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2000

Chapter No. 13

c.13

CORPORATE SERVICE PROVIDERS ACT 2000

Arrangement of Sections

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Signed in Tynwald: 17th October 2000
Received Royal Assent: 17th October 2000
Announced to Tynwald: 17th October 2000
Passed: 17th October 2000

AN ACT

to provide for the licensing,
regulation and supervision of
persons who provide certain
services in relation to bodies
corporate; and for connected
purposes.

WE, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):-

PART I

FIDUCIARIES

Fiduciaries
and regulated
activities.

- I. (1) In this Act "a fiduciary" is a person who, by way of business, engages in any regulated activity.
- (2) In this Act, "regulated activity" means –
 - (a) any activity falling within any paragraph of Part I of Schedule I (corporate services); or
 - (b) any activity falling within any paragraph of Part IA of Schedule I (trust services).

PART 2

LICENSING OF FIDUCIARIES

Offence to act, etc. as a fiduciary without a licence.

2. (1) Subject to the provisions of this Act, any person who, in or from the Island, acts as or holds himself out to be a fiduciary shall be guilty of an offence unless, in respect of the regulated activity concerned he is either –

- (a) the holder of a licence under this Act (in this Act referred to as “a fiduciary licence”); or
- (b) exempted from this subsection under this Act.

(2) Without prejudice to the generality of subsection (1), for the purposes of this Act a person shall be treated as acting as, or holding himself out to be, a fiduciary from the Island if that person –

- (a) is a company that is incorporated in the Island under the Companies Acts 1931 to 2004; and
- (b) acts as or holds itself out to be a fiduciary outside the Island, whether on its own behalf or on behalf of any other person in or outside the Island.

(3) In respect of any regulated activity falling within section 1(2)(a) (corporate services), subsections (1) and (2) of this section do not apply in respect of any regulated activity which, or person who, falls within any paragraph of Part I of Schedule 2 except to such extent and in accordance with such conditions as are specified in that Schedule or in regulations under that Schedule.

(4) In respect of any regulated activity falling within section 1(2)(b) (trust services), subsections (1) and (2) of this section do not apply in respect of any regulated activity which, or person who, falls within any paragraph of Part IA of Schedule 2 except to such extent and in accordance with such conditions as are specified in that Schedule or in regulations under that Schedule.

Restriction on the use of the word “trust”, “trustee”, etc.

2A. (1) No person shall use or cause to be used any one or more of the words “trust”, “trustee”, “fiduciary” or “fiduciaire” or any like or cognate word (whether in English or any other language) as or as part of the name or title of any trade or business carried on by that person –

- (a) in or from the Island; and
- (b) if that person is a company incorporated under the Companies Acts 1931 to 2004, elsewhere,

unless that person is the holder of a fiduciary licence.

(2) Subsection (1) shall not apply in respect of the use of a word as part of the name or title of -

- (a) a business name registered under the Registration of Business Names Acts 1918 and 1954;
- (b) a company incorporated under the Companies Acts 1931 to 2004;
- (c) a limited liability company organised under the Limited Liability Companies Act 1996, [c.19]

if such word was used as part of that name or title immediately before the commencement of this section.

(3) Subsection (1) shall not apply in respect of the use of a word as part of the name or title of any trade or business carried on by the trustee of a retirement benefits scheme that is authorised or recognised under the Retirement Benefits Schemes Act 2000. [c.14]

(4) Subsection (1) shall not apply in respect of the use of a word in the name or title of any trade or business carried on by a company to which the exemption in the paragraph 8 of Part 1A of Schedule 2 applies.

- (5) This section shall not affect the operation of –
 - (a) the Registration of Business Names Acts 1918 and 1954;
 - (b) the Companies Acts 1931 to 2004;
 - (c) the Limited Liability Companies Act 1996 ,

in respect of the names or titles of such business names, companies and limited liability companies.

(6) Subsection (1) shall not apply in respect of the use of a word as part of the name or title of any trade or business carried on by a person if –

- (a) the Commission is satisfied that there is, in all the circumstances, good reason for such use; and
- (b) such use is permitted by the Commission in writing.

(7) Permission under subsection (6)(b) may –

- (a) be given in respect of a specific trade or business, classes of trade or business, or trade and business generally; and
- (b) impose conditions subject to which the use of a word as part of the name or title of any trade or business may be made.

(8) If an application in respect of a specific trade or business for permission under subsection (6)(b) is refused, the Commission shall give written notice to the applicant of the reasons for its decision.

(9) The power to make regulations in paragraph 1 of Part II of Schedule 2 shall, if exercised in respect of paragraph 8 of Part IA of that Schedule, apply in respect of subsection (4).

(10) Any person who contravenes subsection (1) shall be guilty of an offence.

[Sections 1 and 2 and cross-headings in Parts 1 & 2 substituted and section 2A inserted by the Fiduciary Services Act 2005]

3. (1) Every application for a fiduciary licence shall be made to the Financial Supervision Commission (in this Act referred to as “the Commission”).

(2) An application under subsection (1) shall be in a form specified by the Commission, together with such documents and information as may be required by the Commission.

(3) The Commission shall not issue a fiduciary licence unless it is satisfied that-

- (a) the applicant is a fit and proper person to carry on business as a fiduciary and to provide the services described in the application; and
- (b) any controller, director, chief executive or manager of the applicant is a fit and proper person to act as such; and
- (c) in the case of an application by a partnership, each of the partners is a fit and proper person to act as such; and
- (ca) such other persons as the fiduciary arranges to be officers (within the meaning of paragraph 6(3) of Part I of Schedule I) are fit and proper persons; and
- (cb) such other persons as the fiduciary arranges to be partners (within the meaning of paragraph 8E of Part I of Schedule I) are fit and proper persons; and

[Subsection (3)(ca) and (cb) inserted by the Fiduciary Services Act 2005]

- (d) such other persons as appear to the Commission to have significant powers or responsibilities with respect to any regulated activity undertaken by the applicant are fit and proper persons; and
- (e) the applicant is resident in the Island.

(4) The Commission shall, in relation to every application for a fiduciary licence-

- (a) issue the licence; or
- (b) issue the licence, subject to conditions; or
- (c) refuse the application.

Application
for, and
issue of, a
fiduciary
licence

(4A) A fiduciary licence may be issued in respect of all regulated activity, any class of regulated activity or any specific regulated activity.

[Subsection (4A) inserted by the Fiduciary Services Act 2005]

(5) Where a fiduciary licence has been issued under subsection (4)(a) the Commission may at any time make that licence subject to conditions.

(6) Where a fiduciary licence is issued, or has been made, subject to conditions the Commission may at any time -

- (a) make the licence subject to further conditions; or
- (b) vary or revoke any condition.

(7) If the holder of a fiduciary licence is in contravention of any condition imposed under this section, the Commission may undertake enforcement action.

(8) Without prejudice to the generality of subsection (3), the Commission may publish guidance notes setting out the criteria which it will normally apply in assessing whether it is satisfied as required by that subsection.

(9) The conditions which the Commission may impose may include a requirement that the person to whom the licence is issued shall comply with such rules, regulations, codes, guidance or standards as are from time to time in force and made or issued by a regulatory authority (whether made before or after the date on which the condition is imposed).

(10) Where the Commission exercises any power conferred by subsections (4)(b) or (c), (5) or (6), it shall do so by giving the applicant written notice stating the reasons for its decision.

4. (1) The Commission may at any time revoke or suspend a fiduciary licence if there are reasonable grounds for so doing.

Revocation and suspension of licences

(2) Without prejudice to the generality of subsection (1), the Commission -

(a) may revoke or suspend a fiduciary licence if an order under -

[c.2] (i) section 31 of the Companies Act 1982 (disqualification of directors of insolvent companies); or

[c.4] (ii) section 26 of the Companies Act 1992 (disqualification of unfit persons);

is made in respect of the fiduciary or a director, controller, chief executive or manager of the fiduciary;

(b) may revoke or suspend a fiduciary licence if, on reasonable grounds, it appears to it that the fiduciary does not continue to comply with the

requirements of paragraphs (a) to (d) of section 3(3);

(c) may revoke or suspend a fiduciary licence if, on reasonable grounds, it appears to it that the holder of the fiduciary licence -

(i) has contravened any provisions of this Act or any public document under it; or

(ii) in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information; or

(iii) has contravened any prohibition or requirement imposed under this Act.

(3) Where the Commission proposes to revoke or suspend a fiduciary licence it shall give the fiduciary written notice of its intention to do so, stating the reasons for the decision.

(4) Subject to subsection (5), where a notice has been given under subsection (3), the revocation or suspension shall take effect -

(a) if no application for a review under section 18 is made within the period prescribed under that section, on the expiry of that period; or

(b) if there is an application for a review under section 18 -

(i) where the applicant abandons the review, on the date of abandonment; or

(ii) where the decision of the Commission is confirmed, on the date of confirmation; or

(iii) where the decision of the Commission is varied, on such date as the Review Committee appointed under section 18 directs.

(5) If the Commission is of the opinion that a revocation or suspension should have immediate effect, the notice under subsection (3) shall contain a statement to that effect together with the reasons for that opinion, and the revocation or, as the case may be, suspension shall have effect on the giving of the notice.

(6) The suspension of a fiduciary licence shall be for a specified period or until the occurrence of a specified event or until specified conditions are complied with; and the Commission may vary any period, event or condition specified under this subsection.

5. (1) The Commission shall keep a register of holders and former holders of fiduciary licences.

Register of
fiduciaries.

(2) The register to be kept under this section -

- (a) shall be in such form;
- (b) shall contain such information; and
- (c) shall be made available for public inspection in such manner and by such means,

as may be prescribed in regulations made under section 22.

[Subsection 5(2)(c) substituted by the Fiduciary Services Act 2005]

PART 3

REGULATION OF FIDUCIARIES

[Cross heading Part 3 substituted by the Fiduciary Services Act 2005]

Regulation

6. (1) The Commission may make codes (in this Act referred to as “regulatory codes”) concerning - Regulatory codes.

