

Summary of responses received on the consultation on the review of Financial Services Legislation – draft Regulated Activities Order 2009 and Financial Services (Exemption) Regulations 2009

Glossary of terms used in this document

CISA	means the Collective Investment Schemes Act 2008;
Exemption Regulations	means the Financial Services (Exemption) Regulations 2008;
FSA 2008	means the Financial Services Act 2008; and
RAO	means the Regulated Activities Order 2008.

Twenty-six sets of comments were received during the consultation process. A summary of the responses and the Commission's comments is detailed below.

Some changes have been made to the draft Regulated Activities Order 2009 and draft Financial Services (Exemption) Regulations 2009 following the consultation period. Most of these were as a result of the consultation comments and so are detailed in the response to the comment provided in the table although there has been some minor rewording of some paragraphs which are not detailed in the table as there is no material impact on the meaning.

Following a specific issue which has arisen, changes have been made to the exemptions for liquidators in Classes 2-8 (exemptions 2.1, 3.5, 4.8, 5.5, 6.2, 7.1 and 8.4) which extend the exemption to persons acting under the direction or control of the liquidator. This will enable staff of an accountancy firm or a former licenceholder to continue to conduct regulated activities to facilitate a winding up of the business. In addition, in the case of a voluntary liquidation where the Commission does not propose the liquidator, in order for the liquidator to take advantage of the exemption, the Commission has to approve the appointment. This requirement will enable the Commission to consider whether any conflicts of interest or other issues exist.

Some parts of the Financial Services (Exemption) Regulations 2009 have been significantly changed following consideration of the consultation comments. This is detailed in the comments in the table but has been expanded on below for clarity.

- ~ The exemption included for “professional directorships” which are undertaken by a person who is either —
- (a) an advocate or firm of advocates;
 - (b) a registered legal practitioner or a firm of registered legal practitioners;
 - (c) 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,

has been removed as many of the consultation comments did not agree with this approach. The rationale for these changes was that the person would be either acting in a professional capacity, in which case, they would be excluded under the professional services exclusion, or the person is undertaking directorships by way of business and should be regulated, subject to the de minimis level and where the activity is undertaken for a number of companies in the same group. It is accepted that the number of directorships in a group could be significant which is why the group exemption is limited to no more than 3 groups. Additionally, several representations were made from other

professional bodies wanting their organisations to be included in the list and it would have been difficult to objectively decide who should be included and who should not.

- ~ Similarly to this, the new exemption 5.4 which would have exempted trusteeships undertaken by a person who is either —
 - (a) an advocate or firm of advocates;
 - (b) a registered legal practitioner or a firm of registered legal practitioners;
 - (c) 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,

provided that the person adheres to any continuing professional development requirements of his professional body and is in good standing with that body, has been removed as many of the consultation comments did not agree with this approach.

- ~ The additional exemption for “group officers” to cover persons acting as a director or alternate director of companies within a group but with a limit of no more than three groups has been adopted as no negative comments were received but the groups will be discounted from the de minimis level. This exemption has resulted in the exemption for “nominee services” being reduced to avoid duplication.
- ~ The exemption for acting as a director of Isle of Man regulated companies has been reinstated and extended to cover acting as a company secretary following the consultation comments. “Regulated companies” extend to those regulated by the FSC, IPA and GSC.
- ~ The de minimis level of acting as a director or alternate director of no more than 10 companies remains.

