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PART 9  
RISK MANAGEMENT AND INTERNAL CONTROL  
CHAPTER 1  
GENERAL REQUIREMENTS

**9.1 Application**

Except where otherwise provided, this Chapter applies to all licenceholders.

**9.2 Regulatory requirements**

In this Chapter "the regulatory requirements", in relation to any licenceholder, means the requirements of —

- (a) the conditions of the licenceholder's licence, and
- (b) the following, so far as applicable to the licenceholder —
  - (i) this Rule Book;
  - (ii) any other relevant legislation;
  - (iii) the Criminal Justice (Money Laundering) Code 2007 and any relevant code of practice under section 17F (money-laundering codes) of the Criminal Justice Act 1991; and
  - (iv) any direction given by the Commission under this or any other Rule Book.

*Direction and management*

**9.3 Corporate governance**

(1) The Board of a licenceholder is responsible for the good governance of the licenceholder and compliance with this rule book, any other relevant legislation and non-statutory obligations.

(2) A licenceholder must have in place arrangements for effective corporate governance which are appropriate to its size and the nature of its business.

**9.4 Management controls**

(1) A licenceholder must organise and control its internal affairs in a responsible manner and promote high ethical standards in the conduct of its regulated activities.

(2) The Board of a licenceholder, or in the case of a branch its senior management, must establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure —

- (a) effective communication between the licenceholder and its clients; and
- (b) appropriate segregation of key duties and functions; and
- (c) the fair treatment of clients; and

- (d) effective maintenance of accounting and other records and the reliability of this information; and
  - (e) appropriate safeguards to prevent and detect any abuse of the licenceholder's services for money laundering, financial crime or the financing of terrorism; and
  - (f) appropriate safeguards to prevent and detect market manipulation or market abuse.
- (3) A licenceholder must review the controls required by this rule annually, or more frequently if appropriate.
- (4) Where the licenceholder employs staff or is responsible for regulated activities conducted by others, it must make adequate arrangements to ensure that they are suitable, adequately trained and properly supervised.
- (5) A licenceholder must secure that the persons to whom this paragraph applies carry out their duties in a diligent and proper manner in accordance with the systems, controls, policies and procedures referred to in paragraph (2).
- (6) Paragraph (5) applies to —
    - (a) the licenceholder's key persons; and
    - (b) any other individual, whether or not employed by the licenceholder, who performs any regulated activity in the course of his employment or under any contract with the licenceholder.

## **9.5 Compliance with non-statutory obligations**

A licenceholder must observe any code or set of standards promulgated by any authority or body other than the Commission having responsibility in the public interest for the supervision or regulation of the licenceholder's activities, except to the extent that it is inconsistent with any applicable provision of this Rule Book or other legal requirement.

### *Risk Management*

## **9.6 Risk management**

- (1) The Board of a licenceholder, or in the case of a branch its senior management, must—
- (a) establish and maintain a comprehensive policy, appropriate to the nature and scale of its business, for managing the risks specified in paragraph (2); and
  - (b) review that policy annually.
- (2) The risks referred to in paragraph (1)(a) are —
- (a) all material risks associated with the licenceholder, including risks posed by a group company which may impact on the licenceholder;
  - (b) all operational risks associated with the licenceholder's regulated activities; and
  - (c) any other risks which the Commission has, by notice in writing to the licenceholder, specified as additional risks for the purpose of this rule.

- (3) The policy must include —
  - (a) clear arrangements for —
    - (i) delegating (where delegation is appropriate) and the separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities;
    - (ii) reconciliation of those processes;
    - (iii) safeguarding its assets; and
    - (iv) appropriate independent internal audit and/or compliance procedures to test adherence to controls and applicable laws and regulations;
  - (b) appropriate procedures and controls for the purpose of identifying, measuring, monitoring and controlling the risks specified in paragraph (2);
  - (c) arrangements for regular consideration of those risks by the Board of the licenceholder.
- (4) The licenceholder must —
  - (a) secure that the policy is complied with;
  - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy; and
  - (c) monitor the risks specified in paragraph (2) on a frequent and timely basis.
- (5) A notice under paragraph (2)(b) may specify procedures and controls for the purpose of identifying, measuring, monitoring and controlling the additional risks, and the licenceholder must maintain those procedures and controls.
- (6) A notice under paragraph (2)(b) shall remain in force until it is withdrawn by the Commission by a further notice in writing to the licenceholder.
- (7) A licenceholder authorised to carry on regulated activities falling within Class 1 must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the approval by the Board of the policy or amendment.
- (8) In this rule "group company", in relation to a licenceholder, has the same meaning as in the Regulated Activities Order 2008.
- (9) In the case of a licenceholder conducting regulated activities falling within Class 4 or Class 5 the policy should also cover material regulatory and other risks to the licenceholder associated with the activities of client companies and trusts.