- (a) the conduct of business by a fiduciary;
- (b) the content of contracts entered into between fiduciaries and their customers in relation to any regulated activity;
- (c) the systems, procedures, record-keeping, controls and training which must be instituted and operated by a fiduciary in the course of its business;
- (d) the effecting of policies of indemnity insurance by fiduciaries in such form, indemnifying them to such sum, in such manner, in respect of such matters, and valid for such period as may be specified in the code;
- (e) the imposition of obligations on fiduciaries to ensure -
 - (i) that officers and employees of the fiduciary or such classes of officers and employees as may be specified in the code are resident in the Island;
 - (ii) the appropriate level of competence and suitability in its employees, agents, persons acting in accordance with its instructions and persons recommended by it to undertake any function relating to any regulated activity; and
 - (iii) that the functions referred to in sub-paragraph (ii) are undertaken by its employees in a diligent and proper manner;

- (ea) the imposition of obligations on a fiduciary to ensure that as far as is reasonable and within the fiduciary's power, companies, trusts, trustees, and customers of the fiduciary comply with such provisions of law as apply in relation to the regulated services provided to, for or in respect of such companies, trusts, trustees, and customers;

[Subs 6(1)(ea) inserted by the Fiduciary Services Act 2005]

- (f) the identification by a fiduciary of persons with, for or in respect of whom the fiduciary engages in any regulated activity;
- (g) the identification of the nature and purpose of any business, transaction or arrangement undertaken by persons with, for or in respect of whom the fiduciary engages in any regulated activity;
- (h) the circumstances in which a fiduciary must refuse to engage in any regulated activity with, for or in respect of any person;
- (i) arrangements for the settlement of disputes;
- (j) the keeping of accounts and other financial records of a fiduciary, their form, content, inspection and audit and the submission of copies or extracts to the Commission at such times and on such occasions as may be specified in the code;
- (k) the form and content of advertisements relating to the business of a fiduciary;
- (l) the giving of notice to the Commission and such other persons as may be specified in the code of such circumstances or the occurrence of such events as may be so specified;
- (m) the treatment to be afforded to money received by a fiduciary and in particular may provide that money held by a fiduciary is held on trust and the terms and purposes of any such trust;
- (n) the submission to the Commission (at such times and on such occasions as may be specified in the code) of such information, statements, returns, reports or certificates as may be so specified; and
- (o) the form, content and validation of any information or document required to be produced by a fiduciary to the Commission.

(2) A fiduciary shall not be treated as a director of a company for the purposes of the Companies Acts 1931 to 2004 by reason only that the fiduciary is required by a regulatory code to institute and operate systems and controls which are intended to ensure that employees, associates and agents who act as directors in the course of the business of the fiduciary carry out their duties in a diligent and proper manner.

(3) The Commission shall supply copies of regulatory codes to any person on request, at such reasonable charge (if any) as the Commission may

determine.

(4) If a fiduciary is in contravention of a regulatory code the Commission may undertake enforcement action.

(5) Failure to comply with a regulatory code does not give rise to any right of action by any persons affected nor does it affect the validity of any transaction.

(6) Where a person discloses information to another in compliance with a regulatory code the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by statute or otherwise.

(7) A regulatory code may include a requirement that the persons to whom it applies shall comply with such rules, regulations, codes, guidance or standards as are from time to time in force and made or issued by a regulatory authority (whether made before or after the commencement of this Act).

(8) Before making a regulatory code, the Commission shall consult such bodies as appear to be representative of interests likely to be affected by the code.

(9) Any institution with which an account is kept in pursuance of a code under subsection (1) (m) does not incur any liability as constructive trustee where money is wrongfully paid from the account unless the institution -

- (a) permits the payment with knowledge that it is wrongful; or
- (b) has deliberately failed to make enquiries in circumstances in which a reasonable and honest person would have done so.

Recommendations and directions to fiduciaries

7. (1) The Commission may make recommendations to -

- (a) a fiduciary; or
- (b) a former fiduciary.

(2) The Commission may issue written directions to any person mentioned in subsection (1) to secure that -

- (a) effect is given to a recommendation under that subsection; or
- (b) its business is in whole or in part suspended or discontinued,

and the directions shall include a statement of reasons for their issue.

(3) The Commission shall not make any recommendation under subsection (1) with respect to the affairs of any particular customer of a fiduciary or a former fiduciary unless the Commission is satisfied that it is necessary for the purpose of -

- (a) securing that a direction issued under subsection (2)(a) is complied with; or

(b) protecting the interests of the person's other customers.

(4) No recommendation or direction under this section may be made or issued to or in respect of a former fiduciary after that person has ceased to have any liability or obligation in respect of any activity carried on in connection with or for the purposes of his former fiduciary business.

(5) If a person is in contravention of any direction under subsection (2), the Commission may undertake enforcement action.

Civil penalties.

8. (1) If the Commission is satisfied that the holder of a fiduciary licence -

(a) has contravened any provision of this Act;

(b) has contravened any prohibition or requirement imposed under this Act; or

(c) in purported compliance with any such requirement, has furnished the Commission with false, inaccurate or misleading information,

it may require the fiduciary to pay a penalty in respect of the contravention.

(2) The Commission shall give written notice to the fiduciary concerned of any decision under subsection (1) together with a statement of the reasons for the decision.

(3) The Commission may not in respect of any such contravention -

(a) both require a person to pay a penalty under this section and revoke his licence under section 4; or

(b) require a person to pay a penalty under this section if criminal proceedings have been commenced in respect of the contravention.

(4) When setting the amount of a financial penalty, the Commission shall have regard to any regulations under this section.

(5) The Commission shall make such regulations as are necessary to give effect to this section and with respect to -

(a) the imposition of financial penalties under this section; and

(b) the amount of financial penalties under this section.

(6) Regulations under this section shall not come into operation unless they are approved by Tynwald.

(7) Before making regulations under this section, the Commission shall consult such persons as it thinks appropriate.

(8) Any amount received as a penalty under this section shall be paid into

and form part of the General Revenue of the Island.

9. (1) If, on reasonable grounds, it appears to the Commission that any individual is not a fit and proper person -

Directors,
controllers, etc.

- (a) to be appointed as director, chief executive, manager or key person;
or
- (b) to become controller,

of a fiduciary, the Commission may direct that the individual shall not, without the written consent of the Commission, be appointed as such a director, chief executive, manager or key person nor become such a controller.

- (2) If, on reasonable grounds, it appears to the Commission that any -
 - (a) director, chief executive, manager, or key person; or
 - (b) controller,

of a fiduciary, is not a fit and proper person to continue as such, the Commission may direct that the individual shall not, without the written consent of the Commission, continue as such a director, chief executive, manager, key person or controller.

(3) The Commission shall give written notice to the individual concerned of any decision to make a direction under this section together with a statement of the reasons for the decision.

(3A) Subject to subsection (3B), where a notice has been given under subsection (3), the direction shall take effect -

- (a) if no application for a review under section 18 is made within the period prescribed under that section, on the expiry of that period; or
- (b) if there is an application for a review under section 18 -
 - (i) where the applicant abandons the review, on the date of abandonment; or
 - (ii) where the decision of the Commission is confirmed, on the date of confirmation; or
 - (iii) where the decision of the Commission is varied, on such date as the Review Committee appointed under section 18 directs.

(3B) If the Commission is of the opinion that a direction should have immediate effect, the notice under subsection (3) shall contain a statement to that effect together with the reasons for that opinion, and the direction shall have effect on the giving of the notice.

- (4) Any consent by the Commission under subsection (1) or (2) may be -
- (a) given subject to conditions;
 - (b) varied from time to time; and
 - (c) revoked at any time.

(4A) Any direction by the Commission under subsection (1) or (2), whether made before or after the commencement of this subsection, may be revoked at any time.

(5) Any individual who accepts or continues in any appointment referred to in subsection (1)(a) or (2)(a) or becomes or continues as a controller in contravention of a direction under this section shall be guilty of an offence.

(6) It shall be the duty of a fiduciary to take reasonable care not to appoint or continue the appointment of an individual in contravention of a direction.

(6A) The Commission shall keep a register of directions given under this section, and the register –

- (a) shall contain such information; and
- (b) shall be made available for public inspection in such manner and by such means,

as may be prescribed in regulations made under section 22.

- (7) In this section, “key person” means –
- (a) a person specified in paragraphs (c) to (d) of section 3(3); and
 - (b) an individual who –
 - (i) is an employee of the fiduciary (“A”); or
 - (ii) is not an employee of A but is an employee of a company that is in the same group as A and he undertakes regulated activities under the direction of and in the course of business of A; or
 - (iii) is not an employee of A but is an employee of a holder of a fiduciary licence that contracts to provide personnel to A and he undertakes regulated activities under the direction of and in the course of business of A,

and is in a position which the Commission has reasonable grounds for believing to be such that he has significant powers or responsibilities with respect to any regulated activity undertaken by A.

[Subsections (3) and (7) substituted and subsections (3A), (3B), (4A) and (6A) inserted by the Fiduciary Services Act 2005]

Supervisory powers, etc.

Inspection and investigation.

10. (1) The Commission may inspect the books, accounts and documents and investigate the transactions of -

- (a) a fiduciary; or
- (b) a former fiduciary.

(2) The Commission shall have every such power of entry and access as may be necessary for the purposes of subsection (1), and it may take possession of all such books, accounts and documents as, and for so long as, may be necessary for those purposes.

(3) The Commission may take copies of all books, accounts and documents in its possession for the purposes of an inspection and investigation under this section.

(4) Any person who intentionally obstructs the Commission when acting in the execution of its powers under subsection (1), (2) or (3) shall be guilty of an offence.

(5) In this section every reference to the Commission shall include any person authorised by the Commission in writing for the purposes of this section.

(6) Without prejudice to the following provisions of this section, the Treasury may give the Commission such directions as it thinks fit with respect to the exercise or performance of the powers of the Commission under subsection (1), (2) and (3), whether generally or in any particular case, and the Commission shall comply with those directions.

(7) The Commission shall exercise its right of entry and access under subsection (2) only during reasonable hours, and any person authorised by the Commission under subsection (5) shall, in the exercise of such right as aforesaid, produce his written appointment if required to do so.

(8) This section shall not apply in respect of the affairs of any particular customer of a fiduciary or former fiduciary unless the Commission is satisfied that it is necessary for the purpose of an inspection and investigation under subsection (1).

(9) The powers provided by this section may be exercised in relation to a former fiduciary only in respect of, or in connection with, such transactions, matters or circumstances as occurred or existed when he was the holder of a fiduciary licence.

