



## FINANCIAL SERVICES ACT 2008

### FINANCIAL SERVICES (APPOINTMENT OF MANAGER) ORDER 2008

*Approved by Tynwald*

2009

*Coming into operation*

22 January 2009

In exercise of the powers conferred on the Financial Supervision Commission by section 22(1) of the Financial Services Act 2008<sup>1</sup>, and of all other enabling powers, and after carrying out the consultations required by section 44(5) of that Act, the following Order is hereby made:—

#### **1. Citation, commencement and interpretation**

(1) This Order may be cited as the Financial Services (Appointment of Manager) Order 2008 and, subject to section 45(3) of the Act, shall come into operation on 22 January 2009.

(2) In this Order —

“the Act” means the Financial Services Act 2008;

“the Commission” means the Financial Supervision Commission;

“key person”, in relation to a relevant person, means a person appearing to the Commission to have significant powers or responsibilities with respect to any regulated activity undertaken;

“relevant person” means a person with respect to whose affairs an application referred to in article 2 is made.

#### **2. Circumstances in which Commission may apply for appointment of manager**

The circumstances in which the Commission may apply to the High Court for the appointment by the court under section 22(3) of the Act of a

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<sup>1</sup> 2008 c.8  
Price £0.85

manager to manage the affairs of a person, in so far as those affairs relate to the carrying on of a regulated activity, are those specified in the Schedule.

Article 2.

## SCHEDULE

### PRESCRIBED CIRCUMSTANCES

1. Where the Commission is satisfied that there is sufficient evidence to show that the affairs of the relevant person have been inadequately managed for any reason, including but not limited to —

- (a) dishonesty on the part of a director or key person of the relevant person;
- (b) the commission by the relevant person of a serious breach of fiduciary duty in respect of a regulated activity;
- (c) a serious failure by the relevant person to maintain proper records;
- (d) the commission by the relevant person of serious and persistent breaches of the Act or of any regulations, orders or Rule Book made under the Act;
- (e) the death or incapacity or prolonged absence of a director or key person of the relevant person which is to the detriment of the regulated activity;
- (f) the giving with respect to a director or a key person of the relevant person of a direction under section 10 of the Act; or
- (g) the making with respect to a director, secretary or key person of the relevant person of a disqualification order under section 26(1) of the Companies Act 1992<sup>2</sup>.

2. Where a relevant person has given notice to the Commission that it has ceased, is ceasing or intends to cease carrying on a regulated activity but the Commission is satisfied that it —

- (a) is continuing to carry on such activity; or
- (b) has failed or it will fail to transfer the business in question in an orderly manner or at all.

3. Where the Commission —

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<sup>2</sup> 1992 c.4

- (a) has issued a notice under section 9 of the Act to suspend or revoke a financial services licence and the Commission is satisfied that such appointment is necessary to –
  - (i) protect or preserve assets, books and records or other property for which the relevant person is responsible; or
  - (ii) protect the interests of a customer, creditor or others who have or have had dealings with the relevant person; or
- (b) is satisfied for any other reason that such appointment is necessary to –
  - (i) protect or preserve assets, books and records or other property for which the relevant person is responsible; or
  - (ii) protect the interests of a customer, creditor or others who have or have had dealings with the relevant person.

4. Where the Commission is satisfied that there is sufficient evidence that the relevant person has, in relation to a regulated activity, persistently failed –

- (a) to deliver services in a timely manner; or
- (b) to investigate claims or complaints made by its customers.

5. Where the Commission is satisfied that there is sufficient evidence that the relevant person is carrying on a regulated activity in contravention of section 4(1)(a) of the Act.

6. Where the Commission is satisfied that there is sufficient evidence that the relevant person, in relation to a regulated activity, is unable to or has failed to protect or preserve assets, books and records or other property for which it is responsible.

7. Where the Commission is satisfied that there is sufficient evidence that the appointment of a manager is required due to the failure of a relevant person to take steps to comply with a direction given by the Commission under the Act.

8. Where the relevant person is required to comply with the rules of an exchange or clearing house and the Commission is satisfied that there is sufficient evidence to show that it is in default under those rules.

MADE 11 December 2008

R V Penn

Commissioner

J Cashen

Commissioner

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EXPLANATORY NOTE

*(This note is not part of the Order.)*

This Order specifies the circumstances in which the Financial Supervision Commission may apply to the High Court for the appointment of a manager to manage the affairs of a person, so far as they relate to the carrying on of a regulated activity.