company licensed to carry on activities of Class 5 ("the licenceholder"), but
 - (b) is an employee, director or other officer of another company in the same group as the licenceholder, and
 - (c) carries on that activity under the direction of and in the course of business of the licenceholder.

- (3) In relation to a regulated activity of Class 5, section 4 does not apply to an individual who –
- (a) is an employee, director or other officer of a company licensed to carry on that activity ("licenceholder A"), and
 - (b) carries on that activity under the direction of, and in the course of a business carried on by, another person licensed to carry on that activity ("licenceholder B") pursuant to arrangements made between licenceholder A and licenceholder B.

Employee pension schemes, share schemes etc.

- 5.3 (1) Subject to sub-paragraph (2), in relation to an activity falling within paragraph (1) or (2) of Class 5 in respect of an employee pension scheme or an employee share or debenture scheme, section 4 does not apply to an individual who –
- (a) is an employee, former employee, director, former director or other officer or former officer of a company licensed under the Act to carry on activities of Class 5, and
 - (b) carries on that activity in the course of or as a result of his employment or former employment or as holder of that office.
- (2) Paragraph (1) does not apply if –
- (a) the employment, or the appointment to the office, is or was solely for the purpose of enabling that individual to carry on that activity; or
 - (b) in the case of a former employee, director or other officer, the appointment as trustee was made after his employment ceased or after he ceased to hold that office.

Trusteeships

- 5.4 In relation to a regulated activity falling within paragraph (2), (5) or (6) of Class 5, section 4 does not apply to a specified person provided that the person adheres to any continuing professional development requirements of his professional body and is in good standing with that body.

De minimis activities

- 5.5 (1) In relation to an activity falling within paragraph (1) of Class 5, section 4 does not apply to a specified person who is not, and

does not act as, a trustee, enforcer or protector of more than 10 trusts.

- (2) For the purpose of this paragraph, in determining the number of trusts in respect of which a specified person is or acts as trustee, enforcer or protector, no account shall be taken of any trust in respect of which, by virtue of this Schedule (other than this paragraph), section 4 would not apply to that person in relation to any activity of Class 5.

Liquidators, receivers etc.

5.6 In relation to a regulated activity of Class 5, section 4 does not apply to an individual whilst acting as –

- (a) the trustee of a composition or scheme of arrangement if appointed or approved by the High Court; or
(b) receiver of a patient.

Private trust companies

5.7 (1) In relation to a regulated activity of Class 5, section 4 does not apply to a company –

- (a) the sole purpose of which is to provide services in respect of a specific trust or trusts; and
(b) which does not otherwise undertake or, directly or indirectly, hold itself out to the public as undertaking, any regulated activity of Class 5;

where –

- (i) the administration of the trust or trusts is carried out by a person licensed to do so, and
(ii) that person has notified the Commission in writing of the name of the company.

- (2) Without prejudice to the generality of paragraph (1)(b), a company shall be treated for the purpose of paragraph (1) as holding itself out to the public as undertaking a regulated activity of Class 5 if it undertakes that activity in response to introductions from third parties (not being persons licensed to carry on a regulated activity of Class 5) who hold themselves out to the public (whether within or outside the Island) as –

- (a) carrying on any regulated activity of Class 5; or
(b) arranging for any such activity to be undertaken by others.

Personal representatives etc.

- 5.8 In relation to a regulated activity of Class 5, section 4 does not apply to an individual whilst acting in his capacity as personal representative or as trustee (including as trustee for sale), if the activity is wholly incidental to, or for the sole purpose of facilitating, the winding up of the estate of a deceased person.

Administration for licenceholder

- 5.9 In relation to a regulated activity falling within paragraph (2) of class 5, section 4 does not apply to a person who carries on the activity on behalf of, and under the direction of, a person licensed to carry on that activity.

Testamentary trusts

- 5.10 (1) In relation to a regulated activity of Class 5, section 4 does not apply to a specified person where —
- (a) the activity is carried on in respect of a trust created by or arising under the will of a deceased person;
 - (b) the trust is governed by the law of the Island;
 - (c) the testator was resident or domiciled in the Island at his death;
 - (d) the activity is ancillary to a professional activity undertaken by the specified person in his professional capacity.
- (2) In relation to a regulated activity of Class 5, section 4 does not apply to a specified person where —
- (a) the activity is carried on in respect of a trust created in the lifetime of the settlor;
 - (b) the funds of the trust consist only of funds settled or provided —
 - (i) by the settlor when the trust was created; or
 - (ii) subsequently under the will of the settlor or his spouse;and any income or gain arising from those funds;
 - (c) the settlor was resident or domiciled in the Island when the trust is created;
 - (d) where (b)(ii) applies, the settlor or spouse was resident or domiciled in the Island at the date of death; and

- (e) the activity is ancillary to a professional activity undertaken by the specified person in a professional capacity.

