

## **GENERAL LICENSING POLICY FOR THOSE SEEKING A BANKING, INVESTMENT BUSINESS OR FIDUCIARY SERVICES LICENCE**

*This licensing policy sets out the general criteria the Commission will normally apply in assessing fitness and propriety. The specific requirements applicable to a particular type or category of licence are summarised for ease of reference in Tables A to E of Appendix I.*

*The Commission's policy statements entitled "Training and Competence Framework" and "Guidance Note on Outsourcing / Delegation of Functions" should be read in conjunction with this paper.*

*If you are applying for a licence, please also refer to the Commission's Guidance on "How to Apply for a Licence".*

*If you are an investment business licenceholder who wishes to apply for an extension to your licence to allow you to provide custody services to Experienced Investor Funds, Professional Investor Funds or Overseas Schemes please refer to Part 4.*

In granting a licence to conduct regulated business<sup>4</sup> the Commission considers the application of high standards to be the necessary foundation of effective regulation and supervision. This licensing policy is intended to help those who conduct, or wish to conduct, regulated business to understand the Commission's policy in relation to the licensing process and licenceholders.

*The classes and categories of licence issued by the Commission are set out in Appendix I, Table A.*

The Commission will not issue a licence unless the applicant has satisfied the Board of the Commission that it is a "fit and proper" person to hold such a licence and may suspend or withdraw a licence if a licenceholder does not continue to satisfy the fit and proper criteria. This licensing policy contains guidance for licence applicants and licenceholders to explain how the Commission usually applies the fit and proper criteria.

The Commission recognises that the particular circumstances of each licence applicant/licenceholder are not identical. Although the same high standards will be expected of all licence applicants and licenceholders, the Commission will seek to identify and mitigate any regulatory risks arising either from the regulated activities undertaken, or from the particular circumstances of an applicant, in applying the fit and proper test. The Commission will consider each application on its own merits and will examine on a case-by-case basis all relevant matters relating to a licence applicant or licenceholder. Having examined the circumstances of each case, if there appear to be regulatory risks in respect of a particular licence applicant, the Commission may wish to make more extensive enquiries in order to satisfy its concerns and mitigate these risks.

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<sup>4</sup> The regulated activities and exemptions from the requirement to hold the relevant licence are defined as follows:  
s.1 Banking Act 1998;  
Investment Business Order 2004 (SD673/04) made under s.1 Investment Business Act 1991;  
ss.1 & 30 Financial Supervision Act 1988 (collective investment schemes)  
ss.1 & 2(3) and (4), Schedule 1 (regulated activities) and Schedule 2 (exemptions) to Corporate Service Providers Act 2000 (as amended by the Fiduciary Services Act 2005, together called the Fiduciary Services Acts 2000 and 2005)  
With reference to the exemptions from the requirement to hold the relevant licence, see also the relevant Handbook for each regulated sector, which include the subordinate legislation made under the above Acts.  
([www.fsc.gov.im](http://www.fsc.gov.im) /FSC Handbooks)

Unless the context precludes such construction, guidance in this paper that refers to an application for a licence should be construed to apply also to a licenceholder.

The guidance covers:

- the Commission’s “fit and proper” criteria (**see Part 1**);
- how the Commission would generally seek to apply the “fit and proper” criteria (**see Part 2**);
- what the Commission expects in relation to the three elements of the fit and proper test (integrity, competence and solvency) (**see Part 3**); and
- the Commission’s criteria in respect of the provision of custody services to Experienced Investor Funds, Professional Investor Funds or Overseas Schemes (**see Part 4**).

In addition to this licensing policy, the Commission has also published guidance on its licence application procedure and how an aggrieved party can seek a review of licensing decision, which can be accessed on the Commission’s website [www.fsc.gov.im](http://www.fsc.gov.im) /Authorisations / *How to Apply for a Licence* (**see Part 5**).

As noted in 2.2.1 below, specific licence conditions apply to licenceholders which are companies registered under the Companies Act 2006 (**see Part 6**).

## DISASTER RECOVERY EXEMPTION

The Commission generally requires anyone who undertakes regulated activity by way of business in or from the Isle of Man to hold the relevant licence, unless specifically exempted. However, the Commission may permit a regulated activity to be carried on in the Island without a licence in connection with a disaster recovery operation. The relevant regulations<sup>2</sup> permit a bank, investment business, fiduciary (corporate and/or trust) service provider to carry on temporarily the relevant regulated activity in the Isle of Man, subject to certain conditions, provided that the business is already regulated in another, approved jurisdiction.

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<sup>2</sup> Banking (Exemption) (Temporary Business Continuity Operations) Regulations 2006 SD290/06  
Investment Business (Exemption) (Temporary Business Continuity Operations) Regulations 2006 SD292/06  
Fiduciary Services (Exemption) (Temporary Business Continuity Operations) Regulations 2006 SD291/06

## PART I

### THE COMMISSION'S "FIT AND PROPER" CRITERIA

#### ***I.1 GENERAL***

- 1.1.1 In assessing the fitness and propriety of a licence applicant's business, the Commission examines the key areas of: -
- *integrity*
  - *competence*
  - *solvency.*
- 1.1.2 A licenceholder's business should be structured and carried on in such a way that it meets the "fit and proper" test. The test applies both to the business as a whole and to the individuals responsible for the management and control (including owners) of the business, as well as those who have significant powers and responsibilities in respect of any of its regulated activities.
- 1.1.3 The onus is on the licence applicant and relevant individuals to satisfy the Commission that they are fit and proper and not on the Commission to prove that they are not.
- 1.1.4 When considering licence applications, the Commission makes an assessment of the ability of the applicant, once licensed to comply with:
- the relevant Acts<sup>3</sup>;
  - the relevant regulatory codes<sup>4</sup> made pursuant to those Acts; and
  - the Anti Money Laundering Code for the time being in force and any guidance issued by the Commission on the "know your customer" requirements under that Code. As from 1 September 2007, the relevant legislation is the Criminal Justice (Money Laundering) Code 2007 (SD/712/07).
- 1.1.5 The Commission will look for evidence that the licence applicant has adequate systems and controls in place and is adequately resourced to conduct the regulated activities.

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<sup>3</sup> Banking Act 1998;  
Investment Business Acts 1991 to 1993;  
Financial Supervision Act 1988  
Fiduciary Services Acts 2000 and 2005

<sup>4</sup> Banking (General Practice) Regulatory Code 2005 (SD832/05 as amended by SD 280/06)  
Investment Business Order 2004 (SD673/04)  
Fiduciary Services (General Requirements) Regulatory Code 2005 (SD469/05)  
Fiduciary Services (Clients' Money and Trust Money) Regulatory Code 2005 (SD470/05)  
Financial Supervision Commission (Financial Resources and Compliance Reporting) Regulatory Code 2002 (SD345/02)  
Financial Supervision Commission (Clients' Money) Regulatory Code 1993 (SD172/93)  
Financial Supervision Commission (Advertising) Regulatory Code 1991 (GC403/91)  
Financial Supervision Commission (General Requirements) Regulatory Code 1991 (GC402/91)  
Financial Supervision Commission (Audit Requirement) Regulatory Code 1991 (GC401/91)  
Financial Supervision Commission (Clients' Investments) Regulatory Code 1991 (GC399/91)  
Financial Supervision Commission (Conduct of Business) Regulatory Code 1991 (GC400/91)  
Financial Supervision Commission (Stockbrokers) (No.2) Regulatory Code 2003 (SD868/03)  
Investment Business (Clients' Money) Regulations 1996 (SD153/96)

The Commission will also expect to find that the licence applicant has an honest and fair attitude in its dealings with clients and others.

- 1.1.6 It would generally be expected that a licenceholder restricts its activities to the activities which it is licensed to conduct and other activities that are wholly incidental to that licensable business. However, where a licence applicant is permitted to conduct any non-licensable business, the Commission will also have regard to the way in which it conducts that business, as any lack of integrity or competence in that regard may affect its conduct of the regulated activities.

## PART 2

### APPLICATION OF THE FIT AND PROPER TEST

#### **2.1 GENERAL**

- 2.1.1 The fit and proper test is both an initial test at the time of granting a licence and a continuing test in relation to the conduct of the regulated activities.
- 2.1.2 Where the Commission becomes aware of a number of instances of conduct which, on their own, may not necessarily be considered to demonstrate a lack of fitness and propriety but which, cumulatively, may lead to that conclusion, the Commission may take account of the cumulative effect of such conduct.
- 2.1.3 The licence applicant's ownership and organisational structures should be transparent so that the Commission is able to identify the controllers<sup>5</sup>, principals<sup>6</sup> and key persons<sup>7</sup>, to whom it would be appropriate to apply the fit and proper test.

#### **2.2 OWNERSHIP STRUCTURES**

##### **2.2.1 General**

- 2.2.1.1 The Commission will not grant a licence to conduct banking business to a company incorporated or registered under the Companies Act 2006 ("a 2006 Act company") but may grant a licence to a 2006 Act company to conduct other types of regulated activity, subject to conditions set out in Part 6 below. The restriction on banks using 2006 Act companies is principally because the Commission does not consider it appropriate for a licensed bank to be able to reduce its capital without there being in place more stringent safeguards than those which are contained in the Companies Act 2006.
- 2.2.1.2 Although the Commission has licensed sole traders and partnerships, with effect from 1 April 2007, the Commission will only grant new licences to bodies corporate, except for a Category 2 fiduciary licence which is restricted to individuals. The Commission's general policy in respect of different types of ownership structure is set out in paragraphs 2.2.2 to 2.2.4 below.