9th October 2009

Summary of comments

	Industry comment	FSC's Response
<i>Draft Regulated Activities Order 2009</i>		
<i>Class 2</i>	<p>The inter-relationship between Class 2, Class 3 and the CISA is not fully addressed. When a scheme is properly constituted in accordance with the requirements for a particular category of scheme it should be outside the scope of regulation under Class 2 or Class 3. Exclusion 2(v) works for a collective investment scheme that is an entity in its own right (e.g. an open ended investment company) but does not contemplate arrangements between a number of persons where none of them is itself a collective investment scheme (e.g. a limited partnership or unit trust structure). In my view the trustee or general partner should also benefit from a comprehensive exclusion from Class 2 and a general partner should clearly have the benefit of an exclusion under Class 3.</p> <p>A company acting for its own account in buying or selling investments is outside the scope of Class 2, but since it is a legal person it must act through agents; it seems to be generally accepted that the directors of a company in acting as such will not be caught by Class 2(3) or (4) in facilitating such transactions, but they are nonetheless agents of the relevant company and it is my opinion that it would be beneficial to make it clear that none of the Class 2 activities would cover this function, perhaps in similar terms to exclusion 2(j) i.e. provided that the individual does not hold itself out as providing a Class 2 service in addition to the discharge of directors' duties etc.</p>	<p>Exclusion 2(v) has been amended to extend to the governing body of a collective investment scheme or a collective investment scheme for the scheme's own account.</p> <p>It is considered that when a director is acting on behalf of the company of which he is a director, he is not acting for a third party and therefore it is not necessary to clarify this further.</p>
Exclusion 2(d)	<p>The removal of the exemption for UK regulated persons formerly set out in paragraph 11 of the Investment Business Order 1991 has caused difficulties for a number of our international financial services clients. We consider, therefore, that this provision would benefit materially from the inclusion of a general exclusion for UK regulated persons who do not have a place of business on the Isle of Man.</p>	<p>This point has been discussed and will be considered further in the next review of the Regulated Activities Order.</p>
<i>Exclusion 2(g)</i>	<p>We are concerned that this amendment does nothing to clarify what is already a grey area. Class 4 licenceholders provide services to many private investment companies; these companies may be party to investment transactions. Class 4 licenceholders may provide a range of services to such companies including provision of one or more directors or administration services. If the Board of such a client company made a decision that the company should purchase certain securities for its own account, it is possible that the Class 4 licenceholder would be involved in "arranging" that transaction (e.g. liaising with bankers and brokers) and may well charge fees for time spent by its staff in doing so. Is this covered by exclusion 2(g) if it is done by a person acting as a director? Is it covered</p>	<p>It is considered that the proposed amendment does clarify the position and no further revision or clarification is required.</p>

	<p>if he delegates that to a more junior member of the licenceholder's staff? If the licenceholder merely acts as registered agent or secretary and provides record keeping and administration services, but its' staff are instructed by the Board to arrange the transaction, is this covered by the exclusion taken with Class 4(10)?</p> <p>My concern is that the requirement for the activity referred to in Class 4 to "also be" an activity within Class 2 may not easily be met because they are different regulated activities. If the intention is that anything done by a Class 4 licenceholder that might constitute Class 2 activities is excluded if it is merely incidental to an activity for which it is authorised under Class 4, would it not be better to say as much?</p>	
<i>Class 3</i>	Move the definition of exempt-type scheme from the interpretation specific to Class 3 to the general interpretation section so that it applies more widely.	Agreed – change made
<i>Class 3</i>	We consider that the Order would benefit from the inclusion of an interpretation provision of some description with respect to Class 3; it is our understanding (based on previous discussions with FSC officers) that a person holding a Class 3 permission does not require also to hold Class 2, 4 or 5 permissions to the extent that Class 2, 4 or 5 activities (as the case may be) form part of that person's Class 3 activities, however, this does not appear to be expressed within the Order.	The Commission considers that this is clear in the Order. However, several paragraphs of guidance have been included in the supplemental licensing policy for Class 3 licenceholders to further clarify the position.
<i>Class 3</i>	When the FSA 2008 and the RAO were originally introduced they were heralded as an "activity based approach". It is my view that this has not been the outcome as regards Class 3 and, in particular, its inter-relationship with Class 2. This stems from the fact that a collective investment scheme is a highly technical, legal concept. It seems odd that an investment manager wishing to provide services to a closed ended investment company must seek authorisation under Class 2, whilst an investment manager wishing to provide services to an (equally closed ended) limited partnership must seek authorisation under Class 3. The "activities" to be undertaken will be identical. Furthermore Class 2 takes the view that "managing" those investments is qualitatively different from "dealing as an agent" in those investments and from "arranging deals" in those investments. Does a Class 3 investment manager also need Class 2 authorisation to be able to arrange the investment transactions that it has (using its investment discretion) determined are in the best interests of its collective investment scheme client?	It is accepted that Class 3 is approached differently from the other Classes but this approach has been discussed at length with the schemes' industry and it is their favoured approach.
<i>Class 3</i>	Unnecessary complexity in this area has been compounded by the distortion that has occurred to the expression "manager" in the RAO and CISA. In the context of a collective investment scheme, the sole purpose of which is to invest assets for gain, any plain English interpretation of the role of a person identified as the "manager" of that scheme would infer that the overwhelming	In general, the provision of services to collective investment schemes is covered under Class 3 of the Regulated Activities Order and it should not be necessary to give additional permissions under other classes. In particular, it is not necessary to apply for investment business activities under Class 2 if the investment business services provided are only