## **9.7 Business plan**

- (1) A licenceholder must operate in accordance with its business plan.
- (2) Where any matter to be notified by the licenceholder to the Commission under rule 9.8 involves a material change in its activities as set out in its business plan or where the licenceholder ceases to carry on any class of regulated

activity under rule 8.15, the licenceholder must, before or as soon as practicable after the change takes place —

- (a) draw up a fresh business plan incorporating any necessary amendments to take account of that change; and
- (b) provide the Commission with a copy of the plan.

(3) In this rule “business plan” means a statement describing the licenceholder’s business or projected business, containing such details and projections as the Commission may reasonably require; and references to a licenceholder’s business plan are to —

- (a) the statement most recently provided under paragraph (2)(b); or
- (b) if none has been so provided, the statement submitted to the Commission with the licenceholder’s application for a licence.

### **9.8 Changes to activities, services or products**

A licenceholder must notify the Commission in writing, not less than 20 business days in advance, of any addition to, cessation of or material change to —

- (a) any regulated activities which it carries or carried on; or
- (b) any of the services or products which it offers or offered, whether or not their provision constitutes a regulated activity.

### **9.9 Business resumption and contingency arrangements**

A licenceholder must —

- (a) establish and maintain business resumption and contingency arrangements which are appropriate to the nature and scale of its business; and
- (b) test those arrangements at appropriate intervals.

### **9.10 Business continuity**

A licenceholder must —

- (a) establish and maintain arrangements for safeguarding the interests of its clients, appropriate to the size and organisation and the nature, scale and complexity of its business, in the event of —
  - (i) the death, incapacity or sickness; and
  - (ii) holidays and other periods of absence,of the individuals responsible for controlling or carrying on its activities;
- (b) cover the arrangements referred to in subparagraph (a) with either a disaster recovery plan or a locum;
- (c) provide the Commission with full details of those arrangements; and
- (d) notify the Commission, in writing, of any substantial changes to those arrangements.

### **9.11 Delegation of function, outsourcing or inward-outsourcing**

- (1) A licenceholder may not, without the consent in writing of the Commission —
  - (a) delegate any material management or business function to another person (whether or not that person is another company within the same group as the licenceholder);
  - (b) make any material change to any such delegation.
- (2) Any such delegation must be evidenced by a written agreement between the parties setting out clearly —
  - (a) their respective responsibilities and duties, including the monitoring of the delegated function by the licenceholder, and
  - (b) the provisions for terminating the delegation.
- (3) Any such delegation shall not affect the ultimate responsibility of the licenceholder for the delegated functions.
- (4) The licenceholder must secure that —
  - (b) the Commission has access to all records relating to the delegated functions;
  - (a) in the event of a breakdown in the delegation, the licenceholder is able to carry out or assume control of the delegated functions.

### **9.12 Breaches of rules**

- (1) A licenceholder must notify the Commission in writing as soon as it becomes aware of a material breach by the licenceholder of any of the regulatory requirements.
- (2) Where a licenceholder makes a notification under paragraph (1), it must also inform the Commission of the steps which it proposes to take to remedy the breach if possible and prevent a repetition of the breach.
- (3) A licenceholder must maintain a register of all breaches referred to in paragraph (1).
- (4) For the purposes of this paragraph, breaches of rules includes pricing errors in relation to collective investment schemes.

### **9.13 Fraud, dishonesty or prospective claims**

- (1) A licenceholder must notify the Commission in writing as soon as —
  - (a) it has reason to believe that a controller, director, or employee of the licenceholder has been engaged in activities involving fraud or other dishonesty; or
  - (b) it makes a claim, or notifies the insurer of a potential claim, on any insurance policy relating to professional indemnity.
- (2) A licenceholder must notify the Commission in writing as soon as it becomes aware of any event which may amount to fraud or serious mismanagement in the conduct of the licenceholder's business.

(3) Where the notification involves an employee of the licenceholder, who is not a controller, director or other key person, the name of the person involved should not be included.

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

A licenceholder must notify the Commission in writing as soon as it becomes aware of any action of the following kinds taken against a controller, director or key person by a professional body of which that person is a member —

- (a) an inquiry into that person's professional conduct;
- (b) the termination of that person's membership;
- (c) any disciplinary action against him;
- (d) any censure of his conduct.

#### **9.15 Matters to be notified — general (see also rule 8.9)**

(1) Without prejudice to the specific requirements of any other rule, a licenceholder must notify the Commission in writing of any relevant material change affecting its business, systems, controllers, directors and key persons.