***The specific considerations relevant to each class and category of licence in respect of business structures are set out in Appendix I, Table B.***

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<sup>5</sup> The definition of "controller" in the relevant legislation includes "an individual who either alone or with any associate or associates is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the [applicant/licenceholder] or of another body corporate of which it is a subsidiary". (See Banking Act 1998, s.16(7); Corporate Service Providers Act 2000, s.27(1); Financial Supervision Act 1988, s.31(4); Investment Business Act 1991, s.10(6)). It should be noted that the definition of "controller" also includes those individuals who for the purpose of this guidance are described as "principals".

<sup>6</sup> As explained in paragraphs 2.4.1.1 and 2.4.1.2, a "principal" is any individual who has responsibility for the management of the business, including the directors, partners\*, chief executive and chairman of the applicant.  
\*in respect of a licence issued to a partnership prior to 1 April 2007 – see paragraph 2.2.1.2 above.

<sup>7</sup> "Key persons" are individuals who will have significant powers or responsibilities in relation to any of the regulated activities undertaken by the applicant and include managers, the company secretary, compliance officer, money laundering reporting officer, 4-eyes and, where permitted, a locum. It should also be noted that for the purpose of the Corporate Service Providers Act 2000, the definition of "key person" includes additional roles/functions specific to a fiduciary licence applicant/holder (see s.9(7) of that Act).

- 2.2.1.3 In considering the ownership structure of a licence applicant, the Commission should be able to identify the individuals who ultimately own the business and who exercise control over the appointment of the management team as well as the management team and any individuals who will have significant powers and responsibilities in relation to the regulated activities. The Commission should be able to look through the structure and, if an ownership structure is unduly complex and/or lacks transparency, it would expect the applicant to explain and justify the rationale for having such a structure.
- 2.2.1.4 The Commission will not grant a licence unless it is satisfied that each controller of a licence applicant and, if different, the ultimate beneficial owner of the applicant, is a fit and proper person. It is therefore important that there is transparency of ownership so that the ultimate beneficial owner or owners can be identified.
- 2.2.1.5 Where one or more nominees hold the shares in the capital of a licence applicant, which is a body corporate, the Commission will expect the licence applicant to disclose the relevant nominee agreement evidencing the identity of the beneficial owners of the shares. The Commission would generally apply the fit and proper test to both the nominee shareholders and the beneficial owners of the shares.
- 2.2.1.6 The Commission will expect a licence applicant to be transparent to the public regarding its management. There is a statutory obligation for a company registered under the Companies Acts 1931 - 2004 ("1931 Act company") to disclose certain information on the public record held by Companies Registry. However, the equivalent regime for a 2006 Act company is elective.
- 2.2.1.7 The Commission will expect a 2006 Act company which is a licence applicant or licenceholder to provide the same level of public disclosure as applies to a 1931 Act company. A 1931 Act company has a statutory obligation to file the following information regarding its management and control - directors' particulars and any changes thereto, allotments of shares (within one month of the event) and share ownership and any changes thereto since the last annual return. The Commission will therefore expect a 2006 Act company to elect to file its register of members and register of directors and any changes thereto in terms of s.203 and s.204 of Companies Act 2006 prior to the grant of the licence and to ensure that this election is maintained on an ongoing basis while it remains a licenceholder by means of a licence condition.
- 2.2.1.8 As the exercise of options over shares in the capital of a company may impact on the controlling interests in the company's ownership, the Commission will expect any existing options to be notified to it and may also wish to look at the terms of any such options. On an ongoing basis, the Commission will wish to be notified of any proposed pledge of, offer of options over or options granted in respect of any shares in the capital of the company.
- 2.2.1.9 The Commission considers an application for a licence on the basis of the ownership structure in place at the time the application is made. Any subsequent change to that structure may alter the Commission's assessment of the licenceholder as a fit and proper person and should therefore be notified to the Commission for prior written approval.

2.2.1.10 A new licence application will be required where an existing sole trader or partnership licenceholder proposes to re-establish its business as a body corporate, as structuring as a body corporate would be an entirely new legal structure not just a change of structure as envisaged in 2.2.1.8 above. To encourage existing sole trader and partnership licenceholders to incorporate, no application fee will be charged for the relevant licence application.<sup>8</sup>

## 2.2.2 Ownership by a Trust

2.2.2.1 The Commission expects the ownership structure of a licence applicant to be as simple and transparent as possible and is unlikely to grant a licence to an applicant for a banking licence that has a trust in its ownership structure. However, in the case of applicants for investment business and fiduciary licences, the presence of a trust in the ownership structure may not, of itself, disqualify the applicant from being granted a licence, provided the Commission can look through the trust and identify those persons who control and/or exercise significant influence over the licence applicant.

2.2.2.2 The Commission will wish to examine the deed of trust or other document relating to the establishment of the trust and any other documents it considers relevant (for example, the settlor's letter of wishes, deeds of appointment etc). In addition, the licence applicant would be expected to provide full details of the rationale and commercial reasons behind the use of the trust in its ownership structure and justify the use of a trust structure.

2.2.2.3 The Commission expects to be satisfied that all "Influential Parties" in respect of the trust meet its fitness and propriety criteria. For this purpose, "Influential Parties" are:

- the trustee(s) of a trust which owns a licence applicant, whether as the holder of shares in the capital of the applicant, or otherwise; and
- any person to whom the trustee(s) turn for guidance, whose views the trustee(s) seek or whose advice they adopt, or to whom they are obliged, instructed or requested to turn for advice or instructions, or in accordance with whose directions or instructions the trustee(s) are accustomed to act in relation to the licence applicant, its administration or its ownership, other than a person who gives advice in a professional capacity only; and possibly,
- the settlor, protector and beneficiaries of the trust, depending on their formal powers and/or level of influence over the trustees.

## 2.2.3 Sole traders

2.2.3.1 The only category of licence in respect of which the Commission will consider an application from a sole trader is for a Category 2 fiduciary licence, which is restricted to individuals.

***See Appendix I, Tables A and B.***

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<sup>8</sup> Fiduciary Services (Fees) Regulations 2007 (SD113/07)  
Investment Business (Fees) Regulations 2007 (SD114/07)

## **2.2.4 Branches**

- 2.2.4.1 The Commission will not grant a licence for the establishment of a branch unless the relevant head office is licensed to conduct the relevant regulated activity or activities in another jurisdiction, which has licensing and regulatory standards equivalent to those in the Isle of Man and which, in the case of a bank branch, is prepared to exercise consolidated supervision with the Commission.
- 2.2.4.2 The Commission appreciates that the level of autonomy granted to the branch in the Isle of Man by its head or principal office may depend upon the approach and structure of the relevant group (for example, the individuals with effective powers and responsibilities in relation to the Branch's operation may be employed in the branch or may include individuals in the head office). The Commission will therefore adapt the scope of the fit and proper test in relation to the particular circumstances of the case.
- 2.2.4.3 The Commission will wish to be satisfied as to the fitness and propriety of the individuals who are employed in the branch in key person positions. However, where the principals, controllers and key persons relevant to the operation of the branch include individuals whose primary responsibilities relate to the branch's head office, the Commission will generally accept those individuals as fit and proper without further vetting, if it is satisfied that they have been approved by the regulatory authority which supervises the head office to act in their current capacity in both the head office and the branch.

## **2.3 NATURE AND SCOPE OF THE BUSINESS**

### **2.3.1 New businesses - Track record**

- 2.3.1.1 In licensing any new business, the Commission will assess the likely potential risk to investors' and depositors' interests, as well as any potential reputational risk to the Isle of Man as an international finance centre. In particular, the Commission will expect the applicant to demonstrate convincingly the financial viability of its business proposals.
- 2.3.1.2 Although the Commission would welcome the establishment of a subsidiary or branch of an existing bank that is licensed in another jurisdiction, which has regulatory standards equivalent to those in the Isle of Man (**see Paragraph 2.2.4.1 above**), an entirely new start-up banking or building society operation would not be permitted because of the inherent regulatory risk to depositors in allowing a bank or building society without any track record to take deposits. Certain types of investment business that are new business start-up operations may also have inherent regulatory risks and will be considered accordingly.
- 2.3.1.3 The Commission would also expect a licence applicant to have a proven track record in the successful conduct of the business for which it seeks a licence. Such track record may relate to the applicant either in its own right (for example, where it is already licensed to conduct the same or similar business in another jurisdiction), or as part of a group that includes entities licensed to conduct that business. The Commission may consider applications for a fiduciary and some types of investment business licence even though the applicant has no track record itself, and is not part of a group with a track record, provided all the key persons associated with the application have a proven track

record as individuals at a senior level in a relevant licensed business.