Small domestic trusts

5.11 In relation to a regulated activity of Class 5, section 4 does not apply to a specified person where —

- (a) at the time the trust was created, the settlor was resident or domiciled in the Island;
- (b) no funds have been settled or provided to the trust other than those settled or provided by the settlor or his spouse when the trust was created; and
- (c) at the time the activity is undertaken, the gross assets of the trust do not exceed £5,000.

Statutory corporations

5.12 In relation to regulated activity of Class 5, section 4 does not apply to —

- (a) a Department,
- (b) a Statutory Board, or
- (c) a local authority or joint board.

CLASS 6 – E-MONEY

De minimis activities

6.1 (1) In relation to a regulated activity of Class 6, section 4 does not apply to a person where —

- (a) that person notifies the Commission in writing that he carries on, or intends to carry on, that activity; and
- (b) the turnover of that activity, or where that activity is part of a business comprising other activities, the turnover from that part only, at the end of any month was equal to or less than £50,000 in the preceding 12 months.

(2) In relation to a regulated activity of Class 6, section 4 does not apply to a person —

- (a) to whom section 4 previously did not apply by virtue of sub-paragraph (1), and
- (b) who, before the relevant date, applied to the Commission for a licence under the Act to carry on that activity,

until application is granted or refused.

(3) In this paragraph –

"the relevant date" means the date when the person in question knew, or ought reasonably to have known, that the turnover referred to in sub-paragraph (1)(b) exceeded £50,000;

"turnover" means the cumulative total, during the 12 months in question, of all money converted to electronic money, measured in sterling in accordance with generally accepted accounting principles.

CLASS 7 – MANAGEMENT OR ADMINISTRATION SERVICES

7.1 There are no exemptions relating to the regulated activity of Class 7.

CLASS 8 – MONEY TRANSMISSION SERVICES

De minimis activities

8.1 (1) In relation to a regulated activity of Class 8, section 4 does not apply to a person where –

(a) that person notifies the Commission in writing that he carries on, or intends to carry on, that activity; and

(b) the turnover of that activity, or where that activity is part of a business comprising other activities, the turnover from that part only, at the end of any month was equal to or less than £50,000 in the preceding 12 months.

(2) In relation to a regulated activity of Class 8, section 4 does not apply to a person –

(a) to whom section 4 previously did not apply by virtue of sub-paragraph (1), and

(b) who, before the relevant date, applied to the Commission for a licence under the Act to carry on that activity,

until application is granted or refused.

(3) In this paragraph –

"the relevant date" means the date when the person in question knew, or ought reasonably to have known, that the turnover referred to in sub-paragraph (1)(b) exceeded £50,000;

"turnover" means the cumulative total, during the 12 months in question, of all or any of the following –

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- (a) foreign currency which the person, in the course of carrying on the business of a bureau de change, bought from, or sold to, customers of the bureau de change;
- (b) funds transmitted or received by the person in the course of carrying on the business of transmitting money or monetary value, by any means;
- (c) cheques cashed by the person in the course of providing cheque cashing services;

measured in sterling in accordance with generally accepted accounting principles.

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- (4) For the purposes of sub-paragraph (3)(a), a calculation of turnover in relation to a bureau de change shall include, in relation to any transaction, the amount of money bought from a customer, or the amount of money sold to a customer, but not both.

Transactions with overseas persons

8.2 In relation to an activity falling within paragraph (2) of Class 8, section 4 does not apply to an overseas person where the activity is conducted by a permitted person as agent for the overseas person, provided -

- (a) the overseas person is authorised to conduct that activity by an overseas regulator;
- (b) the overseas person does not establish a permanent place of business on the Island for the purpose of carrying on a regulated activity; and
- (c) the overseas person has notified the Commission of its and its agent's activities on the Island.

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Activities of certain persons

8.3 In relation to a regulated activity of Class 8, section 4 does not apply to a person where the person is —

- (a) licensed to carry on a regulated activity falling within Class 1; or
- (b) the Isle of Man Post Office; or
- (c) the National Savings and Investments (an executive agency of the Chancellor of the Exchequer of the United Kingdom).

