

**Combined response to second consultation on  
crowdfunding and consultation on the draft legislation and  
licence conditions for crowdfunding platforms  
PLUS  
other non-crowdfunding related changes to  
the Regulated Activities Order,  
Financial Services (Exemptions) Regulations  
and Financial Services (Fees) Order**

**Issue date: 21 December 2015**

**Closing date: 31 January 2016**



**ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY**

---

*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

---

## CONSULTATION PAPER

This consultation paper, which is issued jointly by the Isle of Man Financial Services Authority, the regulatory body for the financial sector, and the Isle of Man Office of Fair Trading, is in two parts –

**Part 1** is particularly relevant to –

- any person currently offering investment-based or loan-based crowdfunding services or considering providing such services; and
- to consumers who may be interested in using such services; and

**Part 2** is relevant to –

- all persons holding a licence under the Financial Services Act 2008; and
- those who are exempt from requiring a licence under the Financial Services Act 2008, **particularly individuals providing director services.**

The closing date for comments is **31 January 2016**.

Please direct any comments on amendments to the Regulated Activities Order, Financial Services (Exemptions) Regulations, and Financial Services (Fees) Order or on the draft crowdfunding licence conditions to:

**Mrs Shirley E Corlett MSc, MCSI**  
**Deputy Director – Policy and Legal Division**  
**Isle of Man Financial Services Authority**  
PO Box 58, Finch Hill House,  
Bucks Road, Douglas,  
Isle of Man IM99 1DT  
**E-mail:** [shirley.corlett@iomfsa.im](mailto:shirley.corlett@iomfsa.im)  
**Telephone:** +44 (0)1624 689323

Please direct any comments on the Financial Services Disputes (Definition)(Amendment) Order and the Moneylenders (Exempt Person) Regulations to:

**Mrs Pauline Wood**  
**Financial Services Manager**  
**Isle of Man Office of Fair Trading**  
Government Building,  
Lord Street, DOUGLAS,  
Isle of Man IM1 1LE  
**E-mail:** [pauline.wood@gov.im](mailto:pauline.wood@gov.im)  
**Telephone:** +44 (0)1624 686519

## Table of Contents

### PART 1

1.1 Crowdfunding Background .....	5
1.2 Summary of Responses .....	5
1.3 Post-consultation Changes to Proposals.....	6
1.4 Legislative and Other Changes Required for the Crowdfunding Regime .....	10
1.5 Other Legislative Changes to be made by the Isle of Man Office of Fair Trading ('OFT') .....	11

### PART 2

2.1 Background to Other Legislative Changes .....	12
2.2 Legislative Changes to the Regulated Activities Order ('RAO') .....	12
2.3 Legislative Changes to the Financial Services (Exemptions) Regulations ('ERegs') .....	14
2.4 Legislative Changes to the Financial Services (Fees) Order ('Fees Order').....	16

Appendix A – Regulated Activities Order (Keeling Schedule\*)

Appendix B – Financial Services (Exemptions) Order (Keeling Schedule\*)

Appendix C – Financial Services (Fees) Order 2016

Appendix D – Draft Licence Conditions for Crowdfunding Platforms

Appendix E – Financial Services Disputes (Definition)(Amendment) Order 2016

Appendix F – Moneylenders (Exempt Person) Regulations 2016

*\* The Regulated Activities Order and Financial Services (Exemptions) Regulations will be amended by an Amendment Order and Amendment Regulations. Keeling Schedules reflect the legislation as it would be once amended. Amendments relating to crowdfunding platforms are in green and other non-crowdfunding changes are in blue tracked changes.*

---

## GLOSSARY OF TERMS

---

<b>AML/CFT</b>	Anti-Money Laundering and Countering the Financing of Terrorism
<b>Authority</b>	the Isle of Man Financial Services Authority
<b>Commission</b>	the Financial Supervision Commission
<b>ERegs</b>	Financial Services (Exemptions) Regulations
<b>Fees Order</b>	Financial Services (Fees) Order
<b>FSA08</b>	Financial Services Act 2008
<b>FSOS</b>	Financial Services Ombudsman Scheme
<b>IPA</b>	Insurance and Pensions Authority
<b>IPO</b>	Initial Public Offering
<b>KYC</b>	Know Your Customer
<b>OFT</b>	Isle of Man Office of Fair Trading
<b>RAO</b>	Regulated Activities Order
<b>Rule Book</b>	Financial Services Rule Book 2013