(10) The powers provided by this section may be exercised in relation to a person who is, on reasonable grounds, suspected by the Commission of carrying on, or to have carried on, business as a fiduciary contrary to section 2.

(11) A person shall not be under an obligation under this section to

disclose any items subject to legal privilege within the meaning of section 13 of the Police Powers and Procedures Act 1998.

Requests for information

II. (1) The Commission may request

- (a) a fiduciary; or
- (b) a former fiduciary,

to provide the Commission with any information that it may reasonably require for the performance of its functions under this Act and may require such information to be verified in such manner as the Commission directs.

(2) Without prejudice to the generality of subsection (1), the Commission may request information about -

- (a) subject to subsection (4), the affairs of a customer of a person mentioned in subsection (1);
- (b) any body corporate which is or has at any relevant time been -
 - (i) a holding company, subsidiary or related company (within the meaning given in section 32 of the Banking Act 1998) of that person;
 - (ii) a subsidiary of a holding company of that person;
 - (iii) a holding company of a subsidiary of that person; or
 - (iv) a body corporate in the case of which a shareholder controller of that person, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, more than 50 per cent of the voting power at a general meeting; and
- (c) any partnership of which that person is or has at any relevant time been a member,

[c.4]

if, on reasonable grounds, it appears to the Commission necessary for the performance of its functions under this Act.

(3) The Commission may issue directions to any person mentioned in subsection (1) to secure that effect is given to a request under subsection (1) or (2) and the directions shall include a statement of reasons for their issue.

(4) The Commission shall not make any request under subsection (1) or (2) with respect to the affairs of any particular customer of a person mentioned in subsection (1) unless the Commission is satisfied that it is necessary for the purpose of -

- (a) securing that a direction issued under subsection (3) is complied with; or

(b) protecting the interests of that person's other customers.

(5) No request or direction under this section may be made or issued to or in respect of a former fiduciary after that person has ceased to have any liability or obligation in respect of any activity carried on in connection with or for the purposes of his former fiduciary business.

(6) If a person is in contravention of any direction under subsection (3), the Commission may undertake enforcement action.

(7) A statement by a person in response to a direction issued under this section may not be used in evidence against him in respect of any criminal proceedings except proceedings alleging contravention of section 20.

(8) The powers provided by this section may be exercised in relation to a person who is, on reasonable grounds, suspected by the Commission of carrying on, or to have carried on, business as a fiduciary contrary to section 2.

(9) A person shall not be under an obligation under this section to disclose any information subject to legal privilege within the meaning of section 13 of the Police Powers and Procedures Act 1998.

[c.9]

12. (1) Where, on an application made by the Commission, a justice of the peace is satisfied that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person so far as is relevant to any business as a fiduciary which that person is or was carrying on, or appears to be or to have been carrying on, the justice may by written instrument, authorise the Commission to exercise the powers under this section and such powers shall not otherwise be exercisable.

Power of Commission to require information.

(2) The Commission may by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under subsection (1), require the person whose affairs are to be investigated ("the person under investigation") or any other person whom it has reason to believe has relevant information to attend before the Commission at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

(3) The Commission may by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under subsection (1), require any person to produce at a specified time and place any specified documents or copies of documents which appear to the Commission to relate to any matter relevant to the investigation or any documents of a specified class which appear to it so to relate.

(4) If documents or copies of documents are not produced as required under subsection (3), the Commission may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) Where any documents are produced as required under subsection (3), the Commission may -

- (a) take possession of all such documents for so long as may be necessary; or
- (b) take copies or extracts from them; or
- (c) require the person producing them to provide an explanation of any of them.

(6) A statement by a person in response to a requirement imposed under this section may not be used in evidence against him in respect of any criminal proceedings except proceedings alleging contravention of -

- (a) subsection (8) of this section; or
- (b) section 20.

(7) A person shall not be under an obligation under this section to disclose any items subject to legal privilege within the meaning of section 13 of the Police Powers and Procedures Act 1998.

[c.9]

(8) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence.

(9) In this section, "documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.

(10) Where a person claims a lien on a document, its production under this section is without prejudice to the lien.

(11) The Commission may authorise any person to exercise on its behalf all or any of the powers conferred by this section but no such authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in such authority.

(12) No person shall be bound to comply with any requirement imposed by a person exercising powers by virtue of any authority granted under subsection (11) unless he has, if required to do so, produced evidence of his authority.

13. (1) Where, on information on oath laid by the Commission, a Deemster is satisfied, in relation to any documents, that there are reasonable grounds for believing -

Deemster's
search warrant

- (a) that -
 - (i) a person has failed to comply with an obligation under section 12 to produce them or copies of them; or
 - (ii) it is not practicable to serve a notice under section 12(3) in relation to them; or

- (iii) the service of such a notice in relation to them might seriously prejudice the investigation; and

- (b) that they are on premises specified in the information,

he may issue such a warrant as is mentioned in subsection (2).

(2) The warrant referred to in subsection (1) is a warrant authorising any person named in the warrant -

- (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises; and
- (b) to take possession of any documents appearing to be documents of the description specified in the information, or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(3) If, during the course of a search of premises for documents of a description specified in the information, other documents are discovered which appear to contain evidence in relation to an offence under this Act, the Financial Supervision Act 1988, the Banking Act 1998 or the Investment Business Act 1991, the person named in the warrant may -

[c. 4]
[c.18]

- (a) take possession of those documents, or
- (b) take in relation to them any other steps which may appear to be necessary for preserving them and preventing interference with them.

(4) A person executing a warrant issued under subsection (1) shall be accompanied by a constable.

(5) A person shall not be under an obligation under this section to disclose any items subject to legal privilege within the meaning of section 13 of the Police Powers and Procedures Act 1998.

[Subsection (3) amended by the Fiduciary Services Act 2005]

14. (1) The Commission may issue a public statement concerning a person if it has reasonable grounds to believe that the person -

Public
statements.

- (a) is acting or holding himself out to be a fiduciary in contravention of section 2; or
- (b) is in contravention of -
 - (i) any regulatory code;
 - (ii) any condition imposed by or under section 2(3), 3 or 22(2); or
 - (iii) any direction under section 7, 9 or 11.

(2) The Commission may issue a public statement concerning a person if it has reasonable grounds to believe that the person is acting as or holding himself out as a fiduciary (whether in the Island or elsewhere) and it appears to the Commission to be desirable to make the statement for the protection of any person or any class of persons.

(2A) If a direction has been given under section 9(1) or (2) the Commission shall issue a public statement containing –

- (a) such information as is required by regulations under this Act to be included in the statement; and
- (b) such other information about the reasons for the giving of the direction as the Commission believes to be desirable in the public interest.

(2B) The Commission may issue a public statement concerning any matter relating to regulated activities or fiduciaries in general or any class of regulated activity or fiduciary where the Commission believes it to be desirable in the public interest to issue such a public statement.

[Subsections (2A) and (2B) inserted by the Fiduciary Services Act 2005]

- (3) Before issuing a public statement under this section the Commission –
- (a) where the statement is in respect of the holder of a fiduciary licence, shall send to the person concerned at his address stated in the register kept under section 5; or
 - (b) where the statement is in respect of any other person, shall send to the person concerned, at his last known address,

written notice of the proposed statement and of the reasons for which it intends to act.

(4) Except where the Commission is of the opinion that immediate action is necessary, a notice under subsection (3) shall be sent not less than 7 days before issuing a public statement under this section.

(5) The Commission shall not issue a public statement under this section in respect of a direction under section 9(1) or (2) before that date on which the direction takes effect in accordance with section 9(3A).

[Subsections (3) substituted, (4) amended and (5) inserted by the Fiduciary Services Act 2005]

15. (1) If on the application of the Commission the High Court is satisfied - Injunctions.
- (a) that there is a reasonable likelihood that any person will contravene any provision of -
 - (i) this Act;

- (ii) any condition imposed by or under section 2(3), 3 or 22(2);
 - (iii) a regulatory code;
 - (iv) any direction under section 7 or 11; or
- (b) that any person has contravened any such provision and that there is a reasonable likelihood that the contravention will continue or be repeated; or
- (c) that any person has contravened any such provision and that there are steps that could be taken for remedying the contravention,

the court may grant an injunction restraining the contravention or, as the case may be, make an order requiring that person and any other person who appears to the court to have been knowingly concerned in the contravention to take such steps as the court may direct to remedy it.

(2) Nothing in this section affects the right of any person other than the Commission to bring proceedings in respect of the matters to which this section applies.

16. (1) The Commission may present a petition to the High Court for the appointment of a receiver and manager under section 42 of the High Court Act 1991 in respect of the affairs, business and property of a person (“the person”) who is a fiduciary or a former fiduciary.

Appointment
of receiver
and manager.

[c.12]

- (2) If the High Court is satisfied that -
- (a) the appointment is in the public interest; or
 - (b) the appointment is necessary to protect the interests of customers, creditors or others who have or have had dealings with the person in his former capacity as a fiduciary; or
 - (c) the appointment is necessary for the orderly winding up of the fiduciary business of the person; or
 - (d) the appointment is necessary so that the affairs, business and property relating to the person’s former fiduciary business may be settled or disposed of in an orderly manner,

it may appoint a suitable person as receiver and manager.

(3) On the presentation or hearing of a petition the court may dismiss it, or adjourn the hearing conditionally or unconditionally, or make an interim order or any other order that it thinks fit.

(4) Without prejudice to the generality of subsection (3), an interim order under that subsection may be made *ex parte* and may restrict (whether by reference to the consent of the court or otherwise) the exercise of any powers of -

- (a) the person; or
- (b) if the person is a body corporate, its directors,

in respect of the affairs, business and property of the fiduciary business of the person.

(5) This section is without prejudice to the generality of the jurisdiction of the High Court under section 42 of the High Court Act 1991, or under any other enactment or at common law.

PART 4

GENERAL AND SUPPLEMENTARY

Miscellaneous

Application
in doubtful
cases.

17. (1) Where the Commission is satisfied that there is real doubt as to whether

- (a) a person engaging in a regulated activity is doing so by way of business; or
- (b) a company falls within heads (a) to (c) of paragraph 5(1) of Part 1 of Schedule 2; or
- (c) a person falls within paragraph 12 of Part 1 of Schedule 2; or
- (d) a person falls within paragraph (d) of the definition of “director” in section 27(1),

it may make a declaration under this section.