	<p>majority of that person's duties would relate to the management of its investments. However, the CISA includes a definition of "manager" that refers to obligations to ensure the management of the scheme in accordance with its constitutional documents and to the conduct of administration but refers to investment management only in the context of authorised schemes thus leaving investment management of other categories of scheme in limbo.</p> <p>Perhaps all investment management, whether for collective investment schemes or not would be more appropriately authorised under Class 2. The concept of "manager" rather than investment manager could be dropped (except as required in the context of an authorised scheme, if such is the case) and Class 3 should be confined to the authorisation of those persons providing administration, custody and other ancillary services to schemes. If an entity wished to provide both administration and investment management services to a scheme they would need to be authorised under Class 2 and Class 3. If the aim is to impose different levels of oversight responsibility on IOM licensed administrators for different categories of scheme then this could be achieved (as is the case with the qualifying fund) by specifically setting out those responsibilities in the scheme requirements, rather than by calling that licenceholder a "Manager" when clearly it does not have any powers of management.</p>	<p>to schemes. However, sub-custodians do need to apply for a Class 2(5) permission as their services are not provided directly to the scheme.</p> <p>Additionally, restricted permissions under Class 4 (corporate services) may be required to cover corporate services to schemes.</p> <p>If services are also provided to closed ended investment companies, licence applicants may be required to apply for restricted permissions under Class 2 (and/or Class 4).</p> <p>The concept of having all schemes related activity has been discussed at length with the schemes' industry and this is the favoured approach.</p>
<i>Class 3 exempt managers</i>	<p>The status of "exempt managers of exempt type schemes" could benefit from clarification in light of the comments above, and general concerns that the licensing approach to those now providing services to exempt schemes is such that those schemes are de facto subject to regulatory approval requirements.</p>	<p>Exempt schemes are not subject to regulatory approval or notification. However, licenceholders acting for such schemes are required to meet the Commission's requirements. As part of the transitional arrangements, the Commission licensed existing providers but these are subject to a transitional arrangement subject to a supervisory visit being undertaken.</p>
<i>Class 3 (13)</i>	<p>The requirement to purchase an additional licence does not appear justifiable in view of our experience to date acting as a representative. To date there has been no demand from investors made of the representative and the role of the representative is well within the requirements of any business suitable to be provided with a licence to conduct business in the Isle of Man.</p>	<p>Individually recognised schemes are required to have an Island representative who is an 'authorised person'. The definition of an 'authorised person' means "a person licensed under section 7 of the Financial Services Act 2008 to carry out the activity..." therefore, it makes sense to include this as a specific regulated activity so that it can be explicitly included on licences rather than accepting licenceholders who have any Class 3 activities. It is not necessarily a requirement to "purchase a licence" as currently there would be no fee involved.</p>
Joint Enterprise Exclusion	<p>In advising clients on their Isle of Man regulatory position we have had occasion to rely on the exclusion for joint enterprises and, whilst this has not happened very often, we think that the exclusions and related definition should be retained. We note that "joint enterprise" remains a term used elsewhere within the Order (Exclusion 2(c)), notwithstanding the deletion of the definition thereof.</p>	<p>As this is used by the industry, it has been reinstated.</p>

	<p>This should be retained. Joint enterprises are a widely used and established business practice. I am aware of at least one individual who believes this exclusion was of use. I imagine that 'joint enterprises' are quite common in practice when two or more individuals go into business together.</p>	
<i>Exclusion 4(c)</i>	<p>There could be issues of interpretation surrounding the incidental professional activity exemption and when that will apply.</p>	<p>It is agreed that the "wholly incidental" is not applicable for all activities in Class 4 but the exclusion can only be used where the activity is incidental.</p>
<i>Exclusion 4(d)(c)</i>	<p>Concerns have been raised around the deletion of the word "officer" which could give rise to argument about interpretation.</p>	<p>As there are a number of exemptions relating to officers, it is considered appropriate that the reference to officer is removed from this exclusion.</p>
<i>Exclusion 4(g)</i>	<p>This appears to permit an individual to act as a director or secretary of a company wholly owned by himself OR wholly owned by one or more close relatives. What is the position if the company is beneficially owned by himself AND one or more close relatives? (The joint enterprise exclusion would have covered this). Why does this exclusion not cover other activities e.g. (9) or (10)? In any event it seems unlikely that an individual acting as director or secretary of a company wholly owned by him would be doing so by way of business.)</p>	<p>Agreed – change made to include a company that is beneficially owned by a person AND one or more close relatives.</p>
<i>Class 4 Interpretation (2)</i>	<p>Most of this interpretation is superfluous – if any of those circumstances applied, the Financial Services Act definition (which is basically taken from the Companies Act 1974) would exclude the company from the Group.</p>	<p>The inclusion of the interpretation is designed to assist readers, and therefore remains.</p>
<i>Exclusion 5 (b)</i>	<p>Various statutes contain special provisions in relation to employee benefit trusts or share schemes, and normally provide dispensations if a trust is for the benefit of employees of a particular company or group, and the beneficiaries of such employee benefit trusts may extend to wives, husbands, widows, widowers, children or stepchildren under the age of 18 of such employees. The beneficiaries also normally in such dispensations extend to former employees. Two examples are paragraph 3(d) of the Collective Investment Schemes (Definition) Order 2008; and the definition of "relevant person" for the purposes of Exclusion 2(f) – Employee Share Schemes – of the RAO. However, Exclusion 5(b) of the RAO is narrower in two respects. Firstly, it does not provide for employees' families to be beneficiaries of an employee trust. Secondly, and although we do not consider that this is the correct interpretation, on a strict construction to rely on the exclusion on an ongoing basis it may be that a person who ceases to be an employee of a group company must also cease to be a beneficiary of the employee trust, since otherwise it appears that a former employee would be a "third party". It would be normal for former employees to remain beneficiaries, at least if "good leavers", since they may benefit in future</p>	<p>We are not aware of any issues that have arisen in regard to these points and therefore no change has been made.</p>