(2) A licenceholder must notify the Commission in writing as soon as it becomes aware that any of the following has occurred, whether within or outside the Island —

- (a) the breakdown of administrative or control procedures relevant to any of the licenceholder's business (including breakdowns of computer systems or other accounting problems resulting, or likely to result in, failure to maintain proper records);
- (b) any event which makes it impracticable for a licenceholder to comply with any applicable provision of any Part of this Rule Book;
- (c) the appointment of inspectors by a statutory or other regulatory authority to investigate the affairs of the licenceholder or any associated company;
- (d) the imposition of disciplinary measures or sanctions on the licenceholder or any associated company, in relation to its business, by any statutory or other regulatory authority;
- (e) any event which may constitute market manipulation or market abuse;
- (f) an application by the licenceholder or its immediate parent or subsidiary for authorisation to carry on an activity in any country or territory outside the Island which, if carried on in the Island, would be a regulated activity;
- (g) the refusal of any application mentioned in sub-paragraph (f); or
- (h) the revocation of any such authorisation of the licenceholder or an associated company as is mentioned in sub-paragraph (f).

(3) Where a licenceholder gives a notification under paragraph (2)(a) or (b), it must also inform the Commission of the steps which it proposes to take to remedy the situation.

## *Officers of licenceholders*

### **9.16 Compliance officer and money laundering reporting officer**

- (1) A licenceholder must appoint the following officers —
  - (a) a compliance officer with responsibility for overseeing the licenceholder's compliance with the regulatory requirements, including those relating to money laundering and combating the financing of terrorism;
  - (b) a money laundering reporting officer with responsibility for compliance with the Criminal Justice (Money Laundering) Code 2007 and Rules and guidance issued under that Code; and
  - (c) a deputy money laundering reporting officer to cover for any absence of the money laundering reporting officer.
- (2) The same individual may be appointed as compliance officer and as money laundering reporting officer or deputy money laundering reporting officer.
- (3) This rule does not apply to a licenceholder who is authorised to carry on only activities falling within either or both of —
  - (i) paragraph (6) of Class 4 (acting as officer of company); and
  - (ii) paragraph (1) or (4) of Class 5 (acting as trustee or protector).

### **9.17 Functions and status of compliance officer**

- (1) A compliance officer is responsible for ensuring that –
  - (a) the licenceholder has robust and documented arrangements appropriate to the nature and size of the business for compliance with those requirements;
  - (b) the operational performance of those arrangements is suitably monitored; and
  - (c) the registers required by rules 9.12, 9.28 and 9.30 are maintained.
- (2) A compliance officer must have —
  - (a) appropriate independence and direct access to the licenceholder's Board;
  - (b) unfettered access to all business lines and support departments;
  - (c) appropriate status within the licenceholder to ensure that the directors and senior management react appropriately to recommendations; and
  - (d) sufficient time and resources to discharge properly the responsibilities of the position.

### **9.18 Isle of Man resident directors**

- (1) This rule applies to a licenceholder which is incorporated in the Isle of Man.
- (2) A licenceholder shall have at least two Isle of Man resident directors.

### **9.19 Isle of Man resident officers**

- (1) A licenceholder must —
  - (a) secure that its business is effectively controlled on a day-to-day basis by at least 2 nominated individuals —
    - (i) who are directors or key persons; and
    - (ii) who are resident in the Island; and
    - (iii) who have joint responsibility for overseeing the licenceholder's proper conduct; and
    - (iv) whose functions are separated, where appropriate.
  - (b) establish and maintain internal procedures to ensure that sub-paragraph (a) is complied with.
- (2) A nominated individual referred to in paragraph (1) is in this Rule Book referred to as an Isle of Man resident officer.

### **9.20 Absence of resident officers**

A licenceholder must have appropriate arrangements, approved by the Commission, in place so that, if it is at any time unable to comply with rule 9.19, either on a long or short term basis, a fit and proper person exercises the functions of the resident officer so that the licenceholder's regulated activities can continue without interruption.

### **9.21 Company secretary**

The secretary of a licenceholder incorporated under the Companies Act 1931 to which section 19(4) of the Companies Act 1982 does not apply must be an individual who is —

- (a) qualified in accordance with that section; or
- (b) in the case of a licenceholder authorised to carry on activities of Class 1, an associate of the Chartered Institute of Bankers or an associate of the IFS school of finance; or
- (c) approved by the Commission as suitable, by virtue of his knowledge and experience, to be secretary of the licenceholder.

### *Records*

### **9.22 General records**

- (1) A licenceholder must establish and maintain procedures to ensure that sufficient information is recorded and retained about its regulated activities and its compliance with the regulatory requirements.
- (2) A licenceholder must establish and maintain adequate systems and controls over its general records, having regard to its size and the nature and complexity of its activities.
- (3) The systems and controls referred to in paragraph (2) must be —

- (a) such as to enable the licenceholder to comply with the regulatory requirements; and
- (b) adequately and correctly documented.

### **9.23 Clients' records**

- (1) A licenceholder must keep and maintain proper records to show and explain transactions effected by it on behalf of its clients.
- (2) Those records must —
  - (a) be kept in English;
  - (b) be kept up to date;
  - (c) be in such a form as to demonstrate compliance with the regulatory requirements.