- (2) A declaration under this section is a declaration in writing that -
 - (a) a person engaging in a regulated activity is or is not doing so by way of business; or
 - (b) a company does or does not fall within heads (a) to (c) of paragraph 5(1) of Part 1 of Schedule 2; or
 - (c) a person does or does not fall within paragraph 12 of Part 1 of Schedule 2; or
 - (d) a person does or does not fall within paragraph (d) of the definition of a “director” in section 27(1).

(3) Where a declaration is made under this section, the person or company concerned shall, for the purposes of this Act, be treated accordingly.

(4) Any person who is directly affected by a declaration under this

section may, within 28 days of making the declaration, apply for a review of it in accordance with section 18.

(5) Without prejudice to section 26 of the Interpretation Act 1976, the powers conferred on the Commission by this section may be exercised in relation to specified cases, persons or companies or in relation to classes of case, persons or companies.

[c.20]

[Subsections (1)(b) and (c) and (2)(b) and (c) amended by addition of words "of Part I"; and subsection (2)(d) inserted by the Fiduciary Services Act 2005]

18. (1) Any person who is aggrieved by a decision of the Commission to -
- (a) refuse to issue a fiduciary licence;
 - (b) revoke a fiduciary licence;
 - (c) suspend a fiduciary licence;
 - (d) issue a fiduciary licence subject to conditions;
 - (e) make a licence subject to conditions or further conditions;
 - (f) vary any condition attached to a fiduciary licence;
 - (fa) refuse to give its written permission under section 2A(6)(b) in respect of a specific trade or business;
 - (g) issue a direction under section 7, 9 or 11;
 - (ga) refuse to revoke a direction under section 9;
 - (gb) issue a public statement under section 14(1)(a) and (b)(i), (ii) and (in respect of any direction under section 7 or 11) (iii) or (2B);
 - (h) withdraw an exemption in accordance with regulations under section 22(3)(b) or paragraph 2(b) of Part II of Schedule 2; or
 - (i) impose a penalty under section 8,

Review of
Commission
decisions.

may apply for a review of the decision.

[Subsections (1)(fa), (ga) and (gb) inserted by the Fiduciary Services Act 2005]

(2) In the first instance the application shall be addressed to the Chief Secretary who shall report the application to the Council of Ministers.

(3) An application for a review shall be in such form, made within such time, and be subject to such conditions, as may be prescribed by regulations made by the Council of Ministers.

(4) On the notification of an application for review, the Council of Ministers shall appoint 3 persons to form a committee (in this section referred to as

the “Review Committee”) to review the decision in question.

- (5) The members of the committee must be persons -
 - (a) who have appropriate experience; and
 - (b) who are independent of both the Commission and the applicant.
- (6) The Review Committee shall conduct reviews under this section.

(7) On the determination of a review under this section the Review Committee shall confirm, vary or revoke the decision in question.

(8) Any variation or revocation of a decision shall not affect the previous operation of that decision or anything duly done or suffered under it.

(9) Without prejudice to any right of recourse to the High Court, any decision of the Review Committee on a review under this section shall be binding on the Commission and the applicant.

(10) The Council of Ministers may make regulations to provide for the practice and procedure of the Review Committee and for proceedings before the Committee.

Statutory
indemnity.

- 19.** (1) A designated body shall not, nor shall -
- (a) any officer, member or employee of a designated body; or
 - (b) any other person acting on behalf of a designated body; or
 - (c) any person acting pursuant to any authority conferred by a designated body,

be liable in damages for, or in respect of, any act or matter done or omitted to be done in the exercise, or purported exercise, of the functions conferred by or under this Act unless the act or matter done or omitted to be done is shown to have been in bad faith.

(1A) Subsection (1) does not apply so as to prevent the award of damages made in respect of an act or omission on the ground that the act or omission was unlawful as a result of section 6(1) of the Human Rights Act 2001.

[Subsection (1A) inserted by Fiduciary Services Act 2005]

- (2) In subsection (1), designated body means-
 - (a) the Treasury;
 - (b) the Financial Supervision Commission.

(3) This section shall not have effect in relation to any action, suit or proceedings, whether commenced before or after the date on which this section

comes into operation, in respect of any act or matter done or omitted to be done before that date.

Offences

20. Any person who -

False statements, etc.

- (a) furnishes or sends to the Commission for any purpose under this Act a document which he knows to be false or misleading in a material particular; or
- (b) recklessly furnishes or sends to the Commission for the purposes of this Act a document which is false or misleading in a material particular; or
- (c) in furnishing information to the Commission for the purposes of this Act
 - (i) makes a statement which he knows to be false or misleading in a material particular; or
 - (ii) recklessly makes a statement which is false or misleading in a material particular,

shall be guilty of an offence.

21. (1) Any person guilty of an offence under any provision of this Act (except section 9(5)) shall be liable -

Offences.

- (a) on summary conviction, to a fine not exceeding £5,000 or to a term of custody not exceeding 6 months, or to both;
- (b) on conviction on indictment, to a fine or to a term of custody not exceeding 2 years, or to both.

(2) Any person guilty of an offence under section 9(5) shall be liable on summary conviction to a fine not exceeding £5,000.

(3) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (3) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

(5) For the purposes of subsection (3), in relation to a limited liability company constituted under the Limited Liability Companies Act 1996, any reference to a director includes a reference to the company's manager and registered agent.

[c.19]

(6) Criminal proceedings in respect of any contravention of this Act may not be commenced or continued if the Commission has required a person to pay a penalty under section 8 in respect of such contravention.

(7) No proceedings for an offence under this Act shall be commenced in the Island except by the Commission or by or with the consent of the Attorney General.

(8) Any document purporting to be the consent of the Attorney General for the commencement of proceedings for an offence under this Act and to be signed by the Attorney General shall be admissible as prima facie evidence without further proof.

Public documents

Regulations.

22. (1) The Commission may make such regulations as it considers are necessary or desirable to carry this Act into effect.

(2) Without prejudice to the generality of subsection (1), the Commission may by regulations exempt any person or class of persons from any of the provisions of this Act.

[c.20]

(3) Without prejudice to section 26 of the Interpretation Act 1976 or to any other provision of this Act, regulations under subsection (2) may provide for -

- (a) the conditions subject to which the exemption shall operate;
- (b) the circumstances in which the Commission may withdraw the exemption from a person.

(4) If a person is in contravention of any condition imposed by regulations under subsection (2), the Commission may undertake enforcement action.

(5) The Commission shall consult the Treasury before making any regulations under this Act.

23. All regulations made by the Council of Ministers or the Commission under this Act (with the exception of regulations under section 8) and all regulatory codes under this Act shall be laid before Tynwald as soon as practicable after they are made and if Tynwald at the sitting at which they are laid, or at the next following sitting, fails to approve them they shall cease to have effect.

Tynwald procedure: regulations.

Supplementary

24. (1) If in the course of his work, the auditor of a fiduciary becomes aware of any matter which is such as to give the auditor reasonable cause to believe that the fiduciary may be in contravention of -

Obligation for auditors to report to Commission.

- (a) this Act;
- (b) any regulatory code;

- (c) any condition imposed by or under section 2(3), 3 or 22(2); or
- (d) any direction or requirement imposed under this Act,

the auditor shall report such matter in writing to the Commission.

(2) No duty to which an auditor of a fiduciary may be subject shall be regarded as contravened by reason of his communicating in good faith to the Commission any information or opinion under subsection (1).

(3) This section applies to any matter of which the auditor becomes aware in his capacity as auditor and which relates to the business or affairs of the fiduciary.

(4) In this section, auditor includes any accountant (not being an employee of the fiduciary) who is in any way concerned in -

- (a) the keeping of the accounting records of or relating to a fiduciary; or
- (b) the preparation or audit of the accounts of or relating to a fiduciary.

Appointment
of reporting
accountants.

25. (1) The Commission may by notice in writing served on a fiduciary require it to provide the Commission with a report by an accountant or other person with relevant professional skill on, or on any aspect of, any matter relating to the affairs of the fiduciary.

(2) The accountant or other person appointed by a fiduciary to make any report required under subsection (1) shall be a person nominated or approved by the Commission; and the Commission may require his report to be in such form as is specified in the notice.

Fees.

26. The Commission, after consulting the Treasury, may prescribe the fees which shall be paid -

- (a) on the making of an application for the issue of a fiduciary licence;
- (b) on the making of any application or notification in respect of any matter arising under or relating to this Act or a fiduciary licence;
- (c) on any amendment of a fiduciary licence;
- (d) by each licensed fiduciary annually on such date as may be prescribed.

Interpretation.

27. (1) In this Act -

“accommodation address facilities” means any of the following services -

- (a) the receipt or dispatch on behalf of a company of any communication or parcel by means of the postal service, a courier service, hand delivery, a telecommunications system, wireless telegraphy or any electronic media;

- (b) the redirection of communications or parcels received on behalf of a company;
- (c) the provision of an address at which such services are provided;
- (d) the provision of an address at which service of process and notices may be served on a company as provided by section 313(1)(c) of the Companies Act 1931;

[XIII p.235]

“advertisement” includes every form of advertising and includes advertising -

- (a) in any form of publication;
- (b) by the display of notices;
- (c) by means of circulars or other documents;
- (d) by an exhibition of photographs or cinematograph films;
- (e) by means of broadcasting sounds or pictures (including transmission by cable), telecommunications or any electronic media;

“associate” in relation to any individual means -

- (a) the father, mother, wife, husband, son, stepson, daughter, stepdaughter, brother or sister of the individual;
- (b) any body corporate of which that individual is a director; and
- (c) a partner or employee of that individual;

“body corporate” includes a limited liability company constituted under the Limited Liability Companies Act 1996;

[c.19]

“chief executive” means an individual who is employed by the fiduciary and who either alone or jointly with others is or will be responsible under the immediate authority of the directors for the conduct of its business;

“the Commission” has the meaning given by section 3(1);

“company” means a body corporate whether constituted under the law of the Island or elsewhere and, but without prejudice to the generality of that definition includes the following bodies –

- (a) a stiftung (foundation) established under the laws of Austria, Germany or Liechtenstein;
- (b) an anstalt established under the law of Liechtenstein;
- (c) a foundation established under the laws of Panama;
- (d) such other bodies established under the law of a country or territory

outside the Island as are specified in regulations under section 22;