	<p>by reference to past employment.</p> <p>Exclusion 5(b) is relevant where it is an Isle of Man company, being a member of a larger group, which is proposed to act as trustee of an employee benefit trust, and there is no TSP involved. If there is a TSP involved, then that person may be able to either provide a trustee, or Exemption 5.6 – Private Trust Companies – in the Exemptions Regulations may apply depending on the circumstances.</p> <p>However, in a situation where a TSP is not to be involved, then Exclusion 5(b) appears to be the only exclusion or exemption available to an Isle of Man group company which wishes to act as trustee of an employee benefit trust for the group without a licence under the FSA2008 in respect of Class 5 activities.</p> <p>Is there any particular policy reason why Exclusion 5(b) is narrower than other dispensations relating to employee benefit trusts or could it be widened? We are unsure of the extent to which this might be a live issue amongst the business community.</p> <p>We note that the exemption in paragraph 3 of Part 1A of Schedule 2 of the Corporate Service Providers Act 2000 (as amended) was in the same terms as Exclusion 5(b). However, employee benefit trusts routinely include family members and former employees, and therefore to the extent that the business community on the Island is relying on this exclusion, there seems scope for it inadvertently not to apply.</p>	
Class 6 and Class 8 - Money Transmission and e-money	We welcome the separation of E-Money and Money Transmission services and the moving of the exclusion for "Activities of certain persons" to the Exemption Regulations. We agree that this latter more is appropriate.	Positive comment – no response required.
Class 7 - Management or Administration services	We welcome the rewording in order to provide an exclusion for the provision of such services to another company within the same group.	Positive comment – no response required.
Definition of deposit	The reference to “Permanent Interest Bearing Shares” is capitalised but is not defined. Will this be a defined terms?	This will not be a defined term and will not be capitalised.
General	<p>What do we mean by officer? I am confused by the use of the three words: officer, director and secretary. Does officer include anybody else other than a director, alternate director or secretary (See activities (6) and (8) of Class 4)</p> <p>The professional services exclusions (2(n), 4(c) and 5(a)) refer to activities carried out by a person who is an accountant, advocate or registered legal practitioner. It would be clearer and consistent with the Exemption Regulations if they referred to an activity carried out by a specified person.</p>	<p>Companies Act 1931 definition includes director, manager or secretary. CODA 2009 definition includes: (a) director, secretary or registered agent; (b) a liquidator; (c) a receiver; (d) an equivalent under a foreign law; and (e) a person who takes part in promotion, formation or management of a company.</p> <p>Agreed – change made</p>
Draft Financial Services (Exemptions) Regulations 2009		