### **9.24 Records kept by third parties**

For the purpose of rules 9.22 and 9.23 a licenceholder may accept and rely on records supplied by a third party so long as those records are capable of being and are reconciled with records created by the licenceholder.

### **9.25 Business and accounting records**

A licenceholder must —

- (a) maintain records relating to its business transactions, financial position, internal organisation and risk management systems such as to demonstrate to the Commission that it complies with the regulatory requirements; and
- (b) keep those records for at least 6 years after it ceases to hold a licence.

#### *Compliance procedures*

### **9.26 Relations with regulators**

A licenceholder must —

- (a) co-operate in an open and honest manner with the Commission and any other regulatory body to which it is accountable; and
- (b) keep the Commission promptly informed of anything relevant to the exercise of its regulatory functions.

### **9.27 Compliance returns**

(1) A licenceholder must make an annual compliance return to the Commission in such form and at such time as the Commission may specify.

(2) The return must contain the information, and be accompanied by the documents, specified in Schedule 1 [*to be consulted upon at a later date*].

### **9.28 Conflicts of interest policy (see also rule 7.13)**

(1) A licenceholder must establish, implement and maintain an effective conflicts of interest policy which must be —

- (a) in writing; and
- (b) appropriate to its size and organisation and the nature, scale and complexity of its business.

(2) Where the licenceholder is a member of a group, the policy must also take into account any circumstances, of which it is or should be aware, which may give rise to a conflict of interest arising as a result of the structure and business activities of other members of the group.

(3) Where the licenceholder's functions have been delegated (whether in or out of the group) the policy must also take into account any circumstances, of which it is or should be aware, which may give rise to a conflict of interest arising as a result of the delegation.

- (4) The policy must identify, —
  - (a) with reference to the specific activities of the licenceholder, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of one or more of its clients, an example of which may be borrowing from clients which must always be disclosed;
  - (b) procedures to be followed and measures to be adopted in order to manage such conflicts.
- (5) The procedures and measures referred to in paragraph (3)(b) must —
  - (a) ensure that any relevant persons engaged in activities involving a conflict of interest of the kind specified in paragraph (3)(a) carry on those activities at a level of independence appropriate to —
    - (i) the size and activities of the licenceholder and (where appropriate) of the group to which it belongs; and
    - (ii) the materiality of the risk of damage to the interests of clients, and
  - (b) include such of the following as are necessary and appropriate for the licenceholder to ensure the requisite degree of independence —
    - (i) effective procedures to prevent or control the exchange of information between relevant persons who are engaged in activities involving a risk of a conflict of interest, where the exchange of that information may harm the interests of one or more clients;
    - (ii) the separate supervision of relevant persons whose principal functions involve carrying out activities on behalf of, or providing services to, clients whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the licenceholder;
    - (iii) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

- (iv) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out regulated activities;
- (v) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate activities where such involvement may impair the proper management of conflicts of interest.

**9.29 Conflicts of interest register (see also rule 7.13)**

- (1) A licenceholder must maintain a register of conflicts of interest.
- (2) The register referred to in paragraph (1) —
  - (a) may be in summary form, provided that a full record of each conflict of interest and the measures adopted to manage it is kept elsewhere;
  - (b) must contain the following information relating to each conflict of interest —
    - (i) a description of the regulated activity in relation to which the conflict arises;
    - (ii) the name of the client, or the description of clients, whose interests are at a material risk of damage by reason of the conflict;
    - (iii) the nature of the conflict;
    - (iv) if the conflict arises by reason of the involvement of an officer or employee of the licenceholder or of a person employed by them or under contract (in the latter case, the name of the person concerned);
    - (v) the measures adopted to manage the conflict;
    - (vi) the date when the conflict was first identified; and
    - (vii) if the conflict has ceased, the date when it ceased and the grounds for considering that it has ceased.
- (3) The information relating to a conflict of interest must be kept on the register until at least 6 years after the date mentioned in paragraph (2)(b)(vii).

*Complaints*

**9.30 Complaints**

- (1) A licenceholder must secure, in relation to any written complaint received relating to its regulated activities, that —
  - (a) the complaint is recorded in a complaints register;
  - (b) where appropriate, further details in writing, with supporting evidence, are requested from the complainant;
  - (c) the complaint is brought to the attention of an officer or employee of the licenceholder with appropriate authority to deal with complaints;