“conditions” includes restrictions;

“controller” means -

- (a) a managing director of a body corporate of which the fiduciary is a subsidiary;
- (b) a chief executive of a body corporate of which the fiduciary is a subsidiary;
- (c) an individual in accordance with whose directions or instructions one or more of the directors of a body corporate of which the fiduciary is a subsidiary are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that individual in a professional capacity;
- (d) 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 fiduciary or of another body corporate of which it is a subsidiary;

“director” includes -

- (a) any individual occupying the position of director by whatever name called;
- (b) any individual in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that individual in a professional capacity; and
- (c) in relation to a limited liability company constituted under the Limited Liability Companies Act 1996, a member, the company’s manager and the registered agent;
- (d) in respect of any body specified in or under paragraph (a) to (d) of the definition of “company”, such persons as occupy a position equivalent to that of director;

[c.19]

“enforcer” has the same meaning as in section 1(1)(d) of the Purpose Trusts Act 1996 (c.9);

[c.9]

“express trust” means a trust created by the intentional act of the settlor either orally or evidenced in writing;

“fiduciary” has the meaning given by section 1(1);

“fiduciary licence” has the meaning given by section 2(1);

“former ” means a person who was the holder of a fiduciary licence;

“former fiduciary business” means business undertaken when a person was the holder of a fiduciary licence;

“group”, in relation to a company, means that company, any other company which is its holding company or subsidiary and any other company which is a subsidiary of that holding company;

[c.30]

“holding company” shall be construed in accordance with section 1 of the Companies Act 1974;

“manager” means an individual employed by the fiduciary who, under the immediate authority of a director or its chief executive -

- (a) exercises managerial functions; or
- (b) is responsible for maintaining the accounts or other records of the fiduciary;

“partnership” has the same meaning as in the Partnership Act 1909 and [VIII p.327] includes similar relationships formed outside the Island;

“protector” means a person other than a trustee who, as the holder of an office created by or under the terms of an express trust, is authorised or required to participate in the administration of the trust;

“regulated activity” has the meaning given by section 1(2);

“regulatory authority” means any authority (whether established in the Island or elsewhere) -

- (a) which has functions similar to those of the Commission under this Act or any other enactment; or
- (b) which regulates the practice of any profession; or
- (c) which regulates the carrying on of any business or activity in, or connected with, the financial services industry;

“regulatory code” has the meaning given by section 6;

“subsidiary” shall be construed in accordance with section 1 of the Companies Act 1974;

“telecommunications system” has the same meaning as in the Telecommunications Act 1984.

[c.11]

“trust” means a legal relationship which falls within Article 2 of the “Convention on the Law Applicable to Trusts and on Their Recognition” as set out in the Schedule to the Recognition of Trusts Act 1988 whether such relationship was created in, or under the law of, the Island or elsewhere;

[In subsection (1) definition of “ company” substituted, paragraph (d) inserted in definition of “director”; and definitions of “enforcer”, “express trust”, “fiduciary”, “partnership”, “protector” and “trust” inserted by the Fiduciary Services Act 2005]

- (2) In this Act a person is resident in the Island if -
- (a) in the case of an individual, he is ordinarily resident in the Island ;
 - (b) in the case of a company -
 - (i) it is incorporated in the Island; or
 - (ii) it is registered under Part XI of the Companies Act 1931;
 - (c) in the case of any other body of persons, corporate or unincorporate, central management and control of the body is in or from the Island or it has a place of business in the Island.

(3) In this Act “enforcement action” means the exercise of any one or more of the following powers -

- (a) the issue of a recommendation, request or direction under sections 7 or 11 in relation to a fiduciary
- (b) the exercise of powers in relation to a fiduciary under section 10, 12 or 13;
- (c) the revocation or suspension of a fiduciary licence;
- (d) the withdrawal of an exemption in accordance with regulations under section 22(3)(b) or paragraph 2(b) of Part II of Schedule 2;
- (e) the imposition of a penalty under section 8;
- (f) the issue of a public statement under section 14.

(4) Subject to section 21(6), the exercise of any power referred to in subsection (3) shall not prevent the exercise of any other power or remedy under this Act nor shall it prevent the commencement of proceedings for an offence under this Act.

(5) In determining for any purposes of this Act whether any particular matter is desirable in the public interest, the Commission shall take into account all matters which appear to it in the particular circumstances to be relevant and, among other things, shall have regard to –

- (a) the protection of the public;
- (b) the deterrent effect of such a public statement; and
- (c) the effect of publication on those to whom the statement relates.

[Subsection (5) inserted by the Fiduciary Services Act 2005]

Amendment
of enactments.

28. The enactments specified in Schedule 3 are amended in accordance with that Schedule.

Short title and
commencement.

29. (1) This Act may be cited as the Corporate Service Providers Act 2000.

(2) This Act shall come into operation on such day as the Treasury may by order appoint and different days may be so appointed for different provisions and for different purposes.

(3) An order under subsection (2) may include such transitional provisions as the Treasury thinks fit.

SCHEDULES

Section 1(2)

SCHEDULE I

ACTIVITIES WHICH ARE REGULATED ACTIVITIES

PART I

REGULATED ACTIVITIES : CORPORATE SERVICE PROVIDERS

[Schedule I cross-heading substituted by the Fiduciary Services Act 2005]

Formation of companies

1. The provision of services with respect to the formation of companies.

Sale, etc. of companies.

2. The sale, transfer or disposal of companies.

Registered offices and accommodation addresses

3. The provision of premises for use as a registered office for a company, other than in the capacity of landlord, property manager or estate agent.
4. The provision of accommodation address facilities for a company, other than in the capacity of landlord, property manager or estate agent.

[Paragraphs 3 and 4 amended by the Fiduciary Services Act 2005]

5. Any person who engages in either of the following activities -
 - (a) the provision of premises for use as a registered office;
 - (b) the provision of accommodation address facilities,

for a company which is a non-resident company within the meaning given in section 2(1) of the Non-Resident Company Duty Act 1986 shall be deemed to be acting by way of business for the purposes of this Act.

[c.50]

Officers, shareholdings, etc.

6. (1) Acting as a director, alternate director or secretary of companies and for this purpose director includes -
 - (a) any individual occupying the position of director by whatever name called;

- (b) any individual in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that individual in a professional capacity; and
- (c) in relation to a limited liability company constituted under the Limited Liability Companies Act 1996, the company's manager and the registered agent. [c.19]
- (2) Arranging for others to be officers of companies.
- (3) In sub-paragraph (2), officer includes -
 - (a) any person occupying the position of company secretary, by whatever name called; and
 - (b) any director within the meaning of sub-paragraph (1).

7. Acting or arranging for others to act as nominee shareholders or nominee members of companies.

Company administration

- 8. (1) The provision of company administration services.
- (2) Without prejudice to the generality of sub-paragraph (1), "company administration" includes the following activities -
 - (a) the keeping of any register which is required to be kept by the company under the Companies Acts 1931 to 1993;
 - (b) the keeping of accounting records and the preparation of accounts which are required to be kept or prepared by the company under the Companies Act 1982;
 - (c) the preparation and making of returns required to be made by the company to the Registrar of Companies under the Companies Acts 1931 to 1993;
 - (d) the preparation and submission of documents which the company is required to prepare and submit under the Companies Acts 1931 to 1993;
 - (e) the convening of general meetings of a company;
 - (f) the taking, preparation and entry of minutes of proceedings at general meetings and directors' meetings;
 - (g) the entry of written resolutions which are required to be entered in a

[c.12]

minute book by the company under section 119A of the Companies Act 1931;

- (h) the entry of decisions of sole members which are required to be entered in a minute book by the company under section 119B of the Companies Act 1931,

and shall include equivalent activities which are performed in respect of companies which are not constituted under the Companies Acts 1931 to 1993.

Formation of partnerships

- 8A.** The provision of services with respect to the formation of partnerships.

Provision of places of business and accommodation addresses

- 8B.** The provision of premises for use as a place of business by a partnership other than in the capacity of landlord, property manager or estate agent.

- 8C.** The provision of accommodation address facilities for a partnership other than in the capacity of landlord, property manager or estate agent.

Acceptance of process, etc.

- 8D.** Acting as or arranging for others to act as a person authorised to accept on behalf of a partnership service of any process or documents under section 48A of the Partnership Act 1909.

VIII p.327

Partners and functions of partners

- 8E.** Arranging for others to act as a partner in a partnership.

Units in unit trust schemes

- 8F.** Holding units on behalf of another in a unit trust scheme within the meaning of section 31 of the Financial Supervision Act 1988.

[c.16]

- 8G.** Arranging for others to hold units on behalf of another in such a unit trust scheme.

[Part I of SchI paras 8A to 8G inserted by the Fiduciary Services Act 2005]

PART IA

REGULATED ACTIVITIES : TRUST SERVICE PROVIDERS

1. Acting as trustee in relation to an express trust.
2. The provision of trust administration services in relation to an express trust.
3. Acting as a trust corporation within the meaning of section 65A(b) of the Trustee Act 1961. [X1X p..215]
4. Acting as a protector.
5. Acting as an enforcer within the meaning of section 1(1)(d) of the Purpose Trusts Act 1996. [c.9]

[Part IA of Sch 1 inserted by the Fiduciary Services Act 2005]

PART 2

POWER TO AMEND

The Commission may by regulations add to, amend, or repeal the regulated activities specified in this Schedule.

Section 2(3)

SCHEDULE 2

EXEMPTIONS FROM SECTION 2(1) AND (2)

PART I

EXEMPTIONS : CORPORATE SERVICE PROVIDERS

[Sch 2 Part I cross-heading substituted by the Fiduciary Services Act 2005]

Professional services

1. Section 2(1) and (2) shall not apply to a person by reason only that others act on advice given by him in a professional capacity as an accountant, an advocate or a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986.

IA. Section 2(1) and (2) shall not apply in respect of any regulated activity which –

- (a) is undertaken by an accountant, an advocate or a registered legal practitioner;
- (b) is wholly incidental to, or forms part of, advice given or any other professional activity undertaken by such persons in their respective professional capacities; and
- (c) is undertaken at the time at which, or within a reasonable period after, the advice is given or the professional activity is completed.