*The specific considerations relevant to each class and category of licence in respect of new business and track record are set out in Appendix I, Table C.*

### **2.3.2 Real presence**

- 2.3.2.1 One of the Commission's fundamental requirements is that a licenceholder should not be a mere shell. A licence applicant should therefore establish a "real presence" in the Isle of Man. The Commission would expect an applicant to demonstrate real presence by satisfying the Commission that the business's centre of activity will be in the Isle of Man.
- 2.3.2.2 If the licence applicant is an Isle of Man incorporated company, the Commission would expect real presence in the Isle of Man to be demonstrated by the company's management and control being in the Island.
- 2.3.2.3 A sole trader would be expected to be resident in the Isle of Man and carrying on his regulated business in or from the Island.
- 2.3.2.4 A subsidiary or branch of a company incorporated in another jurisdiction, would be expected to demonstrate real presence by registering as a foreign company that has established a place of business in the Isle of Man (under Part XI of the Companies Act 1931 – "F Register"). The centre of regulated business should be in the Isle of Man and there should be a sufficient degree of local management and control to ensure that there is accountability in the Island for the conduct of the regulated activities.
- 2.3.2.5 The Commission would expect all records relating to the business to be located in the Isle of Man or to be accessible from the Isle of Man without recourse to third parties. (This is subject to any outsourcing, or branch, arrangements for which the Commission might give consent.) This includes minutes of directors' and shareholders' meetings and, in respect of a licenceholder which is a 2006 Act company, the Commission shall apply a licence condition that the company's minute books are maintained in the Isle of Man (either at the licenceholder's business premises or at the office of the company's Registered Agent).

### **2.3.3 Managed businesses**

- 2.3.3.1 Although the Commission will not licence a business that is a mere shell without real presence in the Isle of Man, it may grant a licence to an applicant which does not fully meet the "real presence" test if the business of the applicant is to be managed in the Isle of Man by another licenceholder.
- 2.3.3.2 In assessing the fitness and propriety of a "managed" applicant, the Commission will apply its usual licensing policy in respect of the managed business itself *and in addition*, will pay special attention to the arrangements under which the proposed manager will carry out its management functions. These arrangements will need to be set out as a formal agreement between the two parties and the Commission will wish to consider the terms of such an agreement in connection with the application.
- 2.3.3.3 In considering a licence application for a managed business, the Commission will wish to establish that the Commission will be able to exercise sufficient regulatory control over

the managed licenceholder. Although the managed business will rely on the proper exercise of the functions of the manager, the managed operation itself will ultimately remain accountable to the Commission for the regulated activities it undertakes. Thus, although it would be appropriate for the manager to provide the staff and premises for the managed business, the Commission would expect major operational decisions to be made by the directors of the managed business itself.

2.3.3.4 The Commission would also expect all records relating to the managed operation to be located in the Isle of Man. This includes minutes of directors' and shareholders' meetings (see para.2.3.2.5 above).

#### **2.3.4 *Outsourcing***

2.3.4.1 The Commission's policy on outsourcing is set out in *Guidance Note on Outsourcing / Delegation of Functions*, which is available on the Commission's website [www.fsc.gov.im](http://www.fsc.gov.im) / Supervision & Policy / Policy Statements.

#### **2.3.5 *Overseas businesses***

2.3.5.1 The Commission considers that the establishment of an office or subsidiary by an Isle of Man business for the purpose of carrying on any regulated activities outside the Island ("overseas business") may impact on the fitness and propriety of a licence applicant. Therefore, where a licence applicant has already established an overseas business or wishes to do so in future, the level of control the applicant has, or will have, over the operation of the overseas business would be relevant to its licence application.

2.3.5.2 The Commission would also consider the potential risks associated with the establishment and operation of the overseas business and any detrimental effect the overseas business may have on the Isle of Man operation and on the Island's reputation. For these reasons, the establishment or continuance of the overseas business will be taken into account in assessing the applicant's fitness and propriety.

#### **2.3.6 *Representative offices***

2.3.6.1 Any office in the Isle of Man that represents, or holds itself out as representing, an off-Island banking business is required to hold a banking licence.<sup>9</sup>

2.3.6.2 An off-Island non-banking business considering the establishment of a "representative office" in the Isle of Man, should consider whether the activities to be undertaken by the representative office are regulated activities under Isle of Man legislation. If they are, the representative office will be required to obtain the relevant licence before it commences business. In this context, the Commission's policy relating to "real presence" (*see paragraph 2.3.2 above*) should be noted.

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<sup>9</sup> s.2(2) and (3) Banking Act 1998

## 2.4 KEY PERSONS

### 2.4.1 Principals, controllers and individuals with significant powers or responsibilities

2.4.1.1 All individuals with responsibility for the management and control of the business, and all other individuals with significant powers or responsibilities in relation to the regulated activities, must satisfy the Commission that they are fit and proper persons. *(See also footnotes 5, 6 and 7 above in respect of “controller”, “principal” and “key persons”).*

*The specific considerations relevant to each class and category of licence in respect of staffing are set out in Appendix I, Table D.*

2.4.1.2 The principals in a licensable business normally include the directors and the chief executive, whether or not their functions are directly related to the business’s regulated activity. While any partnership licenceholders remain, the partners of such partnerships fall within the definition of “principals” and are required to be fit and proper persons as an on-going requirement. (See 2.2.1.2 above.)

2.4.1.3 In respect of the management and control of the business, “directors” include anyone in accordance with whose instructions one or more of the directors are accustomed to act. The Commission would expect a licence applicant to have a minimum of two directors and that all the directors are natural persons, even where corporate directors are permitted by statute and will apply a licence condition to the licence of a 2006 Act company requiring that all its directors are natural persons and that a minimum of two directors are on its Board at all times.

2.4.1.4 The directors are expected to be cognisant with their statutory and common law duties and responsibilities and if they are the “4-eyes”<sup>10</sup>, of their responsibilities in respect of the day to day supervision of the licenceholder’s activities.

2.4.1.5 As a company secretary’s functions give that individual significant powers and responsibilities in relation to the business, he or she would also be required to meet the Commission’s fit and proper test. Acting as the Registered Agent of a 2006 Act company is a fiduciary regulated activity and that person’s fitness and propriety will be assessed in relation to the holding of a fiduciary licence. Therefore, a Registered Agent would not generally need to be separately assessed in relation to its role as a functionary in the licence applicant’s structure.

2.4.1.6 “Key persons” are the individuals who have, or who appear to the Commission to have, significant powers and responsibility in relation to any regulated activity. The compliance officer, the money laundering reporting officer and the “4-eyes” would be treated as key persons.

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<sup>10</sup> “4 eyes” / dual control is described in the relevant regulatory codes broadly as follows: *the business of [the licenceholder] shall be conducted by at least two individuals. The role of these individuals, who are jointly responsible for overseeing the proper conduct of the licenceholder’s business, is described as being the “4-eyes” of the business.* (See: Banking (General Practice) Code 2005 (SD 832/05 as amended by SD 280/06); Fiduciary Services (General Requirement) Regulatory Code 2005 (SD469/05); Financial Supervision Commission (General Requirements) Regulatory Code 1991 (GC402/91)).

- 2.4.1.7 In respect of a fiduciary licence, all individuals who act as a director, or as a director of a corporate director, of a client company, or who act as a trustee, protector or enforcer of a trust in relation to the regulated activities undertaken by the fiduciary, would be treated as key persons.
- 2.4.1.8 To enable the Commission to assess their fitness and propriety, all such individuals will be asked to submit both a personal and a banker's questionnaire and to be vetted by the Commission. In addition, if considered necessary in order to clarify any issues arising and/or to form an opinion regarding an individual's competence and/or integrity, the Commission may invite the individual concerned to attend a personal interview.
- 2.4.1.9 Before proceeding with any new key appointment or, in respect of controllers, permitting an individual to acquire a significant interest in the business, a licenceholder should obtain approval from the Commission. *(See paragraph 3.5 below.)*
- 2.4.1.10 Unless the business is too small to make it practical to do so, the Commission would generally expect the roles of compliance officer and 4-eyes to be held by different individuals so that compliance control is separated from the day to day control of the business, which a 4-eyes would be expected to exercise.
- 2.4.1.11 Because a company secretary's functions include advising the Board in relation to good corporate governance, the Commission would also generally expect the roles of managing director and company secretary to be performed by different individuals where the size of the organisation permits this.

## 2.4.2 Locums

- 2.4.2.1 A licence applicant would generally be expected to meet the 4-eyes requirement. However, if an applicant will not have the necessary internal staffing resources to fulfil the 4-eyes' oversight function, certain categories of licenceholder may be permitted to appoint a locum instead of a 4-eyes *(see Appendix 1, Table D)*. A locum's function is to ensure that the provision of regulated activities can continue without interruption in the licenceholder's absence. Because of the nature of the role and functions of a locum, the Commission's prior approval of the locum arrangement is required.
- 2.4.2.2 In view of the level of competence necessary to take control of another licenceholder's business and because, in the case of an investment business, the locum may himself be undertaking regulated activities, the Commission would generally expect the person proposed as locum to be another licenceholder. Where a licence applicant proposes as its locum another applicant, the Commission's approval of the locum arrangement will be subject to the locum also being successful in its own licence application.
- 2.4.2.3 In the case of an application for a fiduciary licence, the Commission would consider approving as an applicant's locum, an individual who has an acceptable track record as a director of a licenceholder or, subject to the other applicant being successful in its own licence application, an individual who is a director of another licence applicant.
- 2.4.2.4 In exceptional circumstances, the Commission may accept some other suitably qualified individual, provided that individual is able to demonstrate that he or she is a fit and proper person, capable of standing in for the licenceholder.

## **PART 3**

### **THE THREE ELEMENTS OF THE “FIT AND PROPER” TEST**

#### **3.1 Integrity**

3.1.1 In assessing the integrity of a licence applicant or licenceholder and its principals, controllers and key persons, the Commission will consider whether any of their past actions or conduct indicate a lack of integrity. The Commission will take account of all relevant circumstances, on a case-by-case basis.