- (d) the complaint is investigated promptly and thoroughly within 12 weeks of receipt; and
- (e) appropriate action is taken and recorded.
- (2) A licenceholder must —
  - (a) have documented procedures for dealing with complaints from customers and clients;
  - (b) make those procedures readily accessible to the public; and
  - (c) secure that any remedial action needed is taken promptly (including, where appropriate, correcting any failures or weaknesses in its procedures and carrying out training of its staff).
- (3) Any procedures referred to in paragraph (2)(a) must —
  - (a) comply with paragraph (1); and
  - (b) include reference to the Financial Services Ombudsman Scheme where appropriate.
- (4) The register referred to in paragraph (2)(d) —
  - (a) may be in summary form, provided that a full record of the complaint and action taken in relation to the complaint is kept elsewhere;
  - (b) must contain the following information relating to each complaint —
    - (i) the name and address of the complainant;
    - (ii) the date when the complaint was made;
    - (iii) the date when the complaint was reported to the person with authority to deal with complaints;
    - (iv) the nature of the complaint;
    - (v) whether the complaint involves a regulatory breach;
    - (vi) how and when the complaint was investigated;
    - (vii) the action taken to resolve the complaint;
    - (viii) the date the complaint is considered closed; and
    - (ix) whether the PI insurance company was informed.
- (5) This rule does not apply to complaints relating to the level of fees charged in accordance with a client or customer agreement or terms of business.

## *CHAPTER 2*

### *ALL DEPOSIT TAKERS*

#### **9.31 Application**

This Chapter applies to all licenceholders which are authorised to carry on regulated activities falling within Class 1.

## *Direction and management*

### **9.32 Corporate governance**

- (1) The Board of a licenceholder must ensure that the regulated activity is managed and controlled from the Island.
- (2) At least one director of a licenceholder must be of non-executive status.

### **9.33 Annual review of certain policies**

A licenceholder must notify the Commission in writing, within 4 months after the end of its financial year, that during the year the Board reviewed and approved each of the following and assessed that they were up to date and appropriate —

- (a) its risk management policy under rule 9.6;
- (b) its credit risk policy under rule 9.35;
- (c) its large exposures policy under rule 9.36;
- (d) its policy on arrears and provisions for bad and doubtful debts under rule 9.40;
- (e) its liquidity policy under rule 9.41;
- (f) its foreign exchange risk management policy under rule 9.42; and
- (g) its interest rate risk management policy under rule 9.44.

## *CHAPTER 3*

### *RISK MANAGEMENT — DEPOSIT TAKERS INCORPORATED IN THE ISLAND*

### **9.34 Application**

- (1) This Chapter applies to all licenceholders which are authorised to carry on regulated activities falling within Class 1 and are incorporated in the Island.
- (2) This Chapter is without prejudice to the generality of rule 9.6.

### **9.35 Credit risk policy**

- (1) The Board of a licenceholder must—
  - (a) establish and maintain a credit risk policy which is appropriate to the nature and scale of its business; and
  - (b) review that policy annually.
- (2) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the approval by the Board of the policy or amendment.
  - (3) The policy must include —
    - (a) limits on different types of lending (including geographical, economic and individual sectors);
    - (b) provisions in respect of connected and related party lending;

- (c) provisions in respect of sanctioning limits and authorisation procedures;
  - (d) provisions as to permissible forms of security/collateral;
  - (e) monitoring and control procedures; and
  - (f) arrears and provisioning procedures.
- (4) A licenceholder must —
- (a) secure that the policy is complied with; and
  - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy.

### **9.36 Large exposures policy**

- (1) The Board of a licenceholder must—
- (a) establish and maintain a large exposures policy which is appropriate to the nature and scale of its business; and
  - (b) review that policy annually.
- (2) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the approval by the Board of the policy or amendment.
- (3) The policy must include —
- (a) exposure limits for customers, counterparties, countries and economic sectors;
  - (b) sanctioning limits and authorisation procedures;
  - (c) permissible forms of collateral;
  - (d) procedures where exposures are to a guarantor;
  - (e) monitoring and control procedures; and
  - (f) a regulatory reporting policy.
- (4) A licenceholder must —
- (a) secure that the policy is complied with; and
  - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy.

### **9.37 Large exposure management**

- (1) A licenceholder must —
- (a) not incur an *exposure* which (including accrued interest) exceeds 25% of its *LECB*, unless the exposure is an *exempt exposure*; or
  - (b) not incur *large exposures*, excluding exempt exposures, exceeding in the aggregate 800% of its *LECB*.
- (2) A licenceholder must maintain appropriate procedures and controls for the purpose of monitoring its large exposures on a daily basis.