[Paragraph IA inserted by the Corporate Service Providers (Exemptions) Regulations 2001 (SD No. 53/01)]

2. Section 2(1) and (2) shall not apply in respect of the preparation of the minutes of a company by an advocate, registered legal practitioner or accountant when acting in their respective professional capacities.

3. Section 2(1) and (2) shall not apply in respect of services provided by an accountant in relation to –

- (a) the accounting records of a company or the preparation and audit of the accounts of a company; or
- (b) services provided by an accountant in relation to any return made by a company in respect of income tax, value added tax or duties of customs or excise.

4. Section 2(1) and (2) shall not apply in respect of services provided by the auditor of a company in relation to the accounting records of that company or the preparation and audit of the accounts of that company.

Domestic services

5. (1) Section 2(1) and (2) shall not apply in respect of any regulated activity which is undertaken in the Island by a person who is resident in the Island if the company which is the subject of the activity -

- (a) is resident in the Island; and
- (b) has a permanent establishment in the Island; and
- (c) carries on as its sole or principal trade or business -
 - (i) the holding of assets which are beneficially owned by persons who are resident in the Island; or
 - (ii) the supply of any goods or services made in the Island; or
 - (iii) the manufacture in the Island of any goods.

(2) In sub-paragraph (1) -

“beneficially owned” includes ultimate ownership through a trust or company or a series of trusts or companies;

“permanent establishment” means a fixed place of business through which the business of the company is wholly or partly carried on;

“resident” means a resident in the Island for the purposes of income tax;

“supply” means all forms of supply.

6. Section 2(1) and (2) shall not apply in respect of any regulated activity which is undertaken in the Island if the person for whom the activity is undertaken is -

- [c.18] (a) the holder of an investment business licence under the Investment Business Act 1991;
- [c. 4] (b) the holder of a banking licence under the Banking Act 1998;
- [c.24] (c) a building society authorised under section 2 of the Building Societies Act 1986;
- [c 4] (d) authorised under the Insurance Act 1986 to carry on insurance business;
- [c 7] (e) registered under the Insurance Intermediaries (General Business) Act 1996;
- (f) the holder of a fiduciary licence;

- (fa) an insurance manager registered under section 27 of the Insurance Act 1986; [c.24]
- (fb) a retirement benefits schemes administrator who is registered under section 36(1)(a) of the Retirements Benefits Schemes Act 2000; [c.14]
- (g) a collective investment scheme the manager or administrator of which is the holder of an investment business licence under the Investment Business Act 1991; [c.18]
- (h) a subsidiary of a company of a class specified in any of sub-paragraphs (a) to (g).

[Sub-paragraphs (f), (fa), (fb) and (g) substituted for (f) and (g) by the Fiduciary Services Act 2005]

Group transactions

7. (1) Section 2(1) and (2) shall not apply in respect of any regulated activity when it is undertaken by -

- (a) a company which is part of a group; or
- (b) an individual who is a member (legal or equitable), officer or employee of a company which is part of a group,

and the regulated activity is undertaken for or in respect of a company which is a member of that group.

(2) For the purposes of sub-paragraph (1), a regulated activity is not undertaken for or in respect of a company which is a member of that group if that member is acting -

- (a) as a trustee and each beneficiary (direct or indirect) under the trust is a third party;
- (b) in a fiduciary capacity and the activity is undertaken wholly or partly in the interests of a third party;
- (c) as a nominee of a third party;
- (d) as attorney for a third party;
- (e) as the agent of a third party; or
- (f) otherwise on behalf of or with the consent of a third party.

(3) In sub-paragraph (2), "third party" means -

- (a) an individual who is not a member (legal or equitable), officer or employee of any company which is a member of the group;

- (b) a company which is not a member of the group;
- (c) a company which is a member of the group but is acting (directly or indirectly) for, or on behalf of, or for the benefit of, a person who is not a member of the group.

Joint ventures

8. (1) Section 2(1) and (2) shall not apply in respect of any regulated activity when the activity is undertaken by a person who is, or proposes to become, a participator in a joint enterprise and the activity is wholly incidental to that joint enterprise.

(2) In this paragraph, joint enterprise does not include an enterprise the whole or main purpose of which is to undertake any regulated activity.
Introducers

9. Section 2(1) shall not apply to a person by reason only that he arranges for the introduction of others to a CSP who holds a licence issued under section 3.

Nominee services

10. (1) Section 2(1) and (2) shall not apply where any person acts as or arranges for others to act as nominee shareholders or nominee members of companies if the former is -

- (a) the holder of an investment business licence under the Investment Business Act 1991; or
- (b) the holder of a banking licence under the Banking Act 1998;

and the activity is wholly incidental to the business which he is licensed to carry on under those Acts.

10A. (1) Section 2(1) and (2) shall not apply in respect of any activity specified in paragraph 6(1), acting as a director, alternative director or secretary of Schedule 1 or to the regulated activity of acting as a nominee shareholder or nominee member of a company when the activity is undertaken by a nominee company and such activity is undertaken for or in respect of a client company of the parent.

(2) In sub-paragraph (1) –

“client company” means any company for which the parent by way of business provides services which are regulated activities;

“nominee company” means a company whose business consists solely of acting as a director, secretary and/or nominee holder of shares or nominee member of or in a client company and which is:

- (a) a subsidiary of a body corporate that is a holder of a CSP licence; or
- (b) wholly beneficially owned by a sole trader that is the holder of a CSP licence; or
- (c) wholly beneficially owned by all the partners of a partnership, the partnership being the holder of a CSP licence;

“parent” means the holder of a CSP licence of which the nominee company is a subsidiary.

[Paragraph 10A inserted by the Corporate Service Providers (Exemptions) Regulations 2001 (SD No. 53/01)]
[Definition of “nominee company” amended by the Corporate Service Providers (Exemptions) Regulations 2002 (SD No.75/02)]

Employment agencies

[C.20]

11. Section 2(1) and (2) shall not apply in respect of any regulated activity specified in paragraph 6(2) of Schedule I when the activity is undertaken by the holder of an employment agency licence or employment business licence under the Employment Agencies Act 1975 and the activity is wholly incidental to the business which it is licensed to carry on under that Act.

[Paragraph 11 amended by the Corporate Service Providers (Exemptions) Regulations 2001 (SD No. 53/01)]

Officers

[C. 2]

12. (1) Section 2(1) and (2) shall not apply in respect of any regulated activity specified in paragraph 6(1) of Schedule I if the individual in question is -

- (a) acting as a director or secretary of a company which is listed on a market which is a “regulated market” within the meaning of section 9 of the Insider Dealing Act 1998;
- (b) acting as a director or secretary of a subsidiary of a company of a class specified in head (a);
- (c) acting as a director or secretary of a company which is wholly beneficially owned by -
 - (i) that director or secretary alone; or
 - (ii) any members of his close family; or
 - (iii) the director or secretary together with any members of his close family

and for this purpose, “close family” means the father, mother, wife, husband, son, stepson, daughter, stepdaughter, brother or sister of the director;

- (d) an employee, director or other officer of the holder (“A”) of a fiduciary licence and the activity is undertaken by him in the course of that employment or as holder of that appointment or office; or
- (da) not an employee, director or other officer of A but is an employee, director or other officer of a company that is in the same group as A and the activity is undertaken by him under the direction of and in the course of business of A; or
- (db) is not an employee, director or other officer of A but is an employee, director or other officer of a holder of a fiduciary licence that contracts to provide personnel to A and the activity is undertaken by him under the direction of and in the course of business of A.

[Para 12(1)(d) substituted by paras 12(1) (d), (da) and (db) by the Fiduciary Services Act 2005]

- (e) acting as a director or secretary of a company following the arrangement of his appointment as such by the holder of a CSP licence pursuant to a contract with the holder of the CSP licence which -
 - (i) requires that the CSP is and remains satisfied that the individual is suitable and competent for the office he holds;
 - (ii) requires that the CSP is and remains satisfied that the individual understands the duties and responsibilities pertaining to the office he holds under the relevant laws;
 - (iii) requires that in respect of the CSP’s licence, the individual satisfies the Commission that he is a fit and proper person (in accordance with section 3(3)(d)) and that he continues to satisfy the Commission that he is a fit and proper person (as required by section 4(2)(b));
 - (iv) provides that the contract shall be terminated if the individual fails to meet the requirements of sub-paragraphs (i) to (iii); and
 - (v) has not been terminated pursuant to sub-paragraph (iv) or otherwise.

[Sub-paragraph (1)(e) substituted by the Corporate Service Providers (Exemptions) Regulations 2001 (SD No. 53/01)]

[Sub-paragraph (1)(d), (da) and (db) substituted for (d) by the Fiduciary Services Act 2005]

(1A) Section 2(1) and (2) shall not apply in respect of an individual undertaking a regulated activity if that individual is a partner of the holder of a fiduciary licence and the activity is undertaken by him in the course of the partnership or as a result of his position as partner.

[Paragraph 12(1A) inserted by the Fiduciary Services Act 2005]

(2) Sections 2(1) and (2) shall not apply in respect of the regulated activity of acting as a director or an alternative director specified in paragraph 6(1) of Schedule 1 if the individual in question does not act as a director or alternate director in respect of more than 10 companies.

[Sub-paragraph (2) amended by the Corporate Service Providers (Exemptions) Regulations 2002 (SD No.75/02)]

(3) For the purposes of sub-paragraph (2), in determining the number of companies in respect of which an individual is a director, no account shall be taken of

-

- (a) a directorship of a company which falls within heads (a) to (c) of paragraph 5(1);
- (b) a directorship of a company which falls within any of heads (a) to (g) of paragraph 6; or
- (c) a directorship which falls within sub-paragraph (1) of this paragraph.

(4) In sub-paragraphs (2) and (3), “director” has the same meaning as in paragraph 6(1) of Schedule 1.

[In paragraph 12 “individual” substituted for “person” by the Corporate Service Providers (Exemptions) Regulations 2002 (SD No.75/02)]

Miscellaneous services

13. Section 2(1) and (2) shall not apply in respect of any regulated activity when it is engaged in by -

- (a) an official receiver;
- (b) an insurance manager which is registered under section 27 of the Insurance Act 1986; or
- (c) the liquidator or provisional liquidator of a company;
- (d) a receiver appointed in respect of any of the assets of a company;
- (e) personal representatives appointed in respect of the estate of a deceased person,

and the regulated activity is wholly incidental to the business or office of such person.