3.1.2 Individuals responsible for the management and control of a licence applicant’s business should ensure that, by their conduct and by providing appropriate supervision and training to others within the organisation, the applicant’s business is conducted with integrity.

3.1.3 The following are examples of matters the Commission may have regard to in determining an individual’s or an organisation’s fitness and propriety: -

- a conviction by a court, including a civil or military court, in the Island or in another jurisdiction, including a conviction that is “spent”<sup>11</sup>;
- any failure to comply with a direction or order of a court in the Island or in another jurisdiction;
- any criticism or adverse comment about the individual or organisation made by a court, tribunal or enquiry, in the Island or elsewhere, in the context of proceedings before it, including where the individual or organisation was called or attended voluntarily as a witness;
- a refusal by a regulator, whether in the Island or elsewhere, to licence the applicant to conduct banking, fiduciary or investment business, or any activity similar to the relevant licensable activity;
- in respect of a controller, principal or key person, a refusal of a personal application for approval by a regulator, whether in the Island or elsewhere, on the grounds that the individual was not considered a fit and proper person to act as a controller, director, chief executive, secretary or manager of a banking, fiduciary or investment business;
- information received from law enforcement or other supervisory agencies under “gateways” equivalent to those established under section 24(5) of the Financial Supervision Act 1988;
- a disqualification under section 259 of the Companies Act 1931 (fraudulent trading), section 31 of the Companies Act 1982 (insolvent companies), section 26 of the Companies Act 1992 (unfit persons) or any equivalent legislation in any jurisdiction;
- expulsion from membership, a disciplinary finding against or any similar form of censure of an individual by his professional body;
- an adverse personal reference from a previous employer or professional body; or
- failure to disclose to the Commission any matters relevant to the application, including giving incomplete or untruthful answers to the questions in the personal questionnaire.

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<sup>11</sup> By virtue of the Rehabilitation of Offenders Act 2001 (Exceptions) Order 2001, spent convictions must be disclosed to the Commission. Parking or speeding offences, in connection with the use or ownership of a motor vehicle, which were tried in a court of summary jurisdiction, are not, however, considered relevant and do not need to be disclosed.

This list is illustrative only and the Commission will also consider any other relevant matter in addition, or alternatively, to the matters listed.

- 3.1.4 The Rehabilitation of Offenders Act 2001 (Exceptions) Order 2001 allows the Commission to take account of spent convictions. As part of the vetting procedure, the principals, controllers and key persons of a licence applicant or licenceholder are, therefore, required to disclose any spent convictions to the Commission, notwithstanding the Rehabilitation of Offenders Act 2001. The Commission will consider, on a case-by-case basis, whether a spent or previous conviction is relevant to its current assessment of an individual's fitness and propriety.
- 3.1.5 In cases where legal or disciplinary investigations or proceedings are in progress or pending, it would not be appropriate for the Commission to prejudge the outcome (either in favour of or against the applicant, its principals, controllers or key persons) and, therefore, the Commission may not be able to form a view as to the fitness and propriety of the individual or organisation concerned until the matter has been concluded. In such cases, the Commission may consider it appropriate to defer making a decision on the licence application. Where this is the case, the Commission will keep the matter under regular review and seek to ensure that a decision is made as soon as possible.
- 3.1.6 Information supplied to the Commission should be complete, true and accurate. It should not be false or misleading. The provisions in the relevant Act<sup>12</sup> in respect of false statements should be noted. Failure to complete any form or supply information required in respect of a licence application or as a licenceholder (including in the personal and banker's questionnaires to be completed by principals, controllers and key persons) in an honest manner, or the omission of any relevant material, will be relevant to the Commission's assessment of the integrity of the licence applicant/licenceholder or individual concerned.
- 3.1.7 A licence applicant, licenceholder or individual connected with an applicant or licenceholder should co-operate in an open and honest manner with the Commission or any other regulatory body to which they are accountable and should keep them promptly informed of anything relevant to the regulator's task. A failure to do so will be taken into account by the Commission in considering that person's fitness and propriety.

## 3.2 Competence

*(See also the [Training and Competence Framework](#).)*

- 3.2.1 The Commission expects a licence applicant to demonstrate that it is competent to undertake the relevant regulated activities. An applicant's competence depends on the individuals in the organisation holding the relevant qualifications, and/or having sufficient experience and being appropriately supervised and trained, to perform their particular functions competently and to fulfil their responsibilities in relation to the regulated activities.

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<sup>12</sup> s.20 Corporate Service Providers Act 2000  
s.17A Investment Business Acts 1991  
s.27 Banking Act 1998  
s.25 Financial Supervision Act 1988

- 3.2.2 The directors are expected to be cognisant with their statutory and common law duties and responsibilities and, if they are the “4-eyes”, of their responsibilities in respect of the day to day supervision of the licenceholder’s activities.
- 3.2.3 If a controller exercises influence over the day-to-day affairs of the applicant, he or she would also be expected to demonstrate competence in the same way as principals and key persons.
- 3.2.4 The Commission has published a **Training and Competence Framework**, which provides guidance on the specific training and competence requirements relevant to each class and category of licence and also in respect of the particular role or functions of Key person within the organisation. This is available on the Commission’s website [www.fsc.gov.im](http://www.fsc.gov.im) Supervision & Policy / Policy Statements / *Training and Competence Framework*. <http://www.fsc.gov.im/lib/docs/fsc/policystatements/tandc0406.pdf>
- 3.2.5 In assessing the competence of a licence applicant, the particular regulated activities it proposes to undertake, as well as the quantity and type of business and the jurisdictions in which it will be offering its services, are relevant to the Commission’s assessment of the applicant’s competence.
- 3.2.6 The licence applicant’s organisational structure should be sufficiently transparent to enable the Commission to identify the individuals, whose competence in relation to their particular role and responsibilities within the business would be indicative of the overall competence of the applicant to undertake the regulated activities. The role of controllers and their influence over the running of the business will also be taken into account. The Commission will use its discretion, on a case-by-case basis, in its assessment of competence and may make it a licence condition that an individual should successfully complete a course of study or achieve a qualification relevant to his or her responsibilities within a specified period of time.
- 3.2.7 Principals, key persons and, if relevant, controllers, who do not hold relevant academic and/or professional qualifications, must be able to demonstrate that they have accumulated sufficient knowledge of the regulated activities in relation to their responsibilities through relevant work experience, normally over a period of five years.
- 3.2.8 The Commission may consider serious or repeated breaches of legislation or codes of conduct in the Island or in another jurisdiction by an applicant, its principals, key persons or controllers, as evidence of lack of competence and/or integrity.
- 3.2.9 A licence applicant will be expected to satisfy the Commission that it has in place, and applies, controls, systems and procedures to enable it to comply with the regulatory codes relevant to the regulated activities it proposes to undertake. A licenceholder will be required to maintain records in respect of actions taken and instructions received.
- 3.2.10 The Commission also considers that appropriate business resumption/contingency arrangements are relevant to a business’s competence to continue in the face of an unexpected event that may disrupt its normal operations.

*The specific considerations relevant to each class and category of licence in respect of new business and track record, including the competence criteria, are set out in Appendix I, Table C.*

### 3.3 Solvency

- 3.3.1 Solvency is not merely a matter of meeting liabilities as they fall due, but of maintaining adequate financial resources to enable a licenceholder to survive periods of market weakness and slack trading conditions. The control of the financial risks of the business and proper care for customers' money and assets are also important considerations. The Commission's specific financial resources requirements for each category and class of licenceholder are set out in its regulatory Codes<sup>13</sup>. ***For ease of reference, these requirements are summarised in Appendix I, Table E.***
- 3.3.2 Taking account of contingent and prospective liabilities, a licence applicant must be, and be likely to remain, a going concern. The Commission will seek confirmation of this from the directors, supported, if possible, by a report from the applicant's auditor or reporting accountant. While any partnership licenceholders remain, the same applies as an on-going requirement to the partners of such partnerships. (See 2.2.1.2 above.)
- 3.3.3 To establish a licence applicant's track record of financial stability and the ability to meet the going concern requirement, the Commission will also require a copy of the applicant's past three years' annual financial statements audited, if such audit was carried out when the accounts were prepared, in accordance with the relevant legal requirements. If less than three years have elapsed since the applicant's incorporation, it will be required to submit its annual financial statements for the relevant number of years.
- 3.3.4 In addition, all licence applicants are required to submit a business plan including financial projections for the next two years. As noted in relation to "track record" (*see paragraph 2.3.1.1 above*), the Commission would expect an applicant that is a new business start-up to demonstrate convincingly the financial viability of its business proposals.
- 3.3.5 Licence applicants should note that there is an on-going requirement under the relevant Codes for a licenceholder to submit annual financial statements, which have been audited (companies) or independently verified (partnerships). The requirement for licenceholders that are companies to be audited applies irrespective of whether they are obliged to be audited or are exempt from audit under the relevant Companies Act.
- 3.3.6 While any sole trader licenceholders who are not the holders of Category 2 fiduciary licences remain, the Commission will generally require a sole trader to place a sum of money in a segregated bank account, which must be maintained free of any charge or encumbrance or right of set-off. This does not apply to Category 2 fiduciaries who are not subject to any financial resources requirements other than not being a bankrupt. (See 2.2.1.2 above and 3.3.7 below.)