Schedule I, paragraph 2.3	There are very few commercial differences between a “friendly society” and a “mutual”. Is there any reason why the exemption cannot be extended to “mutuals”? (DC)	There are differences - in particular there is an issue of the size of friendly societies v mutuals. The Commission will not be extending the exemption to mutuals.
Schedule I, paragraph 2.4(b)(ii)	Delete “overseas” as definition of regulator makes it clear that the regulator is outside the Island. For client protection purposes it would be preferable if the overseas regulator should be from an equivalent jurisdiction.	Agreed – change made This is a valid comment but assessing who is “equivalent” and monitoring this position would not be possible.
Schedule I, paragraph 3.1	We think that the reference to “nominee company” could cause some difficulties and perhaps this should instead simply refer to a “company” which is a subsidiary of a licenceholder. We have subsidiary companies which act as trustees of certain exempt schemes in unit trust form; whilst the business of these subsidiaries is effectively conducted and administered by us (the licenceholder), they are not strictly nominees. The licenceholder should have the relevant authorisation for the activities that the subsidiary company is carrying out under the exemption	Not all subsidiaries are exempt. Subsidiaries which act as trustees to exempt or exempt-type schemes are licensable. Agreed – change made
Schedule I, paragraphs 4.1 and 5.4	Our view is that professionals undertaking directorships should probably do so through a separate fiduciary service licenceholder. What is the meaning of “good standing” (which has no recognised legal meaning in the Isle of Man) as used in the context of Exemptions 4.1 and 5.4? We think that a change should be made to give CII equal standing with the other listed professions (for Privy Council approved status has been granted). Add “the Chartered Insurance Institute only where the title Chartered Insurer or Chartered Financial Planner is awarded. We are concerned that this exemption could be abused. Accountants and advocates could use this exemption and the professional services exclusions to provide a majority of the Class 4 and 5 services without being licensed. This could lead to two classes of fiduciary service providers – licensed and ‘professional service providers’ who aren’t licensed. This would be confusing for clients and potentially damaging to the reputation of the fiduciary industry on the IOM. It could also put licenceholders at a competitive disadvantage as they have to cover licensing and compliance costs which ultimately will be passed onto clients. We appreciate that there will be some oversight from professional bodies however this will be in relation to the professional services that they provide, any Class 4 or 5 services would be out of their remit. The CPD that professionals undertake may be completely irrelevant to the Class 4 and 5 services that they could provide so this requirement does not give any comfort that they are keeping their relevant knowledge up to date.	The proposed exemptions for advocates and accountants have been removed following comments received. See also new exemption 4.1 re regulated entities.

How will the specified persons' adherence to CPD requirements and good standing be reviewed and by whom? Obviously the professional bodies monitor this but will anyone be checking with the bodies that specified persons using this exemption are complying with this requirement? If anyone will be performing this review, how will they know who to review?

Would the IMF and other International regulatory bodies consider this an acceptable change or could it potentially have a detrimental impact on their opinion of regulation in the Island?

The professional exemption for Advocates/registered legal practitioners and accountants does not appear to take into account the specific qualifications contained within the Chartered Directorship qualification. This qualification requires annual CPD and may be removed in the event of misconduct. We strongly recommend that Chartered Director qualification is included in this exemption being specifically referable to the office of director.

It appears that the changes relating to Non-Executive Directors are aimed at regulating those NEDs who may bring the reputation of the Isle of Man into disrepute. I applaud this aim but am concerned that some of your proposals will force a number of good NED individuals to either become CSPs and have to comply with regulations that are not really relevant to their role as NEDs; or to reduce the number of NEDs they hold (or their involvement in charities) which may not be the best solution for the growth of good Manx organisations. The quality NEDs know how many directorships they can sensibly take on but this will depend on the scale of the individual organisations. My specific comments are as follows:

- I. There is an exemption for advocates and accountants but not for Chartered Directors. Chartered Directors have to
 - a) undertake training, pass qualifications and prove their suitability and experience to other Chartered Directors in an intensive panel interview;
 - b) sign up to abide by the Combined Code with the penalty of losing their Chartered status if found to have failed in this; and
 - c) annually submit CPD records for a minimum of 30 hours relevant to being a director; these are checked by the IOD in the UK.

These requirements are significant, and more relevant to the role of a director, than the requirements of the Law Society or ACCA. However, I am sure other professional bodies will also argue for exemptions. Therefore I would like to suggest, instead, the retention of the exemption of directorships of any regulated body but to extend this to bodies regulated by any of the

The exemptions are for directors not just for non-executive directors.