Activities of other regulated businesses

14. (1) Section 2(1) and (2) shall not apply to a person who is -
- (a) the holder of an investment business licence under the Investment Business Act 1991;
 - (b) the holder of a banking licence under the Banking Act 1998;
 - (c) a building society authorised under section 2 or as applied by section 4A of the Building Societies Act 1986;
 - (d) an insurance manager registered under section 27 of the Insurance Act 1986;
 - (e) a retirement benefits schemes administrator who is registered under section 36(1)(a) of the Retirement Benefits Schemes Act 2000;
 - (f) an insurance company that is authorised under section 6 of the Insurance Act 1986 or is permitted under section 25 of that Act;
 - (g) the holder of a fiduciary licence in respect of a regulated activity falling within section 1(2)(b),

where the activity is wholly incidental to the business which that person is permitted to carry on under the relevant Act by reason of registration or licence.

(2) This paragraph is in addition to and not in derogation of any other provision in this Part.

[Sch 2 Part I paragraph 14 inserted by the Fiduciary Services Act 2005]

PART IA

EXEMPTIONS : TRUST SERVICE PROVIDERS

Professional services

1. Section 2(1) and (2) shall not apply to a person by reason only that others act on advice given by him in a professional capacity as an accountant, an advocate or as a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986. [c.15]
2. Section 2(1) and (2) shall not apply in respect of any regulated activity which -
- (a) is undertaken by a person who is or practices as an accountant, an advocate or a registered legal practitioner;
 - (b) is wholly incidental to, or forms part of, advice given or any other

professional activity undertaken by such persons in their respective professional capacities; and

- (c) is undertaken at the time at which, or within a reasonable period after, the advice is given or the professional activity is completed.

Group transactions

3. (1) Section 2(1) and (2) shall not apply in respect of any regulated activity when it is undertaken by –

- (a) a company which is part of a group; or
- (b) an individual who is a member (legal or equitable), officer or employee of a company, which is part of a group,

and the regulated activity is undertaken for or in respect of an express trust, which is established for the benefit of that group.

(2) For the purposes of sub-paragraph (1), a trust is not established for the benefit of that group if the person undertaking the activity is acting –

- (a) as a trustee and any beneficiary under the trust is a third party;
- (b) in a fiduciary capacity and the activity is undertaken wholly or partly in the interests of a third party;
- (c) as a nominee of a third party;
- (d) as an attorney for a third party;
- (e) as the agent of a third party; or
- (f) otherwise on behalf of or with the consent of a third party.

(3) In sub-paragraph (2), ‘third party’ means –

- (a) an individual who is not a member (legal or equitable), officer or employee of any company, which is a member of the group;
- (b) a company, which is not a member of the group;
- (c) a company which is a member of the group but is acting (directly or indirectly) for, or on behalf of, or for the benefit of, a person who is not a member of the group.

Joint ventures

4. (1) Section 2(1) and (2) shall not apply in respect of any regulated activity when the activity is undertaken by a person who is, or proposes to become, a

participator in a joint enterprise and the activity is wholly incidental to that joint enterprise.

(2) In this paragraph, “joint enterprise” does not include an enterprise the whole or main purpose of which is to undertake any regulated activity.

Employees, officers, partners, etc.

5. (1) Section 2(1) and (2) shall not apply in respect of an individual acting as a trustee if that individual –

- (a) is an employee, director or other officer of the holder (“A”) of a fiduciary licence and the activity is undertaken by him in the course of that employment or as holder of that appointment or office; or
- (b) is not an employee, director or other officer of A but is an employee, director or other officer of a company that is in the same group as A and the activity is undertaken by him under the direction of and in the course of business of A; or
- (c) is not an employee, director or other officer of A but is an employee, director or other officer of a holder of a fiduciary licence that contracts to provide personnel to A and the activity is undertaken by him under the direction of and in the course of business of A.

(2) Section 2(1) and (2) shall not apply in respect of an individual acting as a trustee if that individual is a partner of the holder of a fiduciary licence and the activity is undertaken by him in the course of the partnership or as a result of his position as partner.

(3) Sub-paragraph (2) shall not apply if the sole purpose for which the partnership is formed is to enable the individual to act as such a trustee.

(4) Section 2(1) and (2) shall not apply in respect of an employee, a director or other officer of the holder of a fiduciary licence who, in the course of or as a result of his employment or as holder of that appointment or office, acts as a trustee in respect of an employee pension scheme; or an employee share or debenture scheme.

(5) Sub-paragraph (4) shall not apply if the employment or appointment is solely for the purpose of enabling the individual to act as such a trustee.

(6) Section 2(1) and (2) shall not apply in respect of a former employee or former director or other former officer of the holder of a fiduciary licence who, in the course of or as a result of his employment or as holder of that appointment or office, acts as a trustee in respect of an employee pension scheme; or an employee share or debenture scheme.

(7) Sub-paragraph (6) shall not apply if –

- (a) the employment or appointment is solely for the purpose of enabling

the individual to act as such a trustee; or

- (b) in the case of a former employee the appointment as trustee was made after his employment had ceased.

Special cases

6. Section 2(1) and (2) shall not apply in respect of the activity of acting as –

- (a) a trustee in bankruptcy appointed under section 7(1) of the Bankruptcy Code 1892; [VI p.312]
- (b) the trustee of a composition or scheme of arrangement if appointed or approved by the High Court;
- (c) an Official Trustee appointed under section 53 of the Bankruptcy Code 1892;
- (d) a guardian of a minor –
 - (i) appointed under the Guardianship of Infants Act 1953; or [XVIII p.180]
 - (ii) appointed, or treated as if appointed, under the Children and Young Persons Act 2001; [c.20]
- (e) a receiver of a patient appointed, or treated as if appointed, under Part 7 of the Mental Health Act 1998. [c.3]

Government

7. Section 2(1) and (2) shall not apply in respect of any regulated activity in respect of a trust created or arising as a result of the compliance by any department or statutory board with any statutory provision.

Private trust companies

8. (1) Section 2(1) and (2) shall not apply in respect of any regulated activity falling within section 1(2)(b) which is undertaken by a company –

- (a) the sole purpose of which is to provide services in respect of a specific trust or trusts; and
- (b) that does not otherwise undertake or, directly or indirectly, hold itself out to the public as undertaking, any regulated activity falling within section 1(2)(b); and
- (c) the administration of the trust or trusts is carried out by a holder of a fiduciary licence.

(2) The exemption in sub-paragraph (1) shall not apply unless the relevant holder of the fiduciary licence has given written notice to the Commission of the name of the company.

(3) For the purposes of sub-paragraph (1)(b) but without prejudice to the generality of that sub-paragraph, a company shall be treated as holding itself out to the public if it undertakes any regulated activity in response to introductions from third parties (not being fiduciary licenceholders) who hold themselves out to the public (whether inside or outside the Island) as –

- (a) undertaking any regulated activity falling within section 1(2)(b); or
- (b) arranging for any such regulated activity to be undertaken by others.

Nominee services

9. (1) Section 2(1) and (2) shall not apply in respect of a nominee company the sole purpose of which is to act as a trustee (other than as an authorised trust corporation for the purposes of section 65A of the Trustee Act 1961), protector or enforcer in relation to express trusts for which trust administration services are provided by a parent.

[XIX p.215]

(2) In sub-paragraph (1) –

“nominee company” means a company which is –

- (a) a subsidiary of a company that is the holder of a fiduciary licence; or
- (b) wholly beneficially owned by a sole trader that is the holder of a fiduciary licence; or
- (c) wholly beneficially owned by all the partners of a partnership, the partnership being the holder of a fiduciary licence, and

“parent” means any of the holders of a fiduciary licence specified in paragraph (a), (b) or (c) of the definition of “nominee company”.

Activities of other regulated businesses

10. (1) Section 2(1) and (2) shall not apply to a person who is –

- (a) the holder of an investment business licence under the Investment Business Act 1991; [c.18]
- (b) the holder of a banking licence under the Banking Act 1998; [c.4]
- (c) a building society authorised under section 2 or as applied by section 4A of the Building Societies Act 1986; [c.7]

- (d) an insurance manager registered under section 27 of the Insurance Act 1986; [c.24]
- (e) an insurance company that is authorised under section 6 of the Insurance Act 1986 or is permitted under section 25 of that Act;
- (f) the holder of a fiduciary licence in respect of a regulated activity falling within section 1(2)(a),

where the activity is wholly incidental to the business which that person is permitted to carry on under the relevant Act by reason of registration or licence.

(2) Section 2(1) and (2) shall not apply in respect of the activity of acting as –

- (a) a trustee of a retirement benefits scheme that is authorised or recognised under the Retirement Benefits Schemes Act 2000; or [c.14]
- (b) a retirement benefits schemes administrator who is registered under section 36(1)(a) of the Retirement Benefits Schemes Act 2000.

(3) Section 2(1) and (2) shall not apply in respect of the activity of acting as a trustee of a collective investment scheme (within the meaning of section 30 of the Financial Supervision Commission Act 1988) if – [c.16]

- (a) the activity is undertaken by an authorised person (within the meaning of section 31 of that Act);
- (b) that activity constitutes investment business under paragraph 5 of Schedule I to the Investment Business Order 2004; and [G.C. 366/91]
- (c) neither of the exclusions in sub-paragraphs (a) or (b) of paragraph 19(1) of Schedule I to that Order apply.

[Sub-paragraph (3)(b) inserted by the Fiduciary Services (Exemptions) Regulations 2005 (SD No. 643/05)]

Personal representatives

11. Other than when acting as a trust corporation within the meaning of section 65A(b) of the Trustee Act 1961, section 2(1) and (2) shall not apply in respect of any regulated activity undertaken by a person when acting in the capacity of –

- (a) a personal representative in respect of the estate of a deceased person if the activity is wholly incidental to the winding up of the estate; or
- (b) a trustee for the sole purpose of facilitating the winding-up of such an estate; or
- (c) a trustee for sale for the sole purpose of realising the property of a deceased person for the purpose of facilitating the winding up of the estate.