***The relevant amount of such bank deposit for each class and category of licence is specified in the relevant Code and is summarised in Appendix, I Table E.***

- 3.3.7 The solvency requirements apply to an individual who is a principal, controller or key person of the licence applicant and to the holders of Category 2 fiduciary licences (a personal licence) (**see Appendix I, Table E**) only insofar as he must disclose if he has ever been declared bankrupt, is currently an undischarged bankrupt or has been subject to any

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<sup>13</sup> Banking (General Practice) Code 2005 (SD 832/05 as amended by SD 280/06)  
Fiduciary Services (General Requirement) Regulatory Code 2005 (SD469/05)  
Financial Supervision Commission (Financial Resources and Compliance Reporting) Regulatory Code 2002 (SD345/02)

money judgement, which has not been satisfied in full. The Commission considers, on a case-by-case basis, the possible effect of any such circumstance on the individual's fitness and propriety.

3.3.8 In assessing the financial standing of a licence applicant, the Commission may also take into account any money judgement obtained against the applicant, which should be disclosed as part of the application process.

### **3.4 Professional indemnity insurance cover**

3.4.1 As stated in paragraph 3.3.1 above, the Commission would expect a licenceholder's business to be able to withstand the normal business risks associated with market conditions. In addition, any prudently run business should be able to withstand extraordinary risks. The Commission would expect a licenceholder to mitigate the business's exposure to extraordinary risk by taking out adequate professional indemnity insurance ("PII").

3.4.2 PII cover should be appropriate to the nature and size of the business operation.

*Guidance as to the levels of cover that the Commission would consider appropriate for each class and category of licence are set out in Appendix I, Table E.*

### **3.5 A "not fit and proper" direction**

The Commission may issue a direction to prevent a licence applicant or licenceholder from allowing an individual to become a controller, or to appoint a principal or key person, if it has reasonable grounds for believing that the individual is not a fit and proper person<sup>15</sup>. In respect of a licenceholder, if an individual's conduct gives the Commission grounds to believe that he or she is no longer a fit and proper person, the individual may be directed to discontinue acting in that role.

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<sup>15</sup> s.9 Corporate Service Providers Act 2000  
s.10 Investment Business Act 1991  
s.16 Banking Act 1998

## **PART 4**

### **CUSTODY SERVICES**

#### **4.1 General**

- 4.1.1 Applicants for a Category 3(b) investment business licence to act as a custodian to Experienced Investor Funds<sup>16</sup> (“EIFs”), Professional Investor Funds (“PIFs”) and Overseas Schemes, and Category 5 investment business licenceholders who apply for an extension to their licence to act as a custodian to EIFs, PIFs and Overseas Schemes, will be assessed on a case by case basis.
- 4.1.2 Applicants should be able to demonstrate that they can meet the requirements of the licensing policy in relation to the adequacy of their financial resources, track record, competence, experience and systems to undertake custody of the types of schemes and scheme assets for which they seek to act as custodian.

#### **4.2 Additional Requirements**

- 4.2.1 An applicant for a Category 3(b) licence to undertake custody work for EIFs, PIFs and Overseas Schemes should be an entity which will only carry out the activity of acting as custodian to such schemes. In all cases, any licence granted will be for that purpose only (a segregated licence<sup>17</sup>).
- 4.2.2 The adequacy of the financial resources of applicants for a Category 3(b) licence to undertake custody work for EIFs, PIFs and Overseas Schemes will be assessed on a case by case basis but in all cases there is a minimum Net Tangible Assets requirement of not less than £175,000<sup>18</sup>. This will be applied by way of licence condition.
- 4.2.3 The Commission would expect an applicant for a Category 3(b) licence to undertake custody work for EIFs, PIFs and Overseas Schemes to be an entity which is ultimately owned by a banking group already offering similar services through other group entities<sup>19</sup>.
- 4.2.4 A Category 5 Licenceholder which wishes to undertake custody work for EIFs, PIFs and Overseas Schemes should apply for an extension to its licence by way of licence condition.

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<sup>16</sup> Category 5 licenceholders may currently act as custodians to EIFs. Category 3(b) licenceholders will be able to act as custodians to EIFs once they are prescribed as an Authorised Person under the Financial Supervision Act 1988. Draft regulations are attached.

<sup>17</sup> Separation of function is an important protection for investors in schemes.

<sup>18</sup> The Commission believes that it is important that custodians of schemes are institutions of substance and that the normal Category 3(b) requirement of £75,000 Net Tangible Assets is not sufficient to demonstrate this. £175,000 has been chosen since this correlates to the Category 4 requirements. Banking institutions who undertake this activity are bound by the capital requirements of the Banking Regime.

<sup>19</sup> This policy will ensure that Category 3(b) licenceholders undertaking such custody work have the group support necessary for this role. This is in line with the general licensing policy whereby Banking institutions are required to be “A subsidiary or a branch of a bank licensed in another jurisdiction that applies regulatory standards equivalent to those applied to banking institutions in the Isle of Man.”

## **PART 5**

### **LICENCE APPLICATION PROCESS**

The licence application procedure is described in the Commission's Guidance Note entitled "*How to apply for a licence*" (available on the Commission's website [www.fsc.gov.im](http://www.fsc.gov.im) Authorisations / *How to apply for a licence*).

A person aggrieved by a decision of the Commission may apply for a review of the decision pursuant to the provisions of the relevant Act.<sup>20</sup>

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s.18 Corporate Service Providers Act 2000  
s.24 Banking Act 1998  
s.15 Investment Business Act 1991

## PART 6

### STANDARD LICENCE CONDITIONS FOR LICENCEHOLDERS WHICH ARE INCORPORATED OR REGISTERED UNDER THE COMPANIES ACT 2006

The licenceholder shall, at all times:

- i Maintain in force elections under Section 203 (filing of the register of members) and Section 204 (filing of the register of directors) of the Companies Act 2006 (“the Act”) and shall comply with the requirements of the Act in respect of such elections;
- ii Have only natural persons as directors;
- iii Have at least two directors; and
- iv Maintain up to date copies of the minutes of its Board meetings and members’ meetings either at the licenceholder’s business premises on the Isle of Man or at the office of its Registered Agent.

Table A

*Classes and Categories of Licence*

(Page 1)

Class and Category of licence	Regulated Activities (Carried on in or from the Isle of Man, by way of business)
<i>Banking</i>	<ul style="list-style-type: none"> <li>▪ receipt of deposits;</li> <li>▪ payment and collection of cheques;</li> <li>▪ acting as a representative office of a banking business outside the Island;</li> <li>▪ an overseas bank that establishes a representative office in the Isle of Man;</li> <li>▪ an Isle of Man incorporated or “F” registered company which holds itself out as carrying on banking business outside the Isle of Man; and</li> <li>▪ provision of management services to a banking institution.</li> </ul>
<i>Building society</i>	<ul style="list-style-type: none"> <li>▪ accepting deposits, or otherwise borrowing any money;</li> <li>▪ accepting any payment representing the whole or any part of the amount due by way of subscription for a share in the society.</li> </ul>
<i>Fiduciary – CSP Category 1</i>	<ul style="list-style-type: none"> <li>▪ formation, sale transfer or disposal of companies;</li> <li>▪ provision of premises for a registered office or accommodation address of a company;</li> <li>▪ acting as or arranging for others to act as a director, alternate director or secretary of a company;</li> <li>▪ acting as or arranging for others to act as a nominee shareholder of a company;</li> <li>▪ holding units on behalf of another in a unit trust scheme;</li> <li>▪ provision of services or premises for, accepting service or arranging for others to accept service on behalf of a partnership, arranging for others to act as partners in a partnership;</li> <li>▪ provision of company administration services; and</li> <li>▪ acting as a registered agent of a 2006 Act company.</li> </ul>
<i>Fiduciary – CSP Category 2</i>	<ul style="list-style-type: none"> <li>▪ acting as a company director (individuals only)</li> </ul>
<i>Fiduciary – Trust Corporation</i>	<ul style="list-style-type: none"> <li>▪ acting as a trustee or protector of an express trust;</li> <li>▪ acting as a <i>Trust Corporation</i> (see Trustee Act 1961, s.65A(b));</li> <li>▪ acting as an enforcer of a purpose trust (see Purpose Trust Act 1996, s.1(1)(d)); and</li> <li>▪ provision of trust administration services.</li> </ul>
<i>Fiduciary – TSP Category 1</i>	<ul style="list-style-type: none"> <li>▪ Same as a Trust Corporation <u>with the exception of</u> acting as a <i>Trust Corporation</i></li> </ul>
<i>Fiduciary – TSP Category 2</i>	<ul style="list-style-type: none"> <li>▪ Acting as a co-trustee or protector of an express trust (individuals only)</li> </ul>
<i>Investment Business – Category 1 Group (a)</i>	<p>Financial adviser acting in either a tied or independent capacity –</p> <ul style="list-style-type: none"> <li>▪ who deals in limited range of investments (i.e. unit trusts, life and pensions products); and</li> <li>▪ who is not permitted to control clients' money or assets</li> </ul>
<i>Investment Business – Category 1 Group (b)</i>	<p>Tied agents being persons:</p> <ul style="list-style-type: none"> <li>▪ who sell the products of one product company only, or more than one product company where those product companies are within the same group, and that company is, or all those group companies are, as appropriate, authorised either in the Island or the United Kingdom;</li> <li>▪ who control money belonging to investment business clients and in respect of whom the Commission has been provided with an indemnity in respect of clients' monies in an acceptable form signed by the product company which the agent represents.</li> </ul>