- (3) A licenceholder must —
  - (a) notify the Commission in writing before entering into an exempt exposure, except —
    - (i) an exposure falling within rule 9.39(a); or
    - (ii) where the Commission has directed that the exposure need not be notified;
  - (b) notify the Commission immediately when the total of its large exposures, excluding exempt exposures, exceeds or is likely to exceed 300% of its LECB;
  - (c) notify the Commission immediately of any breach of —
    - (i) the limit in paragraph (1)(a) or (b), or
    - (ii) any other counterparty limit agreed with the Commission for the purpose of this sub-paragraph;
  - (d) notify the Commission immediately if its adjusted capital base falls below its current LECB.
- (4) Where notification in sub paragraphs (3) (b), (c) and (d) is otherwise than in writing the licenceholder should also follow this up with a notification in writing.
- (5) A licenceholder must report to the Commission as at each quarter-end, within 20 business days of the quarter-end, all exposures (including exempt exposures) which have equalled or exceeded 10% of its LECB during that quarter; and for this purpose no account shall be taken of —
  - (a) accrued interest; or
  - (b) any provision for bad and doubtful debts.

### **9.38 Calculation of exposures**

- (1) A licenceholder must calculate any exposure as the gross amount at risk from —
  - (a) claims, including —
    - (i) actual and potential claims which would arise from the drawing down in full of undrawn advised facilities (revocable or irrevocable, conditional or unconditional) which the licenceholder has committed itself to provide; and
    - (ii) claims which the licenceholder has committed itself to purchase or underwrite;
  - (b) contingent liabilities, including —
    - (i) those which arise in the normal course of business; and
    - (ii) those which would arise from the drawing down in full of undrawn advised facilities (whether revocable or irrevocable, conditional or unconditional) which the licenceholder has committed itself to provide; and

- (c) assets, including those which the licenceholder has committed itself to purchase or underwrite —
  - (i) whose value depends wholly or mainly on a counterparty performing its obligations; or
  - (ii) whose value otherwise depends on a counterparty's financial soundness but which do not represent a claim on the counterparty.

(2) Except as provided in rule 9.37(4), in calculating an exposure a specific provision made against a loan should be set off against the gross amount of the exposure.

(3) If a third party has provided an express unconditional and irrevocable guarantee in respect of an exposure, a licenceholder may report the exposure as being to the guarantor.

(4) A licenceholder must not net its claims and obligations in calculating its exposure to a counterparty unless —

- (a) there is a legally enforceable contract allowing the licenceholder to set off any claim against the counterparty; and
- (b) it notified the Commission before it entered into the contract.

### **9.39 Exempt exposures**

The following exposures are exempt exposures —

- (a) exposures of one year or less to *Zone A banks* (excluding multilateral development banks) not related to a licenceholder, provided that —
  - (i) the placing is not subject to any form of charge or pledge; and
  - (ii) the exposure is part of a licenceholder's normal treasury operations;
- (b) exposures to or guaranteed by central governments and central banks of *Zone A countries*;
- (c) exposures to central governments of *Zone B countries* if they are denominated in local currency and funded by liabilities in the same currency;
- (d) exposures secured either by cash (including certificates of deposit issued by the lending bank) held by the lender, a guarantee by the central government of a *Zone A country*, or central bank securities, provided that —
  - (i) the legal title of the lender must be fully protected;
  - (ii) only the portion of an exposure that is fully secured by cash or securities and over which a licenceholder has a full right of set-off, is exempt for this purpose;
  - (iii) if the security is in a different currency from the exposure or is in the form of securities, the amount of the collateral must include a margin to cover possible fluctuations in value;

- (e) exposures to other group companies which are credit institutions in Zone A countries;
- (f) exposures with parental guarantees.

#### **9.40 Arrears and provisions policy for bad and doubtful debts**

- (1) The Board of a licenceholder must—
  - (a) establish and maintain a policy on arrears and provisions for bad and doubtful debts which is appropriate to the nature and scale of its business; and
  - (b) review that policy annually.
- (2) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the approval by the Board of the policy or amendment.
- (3) A licenceholder must —
  - (a) secure that the policy is complied with; and
  - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy.
- (4) A licenceholder must —
  - (a) hold an adequate level of provisions for specific bad and doubtful debts; and
  - (b) report to the Commission its arrears and provisions for bad and doubtful debts —
    - (i) as at each quarter-end, within 20 business days of the quarter-end; or
    - (ii) at such other intervals as may be required by the Commission, within 20 business days of the reporting date.

#### **9.41 Liquidity policy**

- (1) The Board of a licenceholder must—
  - (a) establish and maintain a liquidity policy (including specific limits for liquidity) which is appropriate to the nature and scale of its business; and
  - (b) review that policy annually.
- (2) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the approval by the Board of the policy or amendment.
- (3) A licenceholder must —
  - (a) secure that the policy is complied with; and
  - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy.
- (4) A licenceholder must —

- (a) establish and maintain an appropriate liquidity contingency plan; and
- (b) provide the Commission with a copy of the plan.