[The opening paragraph from “Other than” to “in the capacity of –” inserted by the Fiduciary Services (Exemptions) Regulations 2006 (SD No. 87/06)]

Testamentary trusts

12. (1) Section 2(1) and (2) shall not apply in respect of a regulated activity if –
- (a) the activity is undertaken by a specified person in respect of a testamentary trust; and
 - (b) the trust is created by or arises out of the terms of the will of the testator; and
 - (c) the will is governed by the law of the Island; and
 - (d) the testator was resident or domiciled in the Island on the date of his death; and
 - (e) the activity is ancillary to a professional activity undertaken by the specified person in his professional capacity.
- (2) In sub-paragraph (1), “specified person” means a person who –
- (a) practices as an advocate or firm of advocates; or
 - (b) is a registered legal practitioner (within the meaning of the Legal Practitioners Registration Act 1986) or a firm of registered legal practitioners; or
 - (c) is a member of one of the following accountancy bodies –
 - (i) the Institute of Chartered Accountants in England and Wales;
 - (ii) the Institute of Chartered Accountants of Scotland;
 - (iii) the Institute of Chartered Accountants in Ireland; or
 - (iv) the Association of Chartered Certified Accountants.

[Sub-paragraph (2) inserted by the Fiduciary Services (Exemptions) Regulations 2006 (SD No. 87/06)]

13. (1) Section 2(1) and (2) shall not apply in respect of a regulated activity if the activity is undertaken by a specified person (within the meaning of paragraph 12(2)) in respect of an *inter vivos* trust to which this paragraph applies.
- (2) This paragraph applies to a trust if –
- (a) the funds of the trust consist only of funds settled or provided –
 - (i) by one or more settlors when the trust is created ;
 - (ii) under the terms of the wills of the settlors;
 - (iii) under the terms of a will of a spouse of a settlor;

and any income or gain arising from those funds; and

- (b) the conditions set out in sub-paragraph (3) are satisfied.
- (3) The conditions referred to in sub-paragraph (2) are that –
 - (a) the settlors are resident or domiciled in the Island when the trust is created; and
 - (b) the will or wills are governed by the law of the Island; and
 - (c) each settlor is resident or domiciled in the Island on the date of his or her death; and
 - (d) the activity is ancillary to a professional activity undertaken by the specified person in a professional capacity.

Trust administration for a licenceholder

14. Section 2(1) and (2) shall not apply in respect of a regulated activity which consists of the provision of trust administration services if the person for whom the activity is undertaken is the holder of a fiduciary licence in respect of a regulated activity falling within section 1(2)(b).

De minimis

15. (1) Section 2(1) and (2) shall not apply in respect of any regulated activity (other than acting as a trust corporation within the meaning of section 65A(b) of the Trustee Act 1961) undertaken by a specified person (within the meaning of paragraph 12(2)) if that specified person does not undertake regulated activities in respect of more than 10 trusts.

- (2) Sub-paragraph (1) shall apply to –
 - (a) a specified person who is an individual in respect of any regulated activities he or she undertakes on his or her own behalf; and
 - (b) a specified person which is a body of persons in respect of any regulated activities it undertakes on its own behalf or as a service for any individual connected with it (whether as a partner, controller, director, employee, or otherwise).

(3) For the purposes of sub-paragraph (1), in determining the number of trusts in respect of which a specified person undertakes a regulated activity, no account shall be taken of any trust in respect of which a regulated activity would be the subject of an exemption under any paragraph of Part IA of this Schedule if that activity were undertaken by that individual or body of persons respectively.

[Paragraph 15 and the heading inserted by the Fiduciary Services (Exemptions) Regulations 2006 (SD No. 87/06)]

Small domestic trusts

16. Section 2(1) and (2) shall not apply in respect of a regulated activity undertaken by a specified person (within the meaning of paragraph 12(2)) if –

- (a) at the time the activity is undertaken, the gross assets of the trust do not exceed £5,000; and
- (b) no funds have been settled or provided to the trust other than those settled or provided by the settlors when the trust is created; and
- (c) the settlors are resident or domiciled in the Island when the trust is created.

[Paragraph 16 amended and heading inserted by the Fiduciary Services (Exemptions) Regulations 2006 (SD No. 87/06)]

[Sch I Part IA inserted by the Fiduciary Services Act 2005]

PART 2

SUPPLEMENTAL

1. The Commission may by regulations add to, amend, or repeal the exemptions in Part I.

2. Without prejudice to section 26 of the Interpretation Act 1976 or to any other provision of this Act, regulations under paragraph 1 may provide for -

- (a) the conditions subject to which exemptions shall operate;
- (b) the circumstances in which the Commission may withdraw exemptions from a person.

3. If a person is in contravention of any condition imposed by or under this Schedule, the Commission may undertake enforcement action.

Section 28

SCHEDULE 3

AMENDMENT OF ENACTMENTS

Companies Act 1931 (XIII p. 235)

1. In section 108(1), after paragraph (b) add –
“(c) such other particulars as may be prescribed”.

Companies Act 1982 (c. 2)

2. After section 20(1) insert -
“(1A)The person presenting the statement required by this section must be resident in the Island.”.

Financial Supervision Act 1988 (c.16)

3. In section 23(2), after “Investment Business Act 1991”, insert “or the Corporate Service Providers Act 2000.”.

4. In section 24 -
 - (a) in subsection (1) -
 - (i) in paragraph (b), after “this Act” insert “or the Corporate Service Providers Act 2000”;
 - (ii) in paragraph (c), after “Investment Business Act 1991” insert “or the Corporate Service Providers Act 2000”;
 - (iii) in paragraph (e), after “Investment Business Act 1991” insert “or the Corporate Service Providers Act 2000”;
 - (iv) in paragraph (j), after “authorised person” insert “or a corporate service provider (within the meaning of the Corporate Service Providers Act 2000)”;
 - (b) in subsection (4) -

- (i) in paragraph (a), after “Investment Business Act 1991” insert “or the Corporate Service Providers Act 2000”;
- (ii) in paragraph (b), after “Investment Business Act 1991” insert “or the Corporate Service Providers Act 2000”;
- (c) in subsection (5)(b)(iii), after “this Act” insert “or the Corporate Service Providers Act 2000”.

5. In section 26, for subsection (3) substitute -

“(3) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.”.

Investment Business Act 1991 (c.18)

6. In section 8A(7A), after “Banking Act 1998” insert “or the Corporate Service Providers Act 2000.”

7. For section 15 substitute -

15. (1) Any person who is aggrieved by a decision of the Commission to -

- (a) revoke an investment business licence;
- (b) refuse to renew an investment business licence;
- (c) suspend an investment business licence;
- (d) alter any of the conditions attached to an investment business licence;
- (e) withdraw an exemption pursuant to regulations under section 2(4)(b) or 4(3)(b);
- (f) issue a direction under section 9, 9A or 10;
- (g) impose a requirement under section 11,
may apply for a review of the decision.

(2) In the first instance the application shall be addressed to the Chief Secretary who shall report the application to the Council of Ministers.

(3) An application for a review shall be in such form, made within such

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time, and be subject to such conditions, as may be prescribed by regulations made by the Council of Ministers.

(4) On the notification of an application for review, the Council of Ministers shall appoint 3 persons to form a committee (in this section referred to as the "Review Committee") to review the decision in question.

(5) The members of the committee must be persons -

(a) who have appropriate experience; and

(b) who are independent of both the Commission and the applicant.

(6) The Review Committee shall conduct reviews under this section.

(7) On the determination of a review under this section the Review Committee shall confirm, vary or revoke the decision appealed against.

(8) Any variation or revocation of a decision shall not affect the previous operation of that decision or anything duly done or suffered under it.

(9) Without prejudice to any right of recourse to the High Court, a decision of the Review Committee on a review under this section shall be binding on the Commission and the applicant.

(10) The Council of Ministers may make regulations to provide for the practice and procedure of the Review Committee and for proceedings before the Committee.

8. In section 15A -

(a) in subsection (1), for "to any action, suit or proceedings" substitute "in damages";

(b) in subsection (4), for "to any action, suit or proceedings" substitute "in damages".

9. In section 19, for subsections (2) to (6) substitute -

"(2) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) Where the affairs of a body corporate are managed by its members, subsection (2) applies in relation to the acts and defaults of a

member in connection with his functions of management as if he were a director of the body corporate.”.

Companies Act 1992 (c.4)

10. In section 26(3)(c)(i), at the end add “or the Corporate Service Providers Act 2000”.

Investment Business (Amendment) Act 1993 (c.17)

11. Sections 5 and 8 shall cease to have effect.

Limited Liability Companies Act 1996 (c.19)

12. In section 6(1), after “Any person” insert “who is resident in the Island”.

Banking Act 1998 (c.4)

13. In section 15(3), after “Investment Business Act 1991” insert “or the Corporate Service Providers Act 2000”.

14. For section 24 substitute -

24. (1) Any person who is aggrieved by a decision of the Commission to -
- (a) revoke a banking licence;
 - (b) refuse to renew a banking licence;
 - (c) alter any of the conditions attached to a banking licence;
 - (d) issue a direction under section 11, 12 or 16,

may apply for a review of the decision.

(2) In the first instance the application shall be addressed to the Chief Secretary who shall report the application to the Council of Ministers.

(3) An application for a review shall be in such form, made within such time, and be subject to such conditions, as may be prescribed by regulations made by the Council of Ministers.

(4) On the notification of an application for review, the Council of Ministers shall appoint 3 persons to form a committee (in this section referred to as the “Review Committee”) to review the decision in question.

- (5) The members of the committee must be persons -

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- (a) who have appropriate experience; and
- (b) who are independent of both the Commission and the applicant

(6) The Review Committee shall conduct reviews under this section.

(7) On the determination of a review under this section the Review Committee shall confirm, vary or revoke the decision appealed against.

(8) Any variation or revocation of a decision shall not affect the previous operation of that decision or anything duly done or suffered under it.

(9) Without prejudice to any right of recourse to the High Court, a decision of the Review Committee on a review under this section shall be binding on the Commission and the applicant.

(10) The Council of Ministers may make regulations to provide for the practice and procedure of the Review Committee and for proceedings before the Committee.”.

15. For section 28 substitute -

“Offences
by bodies
corporate.

28. (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of, a director, manager, secretary or other similar officer of the body corporate or a person who was purporting to act in such a capacity, he, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.”.

16. Paragraph 20 of Schedule I is repealed.

Companies (Transfer of Domicile) Act 1998 (c.6)

17. In section 15, for “to any action, suit or proceeding” substitute “in damages”.