

INWARD OUTSOURCING

Guidance Note

Undertaking outsourced functions on behalf of administrators or managers of foreign collective investment schemes - “Inward Outsourcing”

Isle of Man licensed administrators or managers of collective investment schemes (“Service Providers”) may provide services to an overseas fund manager/ administrator (“Outsourcer”) in relation to a non-Isle of Man collective investment scheme (“Foreign Scheme”) without that scheme being deemed to be “operated in or from the island¹” if, in the context of all of the circumstances, the foreign scheme is not *de facto* operated in or from the Island.

In order to provide such services, the Service Provider, who must hold a Category 3 or Category 4 Investment Business Licence issued by the Financial Supervision Commission (“the Commission”), should seek an extension to its existing Investment Business Licence to permit this activity.

The following criteria are factors that the Commission will take into account when considering whether a Foreign Scheme is de facto operated in or from the Island. They are not however exhaustive and any arrangement will be considered on its own merits.

1. The functions to be performed by the Service Provider should be clearly detailed in an outsourcing agreement with the Outsourcer (“the Outsourcing Agreement”) under which the Outsourcer remains ultimately responsible for the management/administration of the Foreign Scheme and the functions that are outsourced and the Service Provider provides services to the Outsourcer in line with the terms of the Outsourcing Agreement only.
2. The Outsourcer remains accountable to the Foreign Scheme and/or its investors under the Outsourcing Agreement for the provision of services by the Service Provider.
3. The Service Provider should not hold itself out as being the administrator or manager of the Foreign Scheme.
4. The “mind and management” of the Foreign Scheme and its administration should remain outside the Isle of Man, e.g. board meetings of the Foreign Scheme should not normally be held in the Isle of Man.

¹ If a Foreign Scheme were “operating in or from the island” it would be subject to the provisions of Section 11 of the Financial Supervision Act 1988 and any regulations issued thereunder.

Guidance Note – Inward Outsourcing

The Commission would expect that the Service Provider would also take cognisance of the following in relation to the operation of “inward outsourcing” arrangements:

1. The Outsourcer should be appropriately located in a jurisdiction acceptable to the Commission and be licensed by its Regulator. The Outsourcer should have informed its Regulator, in writing, of the intended outsourcing arrangements to the Isle of Man and that Regulator should not have objected.
2. Where the Outsourcer is a non-Group entity, the Service Provider should undertake and evidence that appropriate due diligence has been undertaken on the Outsourcer.
3. In line with the Outsourcer’s continuing responsibility, the Commission would expect that, notwithstanding the level of functions that may be undertaken in the Isle of Man, arrangements are put in place to ensure that investors understand that they are dealing at all times with the Outsourcer. There should be no reference to the Service Provider in the Foreign Scheme’s documentation.
4. The Commission would expect that copies of Outsourcing Agreements between the Service Provider and the Outsourcer would be made available to the Commission on request.

April 2006