#### **9.42 Liquidity management**

- (1) A licenceholder must —
  - (a) maintain liquidity at the minimum level specified in paragraph (2); and
  - (b) measure and monitor liquidity, as frequently as is appropriate, by calculation of mismatch positions.
- (2) The level of liquidity referred to in paragraph (1)(a) is within —
  - (a) such mismatch limits as the Commission may direct; or
  - (b) if no such direction is given, the following mismatch limits —
 

sight to 8 days	0%
sight to 1 month	–5%
- (3) A licenceholder must —
  - (a) notify the Commission immediately of any breach of paragraph (1)(a), if this is otherwise than in writing it should be followed up by a notification in writing;
  - (b) remedy any such breach and take action to prevent future breaches as soon as possible; and
  - (c) report its liquidity positions to the Commission as at each quarter-end, within 20 business days of the quarter-end.

#### **9.43 Foreign exchange risk**

- (1) A licenceholder must maintain appropriate procedures and controls for the purpose of measuring and monitoring its foreign exchange risks on a frequent and timely basis.
- (2) A licenceholder must report its foreign exchange risk positions to the Commission as at each quarter-end, within 20 business days of the quarter-end.
- (3) The Board of a licenceholder must —
  - (a) establish and maintain a prudent foreign exchange risk management policy (including specific limits of risk) which is appropriate to the nature and scale of its business; and
  - (b) review that policy annually, or more frequently if appropriate.
- (4) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the approval by the Board of the policy or amendment.
- (5) A licenceholder must —
  - (a) secure that the policy is complied with; and
  - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy.

#### **9.44 Interest rate risk**

- (1) A licenceholder must maintain appropriate procedures and controls for the purpose of measuring and monitoring its interest rate risks on a frequent and timely basis.
- (2) A licenceholder must report its interest rate risk positions to the Commission as at each quarter-end, within 20 business days of the quarter-end.
- (3) The Board of a licenceholder must—
  - (a) establish and maintain a prudent interest rate risk management policy (including specific limits of risk) which is appropriate to the nature and scale of its business; and
  - (b) review that policy annually, or more frequently if appropriate.
- (4) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the approval by the Board of the policy or amendment.
- (5) A licenceholder must —
  - (a) secure that the policy is complied with; and
  - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy.

### *CHAPTER 4*

#### *RISK MANAGEMENT — DEPOSIT TAKERS INCORPORATED OUTSIDE THE ISLAND*

#### **9.45 Application**

- (1) This Chapter applies to all licenceholders which are authorised to carry on regulated activities falling within Class 1 and are incorporated in a country or territory outside the Island.
- (2) This Chapter is without prejudice to the generality of rule 9.6.

#### **9.46 Credit risk policy**

- (1) A licenceholder must —
  - (a) establish and maintain a credit risk policy which is appropriate to the nature and scale of its business; and
  - (b) review that policy annually.
- (2) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the adoption of the policy or amendment.
- (3) The policy must include —
  - (a) limits on different types of lending (including geographical, economic and individual sectors);
  - (b) limits on connected and related party lending;

- (c) provisions in respect of sanctioning limits and authorisation procedures;
  - (d) provisions as to permissible forms of security;
  - (e) monitoring and control procedures; and
  - (f) arrears and provisioning procedures.
- (4) A licenceholder must —
- (a) secure that the policy is complied with; and
  - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy.

#### **9.47 Large exposures**

(1) A licenceholder must report to the Commission as at each quarter-end, within 20 business days of the quarter-end —

- (a) the 10 largest exposures to banks (or credit institutions); and
- (b) the 10 largest exposures to non banks (or credit institutions)

which relate to its operations in or from the Island.

(2) A licenceholder must have and comply with documented controls and procedures in accordance with the large exposures policy of its head office.

#### **9.48 Arrears and provisions policy for bad and doubtful debts**

- (1) A licenceholder must —
- (a) establish and maintain a policy on arrears and provisions for bad and doubtful debts which is appropriate to the nature and scale of its business; and
  - (b) review that policy annually.

(2) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the adoption of the policy or amendment.

- (3) A licenceholder must —
- (a) secure that the policy is complied with; and
  - (b) maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy.
- (4) A licenceholder must —
- (a) hold an adequate level of provisions for specific bad and doubtful debts; and
  - (b) report to the Commission its arrears and provisions for bad and doubtful debts as at each quarter-end, within 20 business days of the quarter-end.

#### **9.49 Liquidity policy**

- (1) A licenceholder must —

- (a) establish and maintain a liquidity policy (including specific limits for liquidity) which is appropriate to the nature and scale of its business; and
- (b) review that policy annually or more frequently if appropriate.
- (2) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the adoption of the policy or amendment.
- (3) A licenceholder must maintain appropriate procedures and controls for the purpose of monitoring its compliance with the policy.
- (4) A licenceholder must —
  - (a) establish and maintain an appropriate *liquidity contingency plan*; and
  - (b) provide the Commission with a copy of the plan.

### **9.50 Liquidity management**

- (1) A licenceholder must measure and monitor its liquidity, as frequently as appropriate, by calculation of mismatch positions.
- (2) A licenceholder must report its liquidity positions to the Commission as at each quarter-end, within 20 business days of the quarter-end.