Class and Category of licence	Regulated Activities (Carried on in or from the Isle of Man, by way of business)
<i>Investment Business – Category 1 Group (c)</i>	<ul style="list-style-type: none"> <li>▪ Acting as a Promoter to funds that statutorily require the appointment of a regulated promoter including preparation or distribution of, or causing the preparation or distribution of an offering document or associated marketing material for a fund that requires the appointment of a regulated promoter. This category does not permit the person to control clients' money or assets</li> </ul>
<i>Investment Business – Category 2 Group (a)</i>	<p>Financial adviser acting in either a tied or independent capacity –</p> <ul style="list-style-type: none"> <li>▪ who arranges deals in any investment instrument but does not receive or control clients' money; or</li> <li>▪ who arranges deals in a limited range of products (as in Category 1) but is permitted to control clients' money; or</li> <li>▪ who acts as investment adviser to occupational pension schemes and/or collective investment schemes.</li> </ul>
<i>Investment Business – Category 2 Group (b)</i>	<ul style="list-style-type: none"> <li>▪ “managed managers” who are managers of international collective investment schemes (apart from experienced and professional investor funds, Specialist Funds, Qualifying Funds and Overseas Funds (EIFs, PIFs, SFs, QFs or overseas funds)), where manager is administered by a third party fund administrator (Category 4 Licenceholder).</li> </ul>
<i>Investment Business – Category 3 Group (a)</i>	<ul style="list-style-type: none"> <li>▪ Portfolio managers who are permitted to control clients' money and assets on a discretionary basis;</li> <li>▪ Managers of international collective investment schemes (apart from EIFs, PIFs, SFs, QFs or overseas funds), not administered by a third party fund administrator;</li> <li>▪ Managers of more than one “exempt international collective investment scheme” (see Financial Supervision Act 1988, s.11(7)).</li> </ul>
<i>Investment Business – Category 3 Group (b)</i>	<ul style="list-style-type: none"> <li>▪ Managers or fund administrators of International Schemes PIFs, EIFs, SFs, QFs or overseas funds;</li> <li>▪ Investment manager with discretionary powers of investment re collective investment schemes or occupational pension schemes, established in the Isle of Man or in another jurisdiction;</li> <li>▪ Managers of authorised collective investment schemes;</li> <li>▪ Managed managers of a qualifying type EIF or a QF, where the manager is managed by a third party fund administrator (Category 4 Licenceholder) or a category 3(b) licenceholder who can demonstrate appropriate competence and experience and sufficient systems, controls and resources to act in this capacity) (“Managed managers”).</li> <li>▪ Licenceholders who provide services to managers and asset managers of PIFs, EIFs, SFs or QFs, as appropriate (nb the licenceholder is required to demonstrate appropriate competence and experience and sufficient systems, controls and resources to act in this capacity)</li> <li>▪ Associated Asset Managers of SFs and funds of a similar nature to SFs.</li> <li>▪ Specialist Asset Managers of SFs and funds of a similar nature to SFs.</li> <li>▪ Administrators of managed portfolio managers;</li> <li>▪ Investment businesses, other than those included in Categories 1, 2, 3(a), 4 and 5.</li> </ul>
<i>Investment Business – Category 4</i>	<ul style="list-style-type: none"> <li>▪ Third party fund administrators who provide administrative services to managers of authorised and/or international collective investment schemes including PIFs, EIFs, SFs, QFs or overseas funds (except as provided for in Categories 2 and 3 above).</li> <li>▪ They may also directly administer PIFs, EIFs, SFs, QFs or overseas funds.</li> <li>▪ They may also act as manager to Associated Asset Managers.</li> </ul>
<i>Investment Business – Category 5 Group (a)</i>	<ul style="list-style-type: none"> <li>▪ Isle of Man branch of firm of stockbrokers, which is authorised by the UK Financial Services Authority.</li> </ul>
<i>Investment Business – Category 5 (b)</i>	<ul style="list-style-type: none"> <li>▪ A firm of stockbrokers acting in the capacity of an agency broker, which is not authorised by the UK Financial Services Authority.</li> </ul>
<i>Investment Business – Category 5 Group (c)</i>	<ul style="list-style-type: none"> <li>▪ A firm of stockbrokers, other than an agency broker, acting in the capacity of a broad scope firm and which is not authorised by the Financial Services Authority.</li> </ul>

Table B

***Ownership and Management Structures***  
(Paragraphs 2.2)

<b>Class and Category of licence</b>	<b>Permitted structures</b>	<b>Ownership by trust (subject to para. 2.2.2)</b>	<b>May be a managed business</b>
<b><i>Banking</i></b>	Subsidiary company or branch <sup>21</sup> of bank licensed in another jurisdiction.	Not generally permitted	Yes, provided it is part of a banking group whose lead regulator applies regulatory standards equivalent to those applied to banking institutions in the Isle of Man; and the lead regulator has no objection to the establishment of the managed business in the Island.
<b><i>Building Society</i></b>	Branch <sup>21</sup> of building society licensed in another jurisdiction.	Not applicable.	Yes, provided it is part of a building society group whose lead regulator applies regulatory standards equivalent to those applied to banking institutions in the Isle of Man; and the lead regulator has no objection to the establishment of the managed business in the Island.
<b><i>Fiduciary – CSP Category 1</i></b>	Company Branch <sup>21</sup> of CSP licensed in another jurisdiction	May be permitted.	Yes
<b><i>Fiduciary – CSP Category 2</i></b>	Sole trader	Not applicable	Not applicable
<b><i>Fiduciary – Trust Corporation</i></b>	Company	May be permitted	No
<b><i>Fiduciary – TSP Category 1</i></b>	Company Branch <sup>21</sup> of TSP licensed in another jurisdiction	May be permitted.	Yes
<b><i>Fiduciary – TSP Category 2</i></b>	Sole trader	Not applicable	Not applicable

<sup>21</sup> In the case of a branch, subject to its meeting the Commissions “fit and proper” requirements, the licence would be issued to the legal entity in respect of its activities in or from the Isle of Man

Class and Category of licence	Permitted structures	Ownership by trust (subject to para. 2.2.2)	May be a managed business
<i>Investment Business – Category 1 Groups (a) and (b)</i>	Company Branch <sup>21</sup> of company licensed in another jurisdiction to conduct relevant class of investment business	May be permitted.	No
<i>Investment Business – Category 1 Group (c)</i>	Company or Branch of company licensed in another jurisdiction to conduct relevant class of investment business in an acceptable jurisdiction.	May be permitted.	No
<i>Investment Business – Category 2 Group (a)</i>	Company Branch <sup>21</sup> of company licensed in another jurisdiction to conduct relevant class of investment business	May be permitted.	No
<i>Investment Business – Category 2 Group (b)</i>	Company Branch <sup>21</sup> of company licensed in another jurisdiction to conduct relevant class of investment business Generally required to be part of larger Group	May be permitted.	May be permitted
<i>Investment Business – Category 3 Group (a)</i>	Company Branch <sup>21</sup> of company licensed in another jurisdiction to conduct relevant class of investment business Generally required to be part of larger Group	May be permitted	May be permitted in respect of certain activities only
<i>Investment Business – Cat 3(b)</i>	Company Branch <sup>21</sup> of company licensed in another jurisdiction to conduct relevant class of investment business Generally required to be part of larger Group	May be permitted	May be permitted in respect of certain activities only
<i>Investment Business - Category 4</i>	Company Branch <sup>21</sup> of company licensed in another jurisdiction to conduct relevant class of investment business Generally required to be part of larger Group	May be permitted.	No
<i>Investment Business – Category 5</i>	Company  <b>Category 5 Group (a) only –</b> Branch <sup>21</sup> of stockbroker authorised by FSA <b>Category 5 Group (b) and (c) –</b> Branch <sup>21</sup> company licensed in another jurisdiction to conduct relevant class of investment business Generally required to be part of larger Group	May be permitted	No

<sup>21</sup> In the case of a branch, subject to its meeting the Commissions “fit and proper” requirements, the licence would be issued to the legal entity in respect of its activities in or from the Isle of Man

Table C

**Track Record**(Paragraphs 2.3.1 and 3.2) See also *Training and Competence Framework*

Class and Category of licence	Track Record/New Business Start-up
<b>Banking</b>	<p>A subsidiary or a branch of a bank licensed in another jurisdiction that applies regulatory standards equivalent to those applied to banking institutions in the Isle of Man.</p> <p>A new, start-up bank would not be permitted.</p>
<b>Building society</b>	<p>A subsidiary or a branch of a building society licensed in another jurisdiction that applies regulatory standards equivalent to those in the Isle of Man.</p> <p>A new, start-up building society would not be permitted.</p>
<b>Fiduciary – CSP Category 1</b>	<p>New, start-up firms permitted provided the individuals wishing to establish the business have a proven track record (3 to 5 years relevant senior level experience and, preferably, also holding relevant qualifications<sup>22</sup>).</p>
<b>Fiduciary – CSP Category 2</b>	<p>The individual should have an appropriate level of experience (at least 5 years at senior level) and, preferably a relevant qualification<sup>22</sup>.</p>
<b>Fiduciary – Trust Corporation</b>	<p>New start-up firms may be permitted provided the individuals wishing to establish the business have a proven track record (3 to 5 years relevant senior level experience in a Trust Corporation (TSP Category 1 experience may also be relevant) and, preferably, also holding relevant qualifications<sup>22</sup>) and, in addition, the applicant should have at least 5 directors and/or Key person who hold a relevant professional qualification and/or have relevant experience<sup>17</sup>. Where an individual does not hold a relevant qualification, a greater depth of experience at a senior level will be expected.</p> <p>In addition, the Commission would not generally permit a Trust Corporation to be a managed operation and would expect a Trust Corporation to be a company of substance (see Table E) and not a mere nominee.</p>
<b>Fiduciary – TSP Category 1</b>	<p>New start-up firms permitted provided the individuals wishing to establish the business have a proven track record (holding relevant qualifications and/or 3 to 5 years relevant experience at a senior level<sup>22</sup>).</p>
<b>Fiduciary – TSP Category 2</b>	<p>The individual should have an appropriate level of experience (at least 5 years at senior level) and, preferably a relevant qualification<sup>22</sup>.</p>
<b>Investment Business - Category 1 Groups (a), (b) and (c)</b>	<p>New start-up firms permitted.</p> <p>It is expected that any individual who advises customers about investment products will hold a relevant qualification<sup>22</sup>.</p> <p>They should also have a proven track record (a minimum of 3 years experience).</p>