Regulation 5.

SCHEDULE 2

USE OF EQUIPMENT ON THE ISLAND

Exemption

1. Section 4 does not apply to any person who utilises equipment where that person is —

- (a) a permitted person; or
- (b) a person regulated by another regulator either in the Island or elsewhere (“the regulator”),

so long as the conditions specified in paragraph 2 are satisfied.

Conditions

2. The conditions referred to in paragraph 1 are as follows —

- (a) the Commission has been notified of the presence of the equipment on the Island;
- (b) the person must not establish a permanent place of business on the Island for the purpose of carrying on a regulated activity;
- (c) the only regulated activity carried on in the Island is to utilise the equipment to conduct a regulated activity;
- (d) the person must not hold themselves out as carrying on a regulated activity in or from the Island; and
- (e) in the case of paragraph 1(b), the regulator has approved the utilisation of the equipment on the Island.

Interpretation

3. For the purposes of this Schedule, “equipment” means computer apparatus located in the Island which is used to transact any regulated activity either for temporary business continuity purposes or otherwise.

Deleted: TEMPORARY BUSINESS CONTINUITY

Deleted: SERVICES

Deleted: Subject to paragraph 4, in relation to a specified activity s

Deleted: owns or

Deleted: a server

Deleted: located on the Island to transact

Deleted: s

Deleted: any regulated activity either for temporary business continuity purposes or otherwise

Deleted: the equipment is utilised by

Deleted: an exempt person, or

Deleted: required

Deleted: to carry on a regulated activity,

Deleted: during an exemption period

Deleted: (a) . the exempt person is regulated at the relevant time by the overseas regulator and complies at all times with the regulatory requirements in the relevant jurisdiction;¶
(b) . the Commission has not been informed by the overseas regulator that the exempt person has ceased to be authorised in the relevant jurisdiction;¶

Deleted: the exempt person complies with any direction from time to time given in writing by the Commission or the overseas regulator;¶

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Deleted: apart from the operation of the equipment in accordance with paragraph 3, the exempt person does not carry on, or hold itself out as carrying on, any regulated activity in or from the Island except in accordance with a licence;¶

(e) within 7 days of ent... [1]

Deleted: (h) . the exempt person must not establish... [2]

Regulation 3.

SCHEDULE 3
INTERPRETATION

<i>Expression</i>	<i>Definition</i>
Company	includes any body corporate, whether constituted under the law of the Island or elsewhere;
composition or scheme of arrangement	includes a deed of arrangement within the meaning of section 78 of the Bankruptcy Code 1892 ⁶ ;
the Commission	means the Financial Supervision Commission;
Director	has the same meaning as in the Order;
electronic money	has the same meaning as in the Order;
Group	has the same meaning as in the Order;
joint board	has the same meaning as in the Local Government Act 1985 ⁷ ;
licenceholder	means the holder of a licence issued under section 7 of the Act;
licensed	means licensed under section 7 of the Act;
nominee company	means a company whose sole activity is to hold as nominee or bare trustee investments beneficially owned by other persons;
receiver of a patient	means a receiver of a patient appointed, or treated as if appointed, under Part 7 of the Mental Health Act 1998 ⁸ , and includes a person acting by the authority of a judge of the High Court or the Attorney General pursuant to the said Part 7;
registered legal practitioner	means a person who is entered in the register maintained under the Legal Practitioners Registration Act 1986; ⁹

⁶ V1 p.312

⁷ 1985 c.24

⁸ 1998 c.3

⁹ 1986 c.13

regulator	means a person (whether or not a public authority) whose functions are or include the regulation in a country or territory outside the Island of activities which would be regulated activities if they were carried on in or from the Island;
the Rule Book	means the rules, or any part of the rules, made by the Commission under section 18 of the Act;
specified person	means a person who — (a) is an advocate or firm of advocates; or (b) is a registered legal practitioner or a firm of registered legal practitioners; (c) is a member of one of the following bodies — (i) the Institute of Chartered Accountants in England and Wales; (ii) the Institute of Chartered Accountants of Scotland; (iii) the Institute of Chartered Accountants in Ireland; or (iv) the Association of Chartered Certified Accountants.
trustee in bankruptcy	means a trustee appointed under section 7(1) of the Bankruptcy Code 1892, and includes an official trustee nominated to act as trustee under that section.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations, [which repeal and replace the Financial Services \(Exemption\) Regulations 2008](#), set out exemptions for certain persons from section 4 of the Financial Services Act 2008, which prohibits the carrying on of regulated activities except in accordance with a licence.