### **9.51 Foreign exchange risk**

- (1) A licenceholder must maintain appropriate procedures and controls for the purpose of measuring and monitoring its foreign exchange risks on a frequent and timely basis.
- (2) A licenceholder must—
  - (a) establish and maintain a prudent foreign exchange risk management policy (including specific limits of risk) which is appropriate to the nature and scale of its business; and
  - (b) review that policy annually, or more frequently if appropriate.
- (3) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the adoption of the policy or amendment.

### **9.52 Interest rate risk**

- (1) A licenceholder must maintain appropriate procedures and controls for the purpose of measuring and monitoring its interest rate risks on a frequent and timely basis.
- (2) A licenceholder must —
  - (a) establish and maintain a prudent interest rate risk management policy (including specific limits of risk) which is appropriate to the nature and scale of its business; and
  - (b) review that policy annually, or more frequently if appropriate.

(3) A licenceholder must provide the Commission with a copy of the policy, and any substantial amendment of that policy, within 20 business days of the adoption of the policy or amendment.

## CHAPTER 5

### INVESTMENT, CIS, CORPORATE AND TRUST SERVICE PROVIDERS

#### 9.53 Professional indemnity insurance

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

(2) A licenceholder must maintain professional indemnity insurance appropriate to the nature and size of its business.

(3) The following levels of PII cover should be maintained –

(a) for financial advisors, Promoters and licenceholders authorised to carry on regulated activities falling within Class 4, £250,000 in aggregate or 3 times total revenue whichever is the greater;

(b) for licenceholders authorised to carry on regulated activities falling within Class 2, except financial advisers, Class 3, except promoters, and Class 5, £500,000 in aggregate or 3 times total revenue whichever is the greater; and

(c) the licenceholder is not required to have aggregate cover exceeding £10,000,000.

Where a licenceholder is authorised to carry on regulated activities falling within Class 4 and Class 5, the Commission would expect the business as a whole to meet the higher applicable requirement, which, subject to the licenceholder's revenue, would be the PII cover relevant to a licenceholder authorised to carry on regulated activities falling within Class 5.

(4) PII must be obtained from an underwriter who is subject to regulation in an acceptable jurisdiction.

(5) When making its annual compliance return, a licenceholder must also supply to the Commission details of the insurance in force together with evidence of the cover.

(6) A licenceholder must notify the Commission in writing as soon as practicable of –

(a) any claim exceeding £10,000 on its insurance; and

(b) any change in the insurance previously notified to the Commission.

*Guidance –*

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

*Professional Officers may apply for a modification of the PII requirements, in order that the Commission may accept Director & Officers Insurance instead of full PII.*

#### **9.54 Retention of client records**

(1) This rule applies to all licenceholders which are authorised to carry on regulated activities falling within Class 2.

(2) Subject to paragraph (4), a licenceholder must keep —

- (a) the records which it is required by this Part to make; and
- (b) copies of the statements which it is required by rule 7.49 to provide;

for not less than 6 years after the date on which they are made or provided to the client and records relating to pension transfers, pension opt-outs or free-standing additional voluntary contributions shall be retained indefinitely.

(3) The licenceholder must keep those records either —

- (a) at a place where the licenceholder carries on business; or
- (b) in such a manner that they can be produced at such a place within 24 hours of demand.

(4) In the case of a transaction which relates to long-term business within the meaning of the Insurance Act 1986, a licenceholder must keep the records referred to in paragraph (2) for the duration of the contract in question.

#### **9.55 Inspection of records**

(1) This rule applies to all licenceholders authorised to carry on regulated activities falling within Class 2.

(2) A licenceholder must allow each of its clients during business hours to inspect, either personally or by his agent, any entry in a record kept by it of matters relating exclusively to the client —

- (a) as soon as practicable; and
- (b) in any event, not more than 10 business days after it receives a request to carry out such an inspection.

(3) If a client asks to inspect any entries in its records which relate to transactions effected by the licenceholder with or for him, but which are not exclusive to him, the licenceholder must either comply with the request subject to any data protection issues.

#### **9.56 Provision of officers**

(1) This rule applies to all licenceholders which are authorised to carry on regulated activities falling within Class 4.

(2) Where a licenceholder carries on a regulated activity falling within paragraph (7) of Class 4 (providing officer of company) it must take reasonable steps to ensure that the person concerned —

- (a) is a suitable and competent person to undertake the office in question; and
- (b) understands the duties and responsibilities of the office.

(3) Where the person concerned is a body corporate, the licenceholder's obligation under paragraph (2) relates to the directors of the body corporate.

(4) Where the person concerned is an officer of or employed by, or a professional associate of, the licenceholder, the licenceholder must take reasonable steps to ensure that the person concerned undertakes the office in a diligent and proper manner.