	<p>'white listed' jurisdictions. This would then include Manx Registered AIM listed funds. Regulatory checks on the regulated body should identify directors who may affect the reputation of the company or the jurisdiction.</p> <p>If you no longer exempt regulated companies please will you increase the de minimis level to 15? I think local charities need individuals who are capable of performing director level duties. Volunteers are very happy to do the ground work but most are afraid of the responsibilities of a director. In a number of the charities the work involved for a director is not onerous, and is generally carried out by an individual in their spare time. It will be the charities which suffer if the de minimis level is too low.</p> <p>The exemption of lawyers and accountants implies that their experience or area of expertise is always relevant and that they have the time to commit which may not be the case. Much CPD is "box ticking" and little is relevant to company direction.</p> <p>I am concerned that the directorships of regulated companies are discounted and feel that this weakens the existing powers of the IPA. As a retired insurance professional, I can devote more time than an advocate or accounting working full time.</p> <p>I agree with the listing of Professional Bodies but want to request that the Institute of Certified Public Accountants in Ireland (CPA) be added to the list that is proposed under the exemption. The CPA is one of the main Irish accountancy bodies, its qualification enjoys wide international recognition and the CPA designation is the most commonly used designation worldwide for professional accountants.</p>	
Schedule I, paragraph 4.1 and 5.4	It could be clearer who the specified person is and we suggest replacing text with "...to a person specified in paragraph 6...". We also suggest inserting "if any" after "professional body", as there may be directors who are not associated with any professional body.	Following comments these exemptions have been removed.
Schedule I, paragraph 4.1-	<p>I can see no merit in granting an exemption to advocates and accountants in this area. Both of these groups are self-regulated, and in the absence of compelling evidence that the level of regulation, supervision and, if necessary, enforcement, carried out by those industry bodies is materially the same as that performed by the FSC, it would seem to me inappropriate to carve them out of the law.</p> <p>To do so may have the unintended consequence of allowing these groups an unfair advantage in the market, and thus driving up the fees paid to directors.</p> <p>There is no such exemption in place for advocates in Jersey, and I do not think it equitable for one to exist in the Isle of Man. Indeed, it could be regarded as an insult to people employed in the financial services industry, who regard themselves</p>	Following comments this proposed exemption has been removed.

	<p>as every bit as professional as accountant and lawyers. It would be in the interests of the IOM to ensure that regulation encourages lawyers to practice the law and financial services professionals to provide financial services.</p> <p>I would have thought a better exemption could be crafted around people who act as directors as part of their role as an employee of a regulated financial services business.</p>	
Schedule I, paragraph 4.1	<p>I note the proposed exemption for members of certain professional bodies who are required to adhere to continuing professional development ('CPD') requirements. I understand your thinking on this and appreciate the reasons why the proposal is drafted in this way. However, I would imagine that there may be senior members of other professional bodies - the Chartered Insurance Institute being the most obvious to us – who are also subject to CPD requirements and a code of professional ethics who may feel that this is too limited in its scope. I can think of several such people who would feel very strongly that by virtue of their professional status and knowledge and practical experience they would be as well qualified to sit on boards of authorised insurers as their colleagues in the professions that you have proposed to exempt. I realise that a line has to be drawn somewhere, but do feel that this could be a somewhat artificial distinction in practice and therefore may possibly not achieve its intended objective.</p>	<p>Following comments this proposed exemption has been removed.</p>
Schedule I, paragraph 4.1	<p>As currently worded it infers that any director in the marketplace is not a professional director unless, for example, in the case of individuals they are an advocate, a registered legal practitioner or a member of one of the four bodies quoted in (c); therefore, for example, professional individuals operating in the financial services arena are excluded (bankers, actuaries, insurers, chartered secretaries). That would suggest those professional individuals emanating those four professional spaces are being discriminated against; I am sure however that is not the intention of the proposals.</p>	<p>Following comments this proposed exemption has been removed.</p>
Schedule I, paragraph 4.2	<p>I note that the effect of this is to remove the distinction currently made between directors of FSC and IPA licenceholders. I confirm that we are supportive of this principle. However, I also note that the proposal does not in fact restore the position to that which was in place before the introduction of the new Rule Book), which I believe is what may have been expected by several people who expressed concern at the current provisions.</p> <p>On balance therefore, I believe that for the time being it would be more appropriate to return to a position where directorships of Isle of Man regulated companies were discounted for the purposes of the de minimis level. Failing that, I would be in favour of a more general re-examination of the extent to which any exemptions should be available at all as the proposed position (taking into account draft</p>	<p>The exemption has been reinstated for all entities regulated by the FSC, IPA and GSC.</p>