<sup>22</sup> See Training and Competence Framework

Class and Category of licence	Track Record/New Business Start-up
<b><i>Investment Business – Category 2 Group (a)</i></b>	<p>New start-up firms permitted.</p> <p>It is expected that any individual who advises customers about investment products will hold a relevant qualification<sup>22</sup></p> <p>They should also have a proven track record (a minimum of 3 years experience).</p>
<b><i>Investment Business Category 3 Group (a) (discretionary portfolio managers)</i></b>	<p>In some circumstances new start-up businesses may be permitted.</p> <p>Investment managers should preferably be part of a group that can demonstrate a track record in a business similar to the business the applicant proposes to conduct in the Isle of Man. Applicants should normally be institutions of proven quality and it is expected that individuals who will act as the applicant’s investment managers, directors, 4-eyes and compliance officer will have a proven track record (relevant qualifications and experience<sup>22</sup>).</p> <p>An investment manager will be expected to hold a relevant qualification<sup>22</sup>. Back office and administration staff would only be expected to have relevant experience. Whilst there is no specific qualification requirement for those overseeing back office and administration staff, relevant experience is expected and relevant qualifications may be appropriate.</p>
<b><i>Investment Business – Category 2 Group (b)*; Category 3 Groups (a) and (b); and Category 4 (collective investment schemes’ fund managers &amp; fund administrators)</i></b>	<p>The Commission welcomes applicants which are part of a substantial group that can demonstrate a track record in an investment business similar to that which the applicant proposes to conduct in the Isle of Man (usually a minimum of 5 years in a jurisdiction with equivalent regulatory standards to the Isle of Man’s or which is otherwise considered acceptable).</p> <p>If the applicant is a new “start up” business, the Commission will consider the application on its merits, taking into account all factors which it considers to be relevant, including the applicant’s business plan, the track record and experience<sup>22</sup> of its Key person and the types of funds it proposes to manage or administer, including the investors at whom the marketing will be aimed and the level of minimum subscriptions. The same considerations will apply in respect of a licenceholder’s proposed change in controller. The Commission may impose conditions on any licence granted until the applicant’s business as a whole has established a satisfactory track record (3-5 years).</p> <p>All applicants must have staff with relevant experience, who are able to demonstrate that they have adequate skills and knowledge in relation to their particular role and responsibilities<sup>22</sup>. Relevant staff must demonstrate that they have adequate knowledge of the nature of the financial instruments and products with which they deal and of the nature and organisational structure of the markets on which those instruments and products are traded. This includes being aware of the nature of the risks involved.</p> <p>*A Category 2 Group (b) licenceholder is always a managed business and, as such, will not employ its own staff. The Commission would, however, look at the functions and services provided by the Group (if applicable) and by the Third Party Fund Administrator as well as the competence of its directors and controllers.</p>

<sup>22</sup> See Training and Competence Framework

Class and Category of licence	Track Record/New Business Start-up
<p><b><i>Investment Business – Category 3 Group (b) (Any other Category 3 investment business not covered above)</i></b></p>	<p>Applicants wishing to act as investment managers should be part of a group that can demonstrate a track record in a business similar to that to be conducted in the Isle of Man. Applicants should be institutions of proven quality. However, new business start-ups may in some circumstances be allowed.</p> <p>It is expected that individuals who will act as the applicant’s investment managers, directors, 4-eyes and compliance officer will have a proven track record (relevant qualifications and experience<sup>22</sup>).</p> <p>An investment manager will be expected to hold a relevant qualification<sup>22</sup>. Whilst there is no specific qualification requirement for those overseeing back office and administration staff, relevant experience is expected and relevant qualifications may be appropriate.</p>
<p><b><i>Investment Business – Category 5 Groups (a), (b) and (c)</i></b></p>	<p>The Commission would normally expect stockbrokers to be part of a group that can demonstrate a track record in that type of investment business. A “proven track record” is deemed to be at least 5 years in a jurisdiction with regulatory standards deemed to be appropriate by the Commission.</p> <p>A stockbroker will be expected to hold a relevant qualification<sup>22</sup>.</p>

<sup>22</sup> See Training and Competence Framework

Table D

*Staffing* (Paragraphs 2.4)

Class and Category of licence	Staffing/4-eyes requirement	Locum required	Individuals subject to the “fit and proper” test
<b>Banking</b>	4-eyes Compliance Officer Money Laundering Reporting Officer (MLRO) Managing Director Secretary At least one non-executive director (The role of Managing Director and Secretary must not be undertaken by the same individual and generally, the role of 4-eyes & compliance officer should not be undertaken by the same individual.)	Not applicable	Directors, chief executive, managers and controllers. This includes the secretary, 4-eyes, compliance officer and MLRO.
<b>Building Society</b>	4-eyes Compliance Officer MLRO  (Generally, the role of 4-eyes and compliance officer should not be undertaken by the same individual.)	Not applicable	Executive management team, Key persons and controllers. This includes the secretary (if any), 4-eyes, compliance officer and MLRO.
<b>Fiduciary – CSP Category 1</b>	4-eyes MLRO Managing Director Secretary  (Generally, the role of Managing Director and Secretary should not be undertaken by the same individual.)	Yes – if unable to meet 4-eyes requirement	Directors, chief executive, managers and controllers; the partners (in the case of a partnership licence granted pre April 2007); the individuals whose appointment to act as officers of client companies or partners of partnerships is arranged by the applicant; and such other persons as appear to the Commission to have significant powers or responsibilities with respect to any regulated activity to be undertaken by the applicant. <sup>23</sup> This includes the secretary, 4-eyes, compliance officer (if any) and MLRO.
<b>Fiduciary – CSP Category 2</b>	No 4-eyes requirement	Not applicable	Applicant only (licence restricted to individuals)

<sup>23</sup> s.3 Corporate Service Providers Act 2000

Class and Category of licence	Staffing/4-eyes requirement	Locum required	Individuals subject to the “fit and proper” test
<b><i>Fiduciary – Trust Corporation</i></b>	4-eyes MLRO Managing Director Secretary  (The role of Managing Director and Secretary must not be undertaken by the same individual.)	Not applicable as must have 4-eyes	Directors, chief executive, managers and controllers; the individuals whose appointment to act as trustees, enforcers or protectors of express trusts is or will be arranged by the applicant; and such other persons as appear to the Commission to have significant powers or responsibilities with respect to any regulated activity to be undertaken by the applicant. <sup>23</sup> This includes the secretary, 4-eyes, compliance officer (if any) and MLRO.
<b><i>Fiduciary – TSP Category 1</i></b>	4-eyes MLRO Managing Director Secretary  (Generally, the role of Managing Director and Secretary should not be undertaken by the same individual.)	Yes, if unable to meet 4-eyes requirement	Directors, chief executive, managers and controllers; the partners (in case of a partnership licence granted pre April 2007); the individuals whose appointment to act as trustees, enforcers or protectors of express trusts is or will be arranged by the applicant; and such other persons as appear to the Commission to have significant powers or responsibilities with respect to any regulated activity to be undertaken by the applicant. <sup>23</sup> This includes the secretary, 4-eyes, compliance officer and MLRO.
<b><i>Fiduciary – TSP Category 2</i></b>	No 4-eyes requirement	Not applicable	Applicant only (licence restricted to individuals)
<b><i>Investment Business – Category 1 Groups (a), (b) and (c)</i></b>	No 4-eyes requirement. However, may be required to have a locum. MLRO Company – Managing Director & Secretary  (Generally, the role of Managing Director and Secretary should not be undertaken by the same individual.)	May apply depending on size of business	Directors, chief executive, managers and controllers, and partners (in the case of a licence granted to a partnership pre April 2007); <sup>24</sup> This includes the secretary, 4-eyes (if any) and MLRO.