apart from the operation of the equipment in accordance with paragraph 3, the exempt person does not carry on, or hold itself out as carrying on, any regulated activity in or from the Island except in accordance with a licence;

- (e) within 7 days of entering into a binding agreement for the provision of temporary business continuity services, the exempt person notifies the Commission in writing of the terms of such agreement;
- (f) within 7 days of a request by the Commission, the exempt person provides to the Commission a copy of the agreement and any other relevant documentation which the Commission may require;
- (g) the exempt person forthwith notifies the Commission of the occurrence of —
 - (i) a relevant event resulting in the operation of the equipment;
 - (ii) any change in the use or proposed use of the equipment;
 - (iii) any change in the terms of the agreement; or
 - (iv) the termination of the use of the equipment;

- (h) the exempt person must not establish a permanent place of business on the Isle of Man for the purpose of operating the equipment;
- (i) the exempt person permits the Commission to inspect and investigate physical and electronic records relating to the performance of exempted operations by the exempt person in or from the Island.

Interpretation

3. (1) In this Schedule —
- "exempt person" means any person who —
- (a) enters into a contractual arrangement with another person ("the client") under which, on the happening of a relevant event, that person will perform, or cause to be performed, exempted operations in or from the Island utilising the equipment provided by the client; and
 - (b) is authorised by the relevant regulator at the relevant time to carry on the specified activity;

"exemption period" means the period calculated in accordance with sub-paragraphs (2) to (4) during which the exemption conferred by this Schedule operates;

"equipment" means computer apparatus located at a facility in the Island which is operated by a person other than the exempt person and is dedicated exclusively to the provision of temporary business continuity services;

"exempted operations" means the performance by or on behalf of an exempt person of operations, transactions and activities in or from the Island which —

- (a) the exempt person is authorised by the overseas regulator to perform, or to have performed on its behalf;
- (b) either —
 - (i) cannot be performed by the exempt person in or from the relevant jurisdiction due to a relevant event, or
 - (ii) are performed outside the relevant jurisdiction solely for the purposes of testing and maintenance;
- (c) do not result in the exempt person holding itself out as carrying on business in or from the Island; and
- (d) apart from section 4, are not unlawful under the law of the Island;

"relevant event" means an unplanned interruption to the operation of or accessibility to the computer apparatus of the exempt person due to an event beyond the control of the exempt person occurring in the jurisdiction in or from which the exempt person carries on business and caused by —

- (i) fire, hurricane, tidal wave, tornado, flood, volcanic eruption, act of God or any other kind of natural disaster;
- (ii) act of war or terrorism (excluding social upheaval due to political factors or governmental action);
- (iii) criminal damage; or
- (iv) the unauthorised modification of the contents of a computer;

"relevant jurisdiction" means the country or territory in which the overseas regulator is established;

"required person" means any person who undertakes activities in relation to the operation of equipment on behalf of an exempt person for the purposes of an exempted operation;

"specified activity" means a regulated activity to which the agreement referred to in regulation 3 relates;

"testing and maintenance" means establishing or verifying the effectiveness of arrangements for temporary business continuity services.

(2) Where the exempted operations cannot be performed by the exempt person in or from the relevant jurisdiction due to a relevant event, the exemption period —

(a) begins on the date on which the Commission confirms receipt of written notification of the occurrence of the relevant event, and

(b) subject to sub-paragraph (3), ends on the expiration of —

(i) 30 days after that date, where the overseas regulator notifies the Commission and the exempt person is unable to continue to exercise its regulatory functions in relation to the exempt person;

(ii) 60 days after that date, in any other case.

(3) On an application in writing by the exempt person and the supply by the exempt person of such information as the Commission may require, the Commission may by notice in writing to the exempt person extend the exemption period for such further period as may be specified in the notice if it is satisfied that such an extension is warranted, subject to such conditions (in addition to those in paragraph 2) as may be so specified; and the exemption period as so extended may be further extended in accordance with this sub-paragraph.

(4) Where the exempted operations are performed outside the relevant jurisdiction solely for the purposes of testing and maintenance, the exemption period —

(a) begins on the date on which the Commission confirms receipt of written notification of entering into a binding agreement for the provision of the temporary business continuity arrangements under which the testing and maintenance will take place; and

(b) ends when those arrangements cease to have effect.