	<p>regulations 4.1 and 4.6 also) does seem to me to contain some potential inconsistencies.</p> <p>Regarding the proposal to discount directorships of regulated entities, it seems to me that as such directors have to pass the FSC's fit and proper test then that reduces the risk profile of an individual on a relative basis. Furthermore that entity itself would be the subject of compliance obligations, ongoing monitoring, etc by the FSC and in addition such an individual has to maintain an up to date CPD log. Therefore I would leave the current legislation in place which I understand gives an exemption if you are a Director of a regulated entity.</p> <p>We do not have any issue with removing the discounting of directorships of IOM regulated companies from the calculation of the de minimis level.</p> <p>My principal concern relates to the possibility of removing directorships of regulated companies from the exemptions. However, the position of companies which are not themselves regulated but are managed by managers who are regulated remains an anomaly.</p> <p>Also, it would be helpful to make it clear that directorship of charitable companies are not "by way of business" and are not included in the de minimis.</p> <p>I wonder why the limit on numbers is relatively low. Non-executive directors of most Manx company are managed by regulated managers who are fully accountable and would not welcome the more intrusive involvement of NEDs which the implied time demand assumed in the limitation of numbers might assume. However, inexperienced directors could represent a danger.</p>	<p>If the managed company is undertaking a regulated activity it would require its own licence unless it is subject to an exemption or exclusion.</p> <p>These would need to be covered by the de minimis or group exemptions.</p> <p>In view of the other exemptions such as Regulated entities and groups, it is considered that the de minimis level of 10 is appropriate.</p>
Schedule I, paragraph 4.2	<p>I'm not convinced that this is an area that requires legislation to prescribe how many directorships is an appropriate number. All directors have a duty to perform their role with skill, care and diligence for each company on whose board they sit. Setting a de minimis limit attempts to introduce an objective argument as to how effectively a director can meet these requirements, but this is of course wholly subjective depending on the director and the roles he/she is being asked to perform. If the de minimis level is to be introduced I do not see any merit in discounting regulated companies</p> <p>It would be more reasonable if the de minimis should be in addition to any other directorships permitted under a different exclusion.</p>	<p>Acting as an officer of a company is a regulated activity and so anybody undertaking this activity should be licensed under Class 4. However, the Commission feels that an exemption is appropriate for individuals providing services to a small number of companies; therefore, a limit has to be set.</p> <p>The de minimis is in addition to other directorships permitted under different exclusions. However, the exemption under paragraph 4.3 for groups will be counted as one appointment under the de minimis level.</p>
Schedule I, paragraph 4.3	<p>Should this not be headed 'group directors'? Paragraph (1) refers to officer but paragraph (2) refers to director or alternate director.</p> <p>I am satisfied that the limit on the number of "groups" which can be excluded from the de</p>	<p>This exemption will be counted as one appointment under the de minimis level.</p> <p>Positive comment – no response required.</p>

	<p>minimis exemption is consistent with the overall philosophy even though it may not be my own interest.</p>	
<p>Schedule I, paragraph 4.4 and 4.5</p>	<p>The new exemption at paragraph 4.4 applies to persons whose business consists <u>solely</u> of acting as director or secretary of a client company. The new exemption at paragraph 4.5 applies to persons acting as nominee. The effect of the proposed change would mean that a company that acts as both company secretary and nominee shareholder will no longer be exempt from licensing. This may be onerous for licenceholders who have used one entity for both functions.</p>	<p>The Commission considers that a company should not act as both company secretary and nominee shareholder which is why these exemptions are included.</p>
<p>Schedule I, paragraph 4.6</p>	<p>The exemption available to employees of licensed CSPs in respect of directorships held through their employment in such capacity would not apply to employees of registered insurance managers in respect of directorships of authorised insurers held through their employment. In my view, in the interests of consistency, a similar approach should be adopted here. In other words, directorships of authorised insurers held by employees of the registered insurance managers of those authorised insurers should not count towards the de minimis limit for those employees.</p> <p>In support of this proposed position I would say that both the registered insurance manager by which the person concerned is employed and the insurance company of which that person is a director by virtue of his or her employment, will be regulated by the IPA and the person concerned will have been approved by the IPA to hold such a position.</p> <p>As an aside, this seems to me to be possibly tighter than the situation that applies in respect of the existing concession for employees of CSPs, where the client companies may be unregulated. As a further aside, I would respectfully suggest that if the Commission is prepared to grant the concession in regulation 4.1 based on the oversight role of the professional bodies concerned, it should perhaps also consider accepting the supervision being exercised by the IPA as a basis for similar concessions</p> <p>In terms of the practical issue involved in this point, I would estimate that at the moment there would be no more than five such employees who would benefit from this exemption (and possibly fewer than that) and therefore would hope that the Commission would take the view that this would be a reasonable concession.</p>	<p>This is covered by the new Regulated entities exemption.</p>
<p><i>Schedule I, paragraph 4.7</i></p>	<p>We presume the exemption for directors of companies providing the services specified is now under the de minimis exemption at paragraph 4.2.</p> <p>The revision to (c)(ii) does seem to make this easier to understand. There seem to be 2 different scenarios –</p> <ol style="list-style-type: none"> 1. An investment holding company beneficially owned by residents of the Island 2. A trading company where the business is based in the IOM, but the company could be owned by 	<p>The exemption for directors of companies providing the 'domestic services' has been reinserted.</p>