<sup>23</sup> s.3 Corporate Service Providers Act 2000

<sup>24</sup> s.10 Investment Business Act 1998

Class and Category of licence	Staffing/4-eyes requirement	Locum required	Individuals subject to the “fit and proper” test
<b><i>Investment Business – Category 2</i></b>	4-eyes requirement may in some circumstances be waived. However, may be required to have a locum. MLRO Company – Managing Director & Secretary  (Generally, the role of Managing Director and Secretary, and the role of 4-eyes and compliance officer/MLRO, should not be undertaken by the same individual.)	May apply depending on size of business	Directors, chief executive, managers and controllers. <sup>24</sup> This includes the secretary, 4-eyes (if any) and MLRO.
<b><i>Investment Business – Category 3</i></b>	4-eyes Compliance Officer Managing Director Secretary MLRO Administrative staff Generally, minimum of 5 staff required.  (Generally, the role of Managing Director and Secretary, and the role of 4-eyes and compliance officer/MLRO, should not be undertaken by the same individual.)	No	Directors, chief executive, managers and controllers. <sup>24</sup> This includes the secretary, 4-eyes, compliance officer and MLRO.
<b><i>Investment Business – Category 3 and Category 4 (Schemes)</i></b>	4-eyes Compliance Officer Managing Director Secretary MLRO Administrative staff Generally, minimum of 5 staff required.  (Generally, the role of Managing Director and Secretary, and the role of 4-eyes and compliance officer/MLRO, should not be undertaken by the same individual.)	No	Director, chief executive, managers and controllers. This includes the secretary, 4-eyes, compliance officer and MLRO.
<b><i>Investment Business – Category 5</i></b>	Senior Executive Officer Finance Officer Compliance Officer (or 4-eyes if a branch) Secretary Administrative staff Generally, minimum of 5 staff required.  (Generally, the role of Senior Executive Officer (or 4-eyes) and Secretary, and the role of 4-eyes and compliance officer/MLRO, should not be undertaken by the same individual.)	No	Director, chief executive, managers and controllers. This includes the secretary, 4-eyes, compliance officer and MLRO.

<sup>24</sup> s.10 Investment Business Act 1998

Table E

*Financial resources and professional indemnity insurance*

Class and Category of licence	Financial Resources Requirement	Professional Indemnity Insurance (PII)
<b>Banking</b>	IOM incorporated – minimum £3.5 million paid-up share capital; and capital adequacy requirements as specified for that institution by the Commission. <sup>25</sup>  Branch of an overseas bank – separate assessments.	Not applicable but auditor must have minimum £20 million PII cover <sup>26</sup> .
<b>Building Society</b>	Dealt with on a case-by-case basis. Must demonstrate to the Commission that it has an appropriate liquidity policy.	Not applicable.
<b>Fiduciary – CSP Category 1</b>	Company or partnership – going concern requirement applies. <sup>27</sup> Commission would generally expect applicant to be adequately capitalised (£10,000 minimum level of paid-up share capital).  Sole trader – £10,000 to be deposited in a segregated bank account with no right of lien or set-off. <sup>28</sup>	Aggregate of claims in 1 year: £250,000 or 2.5 times annual turnover, whichever is greater. Excess should not exceed 3% of annual turnover <sup>29</sup>
<b>Fiduciary – CSP Category 2</b>	Must not be an undischarged bankrupt.  Circumstances of previous, discharged bankruptcy will also be taken into account.	Aggregate of claims in 1 year: £250,000 or 2.5 times annual turnover, whichever is greater. Excess should not exceed 3% of annual turnover. (Equivalent Directors & Officers insurance may be acceptable.)
<b>Fiduciary – Trust Corporation</b>	Going concern requirement applies.  Must be adequately capitalised (£25,000 is expected minimum level of paid up share capital); must monitor liquidity and report quarterly <sup>30</sup> .	Aggregate of claims in 1 year: £500,000 or 2.5 times annual turnover, whichever is greater. Excess should not exceed 3% of annual turnover

<sup>25</sup> Banking (General Practice) Regulatory Code 2005 – SD 832/05 Code 5 (1)

<sup>26</sup> Banking (General Practice) Regulatory Code 2005 – SD 832/05 Code 29 (4)

<sup>27</sup> Fiduciary Services (General Requirements) Regulatory Code 2005 – SD 469/05 para.11

<sup>28</sup> Fiduciary Services (General Requirements) Regulatory Code 2005 – SD 469/05 guidance to para.11

<sup>29</sup> Fiduciary Services (General Requirements) Regulatory Code 2005 – SD 469/05 guidance to para.18

<sup>30</sup> Fiduciary Services (General Requirements) Regulatory Code 2005 – SD 469/para.11(1) & (5) and guidance

<b><i>Fiduciary – TSP Category 1</i></b>	<p>Going concern requirement applies.</p> <p>Must be adequately capitalised (£25,000 is expected minimum level of paid up share or partners' capital); must monitor liquidity and report quarterly.</p> <p>Sole trader – £25,000 to be deposited in a segregated bank account with no right of lien or set-off.<sup>30</sup></p>	<p>Aggregate of claims in 1 year: £500,000 or 2.5 times annual turnover, whichever is greater. Excess should not exceed 3% of annual turnover.</p>
<b><i>Fiduciary – TSP Category 2</i></b>	<p>Must not be an undischarged bankrupt. Circumstances of previous, discharged bankruptcy will also be taken into account.</p>	<p>Aggregate of claims in 1 year: £500,000 or 2.5 times annual turnover, whichever is greater. Excess should not exceed 3% of annual turnover.</p>
<b><i>Investment Business – Category 1 Groups (a), (b) and (c)</i></b>	<p>Minimum Net Tangible Assets of £5,000 (to be deposited in a segregated bank account with no right of lien or set-off).</p> <p>Partnerships and companies –Minimum Net Tangible Assets of £10,000 (which may be deposited in a segregated bank account with no right of lien or set-off).<sup>31</sup></p>	<p>Aggregate of claims in 1 year: £250,000 or 3 x total revenue, whichever is the greater. Excess should not exceed £5,000 plus 0.75% of aggregate cover in excess of £1million<sup>32</sup></p>
<b><i>Investment Business – Category 2 Group (a)</i></b>	<p>Minimum Net Tangible Assets of £15,000 plus 3 months expenditure-based requirement as liquid capital<sup>31</sup></p>	<p>Aggregate of claims in 1 year: £500,000 or 3 x total revenue whichever is the greater. Excess should not exceed £5,000 plus 0.75% of aggregate cover in excess of £1 million.<sup>32</sup></p> <p>In addition, auditor must have at least £10 million PII cover.<sup>32</sup></p>
<b><i>Investment Business – Category 2 Group (b)</i></b>	<p>Minimum Net Tangible Assets of £30,000 plus 3 months expenditure-based requirement as liquid capital<sup>31</sup></p>	<p>Aggregate of claims in 1 year: £500,000 or 3 x total revenue whichever is the greater. Excess should not exceed £5,000 plus 0.75% of aggregate cover in excess of £1 million.<sup>32</sup></p> <p>In addition, auditor must have at least £10 million PII cover.<sup>32</sup></p>
<b><i>Investment Business – Category 3 Group (a)</i></b>	<p>Minimum Net Tangible Assets of £50,000 plus 3 months expenditure based requirement as liquid capital<sup>31</sup></p>	<p>Aggregate of claims in 1 year: £500,000 or 3 x total revenue whichever is the greater.</p> <p>Excess should not exceed £5,000 plus 0.75% of aggregate cover in excess of £1 million.<sup>32</sup></p> <p>In addition, auditor must have at least £10 million PII cover<sup>32</sup></p>

<sup>31</sup> Financial Supervision Commission (Financial Resources and Compliance Reporting) Regulatory Code 2000 – SD345/02 para.3(3)

<sup>32</sup> Financial Supervision Commission (Financial Resources and Compliance Reporting) Regulatory Code 2000 – SD345/02 para.3(5) and guidance

<p><b><i>Investment Business – Category 3 Group (b)</i></b></p>	<p>Minimum Net Tangible Assets of £75,000 plus 3 months expenditure based requirement as liquid capital. <sup>31</sup></p>	<p>Aggregate of claims in 1 year: £500,000 or 3 x total revenue whichever is the greater. Excess should not exceed £5,000 plus 0.75% of aggregate cover in excess of £1million. <sup>32</sup></p> <p>In addition, auditor must have at least £10 million PII cover. <sup>32</sup></p>
<p><b><i>Investment Business – Category 4</i></b></p>	<p>Minimum Net Tangible Assets of £175,000 plus 3 months expenditure based requirement as liquid capital.</p>	<p>Aggregate of claims in 1 year: £500,000 or 3 x total revenue whichever is the greater. Excess should not exceed £5,000 plus 0.75% of aggregate cover in excess of £1million.</p> <p>In addition, auditor must have at least £10 million PII cover.</p>

<b>Investment Business – Category 5 Group (a)</b>	No requirement as it is a branch	As appropriate to the nature of the business.
<b>Category 5 Group (b)</b>	<p>Primary Requirement – being the sum of:</p> <ul style="list-style-type: none"> <li>▪ the base requirement of £50,000 or ¼ of relevant annual expenditure (whichever is the higher);</li> <li>▪ the total liquidity requirement;</li> <li>▪ charged assets;</li> <li>▪ contingent liabilities; and</li> <li>▪ deficiencies in subsidiaries</li> </ul> <p><b>Plus</b> the total Position Risk Requirement and the total Counterparty Risk Requirement</p>	
<b>Category 5 Group (c)</b>	<p>Primary Requirement – being the sum of:</p> <ul style="list-style-type: none"> <li>▪ the base requirement of £100,000 or ¼ of relevant annual expenditure (whichever is the higher);</li> <li>▪ the total liquidity requirement;</li> <li>▪ charged assets;</li> <li>▪ contingent liabilities; and</li> <li>▪ deficiencies in subsidiaries</li> </ul> <p><b>Plus</b> the total Position Risk Requirement and the total Counterparty Risk Requirement<sup>33</sup></p>	

<sup>33</sup> Financial Supervision Commission (Stockbrokers) (No2) Regulatory Code 2003 – SD868/03 para.102