	<p>anybody. Is this what was intended? It might be better to target the exemption purely at companies that are beneficially owned by residents of the Island. If the exemption were restricted this way, all activities could be covered by the exemption rather than excluding acting as a director from it. If the beneficial owners are resident in the Island, I do not see why they should not be free to choose whomsoever they wish to provide services of whatever description to their company/partnership. Activities (12) and (14) relate to partnerships rather than companies, since partnerships are generally not bodies corporate I suggest the words “or partnership” should be added after “company” in paragraph (1).</p> <p>I welcome the tighter definition of local services as the current definition is almost meaningless and the new definition is much clearer. I also understand the logic of removing directorships from the list even though this may not be in my own interests. However, I am not convinced that the company secretary should be treated differently from directors.</p>	<p>The scenarios described do capture what was intended by the exemption.</p> <p>Positive comment – no response required.</p> <p>Agreed – this has been reinserted.</p>
<p><i>Schedule 1, paragraph 5.4 and 5.5</i></p>	<p>This exemption does not seem fair on the “non” specified persons.</p> <p>One way of ensuring the involvement of a Class 5 licenceholder would be to limit involvement to co-trustee with a licenceholder. Current proposal could be detrimental to international reputation.</p> <p>Under paragraph 5.4 and 5.5 unlicensed specified persons cannot act as sole trustee on more than 10 trusts, one possible way to keep a Class 5 licenceholder involved would be to require that unlicensed specified persons can only act as co-trustee with a licenceholder.</p>	<p>Following comments the exemption relating to ‘specified persons’ has been removed.</p>
<p><i>Schedule 1, paragraph 5.5</i></p>	<p>It appears that paragraph (1) of Class 5 relates only to acting as sole trustee. “Protector” and “enforcer” fall under paragraphs (5) and (6). These are already covered by exemption 5.4 (so long as the specified person is in good standing with his professional body). This exemption seems to permit any specified person to act as sole trustee of up to 10 trusts even if he is not in good standing with his professional body.</p> <p>Paragraph 5.5(1) refers to an activity falling within paragraph (1) of Class 5 but then goes on to refer to trustee, protector and enforcer. Therefore if a specified person is a sole trustee of one trust, it then limits the number of protector and enforcer appointments they can accept. This doesn’t make sense as under 5.4 a specified person can act as enforcer or protector on an unlimited number of trusts. It would make more sense if the references to enforcer or protector were removed from 5.5(1) and (2).</p>	<p>The exemption for specified persons has been removed following consultation comments. Sole trustee, protector and enforcer are all included under the de minimis level.</p>
<p><i>Schedule 1,</i></p>	<p>Class 6 - E-Money</p>	<p>Under the financial services legislation</p>

<i>paragraph 6.1</i>	We believe it is more appropriate for the exclusion for "Activities of certain persons" to sit within these Exemption Regulations. We note that this exclusion in relation to Class 1 licenceholders and others has been included in the exclusions proposed for Class 8 - Money Transmission Services however would contend that it is also appropriate for the exclusion to relate to E-money activity as it did under the RAO.	licenceholders hold one licence which details all of the activities that that business undertakes; therefore, the Commission does not feel that it is appropriate to exempt Class 1 licenceholders from requiring a Class 6 (e-money) permission on their licence if they are providing e-money services.
<i>Schedule 2 Temporary Business Continuity</i>	The proposed amendment causes us no issues. Am I correct in thinking that the use of a server on the IOM to conduct what would be a regulated activity (Class 8) needs to be licensed unless the service is regulated in another jurisdiction?	Positive comment – no response required. This interpretation is correct.
<i>Schedule 2, paragraph 1(b)</i>	We suggest that a reference to the activity for which the person must be regulated should be inserted.	The Commission considers that it is clear that the activity must be a regulated financial service because the exemption would not be required otherwise.
<i>Definition of specified person</i>	This definition includes a firm of advocates but does not include a firm of accountants. We know that this has always been the case but as amendments are being made at this time we feel that it is brought into line. Another inconsistency in the definition is that the definition of advocate in the Interpretation Act means "a person entitled to practise as such" where as an accountant can remain a member of an accountancy body even if they do not practise i.e. they are retired; therefore retired accounts can still be considered specified persons.	The exemption and definition referring to specified persons has been removed.