---

## **PART 1**

# **Combined response to second consultation on crowdfunding and consultation on the draft legislation and licence conditions for crowdfunding platforms**

### **1.1 Crowdfunding Background**

The Commission<sup>1</sup> issued a [first consultation](#)<sup>2</sup> on crowdfunding between April and June 2015 in order to obtain views to enable it to make an informed decision on the next steps towards establishing a specific class of regulated activity encompassing both investment-based and loan-based crowdfunding. A [second consultation](#)<sup>3</sup> was issued on 28 September 2015 which incorporated

- a brief summary of the responses to the first consultation;
- details of the planned regulated activity;
- information about which rules contained in the Rule Book may apply; and
- an indication of the nature of specific new rules (which will initially be applied by licence condition) anticipated for crowdfunding activity.

### **1.2 Summary of Responses**

A number of very detailed and informative responses to the second consultation were received from a variety of interested parties, including advocates, a professional body, and financial services licenceholders. In addition, some respondents sought clarification on how the regime would work. Comments were mainly positive and supportive, such as:

*“broadly very supportive – it certainly contains many very apposite proposals”*  
*“a practical framework that is regulatory robust and accommodates a range of participants”*

However, one respondent felt that a crowdfunding regime would *“pose a significant and unacceptable risk to the Island’s reputation as a well-regulated financial jurisdiction with sensible, well-thought through legislation”*. It is important to note that without a regime there is no licensing framework (in relation to the loan-based crowdfunding) which could pose an even greater risk to the reputation of the Island.

One respondent was keen that start-up and early stage businesses should be able to use the services of existing licenceholders, as the e-gaming firms have done, and they commented that the

---

<sup>1</sup> In November 2015 the Isle of Man Financial Services Authority succeeded the Financial Supervision Commission following the latter’s merger with the Insurance and Pensions Authority.

<sup>2</sup> <http://www.fsc.gov.im/lib/docs/fsc/consultations/consultationcrowdfunding16042015.pdf>

<sup>3</sup> <http://www.iomfsa.im/lib/docs/iomfsa/consultations/consultationcrowdfunding280915.pdf>

Authority should not prohibit outsourcing. Neither of the previous two consultations suggested that outsourcing would be prohibited and, in fact, the same outsourcing provisions that apply to all other licenceholders are intended to apply to crowdfunding platforms.

Some respondents felt the levels imposed on investing or lending were too low, whilst others felt they were too high.

One respondent commented, *“While it is important that AML/KYC rules apply, they should be applied in a manner that is conducive for business and not simply to satisfy various international regulatory bodies who may have no regard to the wellbeing of the Island’s economy. There is a high monetary cost in complying with AML/KYC rules and the Island needs to ensure that it does not price itself out of the market.”* As is the case for outsourcing, the same AML/CFT legislation will apply to crowdfunding platforms as it does to other regulated activity.

The view that re-sales of investments purchased through a crowdfunding portal should be permitted was again raised. Although the concept of a secondary market facilitating the resale of such investments is not proposed at this time, there is nothing to prevent an individual selling his shares privately to another person if they wish to buy.

Some other proposals for change such as permitting a platform with *“UK investors to follow UK rules and any more onerous Isle of Man rules would not be applicable”* and others which focussed on the attractiveness of the regime rather than consumer protection were considered unworkable and will not be progressed.

The Authority has considered all of the responses and has made some changes to its proposals which are detailed in 1.3 below. The Authority believes that its revised proposals will result in a proportionate regulatory regime which will facilitate a new industry on the Island while providing retail clients and others with the protections and disclosures they need.

### **1.3 Post-Consultation Changes to Proposals**

As a result of consultation responses some changes have been made to the draft licence conditions (which can be found at Appendix D) to clarify the responsibilities of the issuers or borrowers and to expand disclosure requirements where these were not sufficiently clear or were considered inadequate. A brief summary of the changes made as a result of the comments received is detailed below –

- 1.3.1 One respondent indicated that the wording of the activity in the RAO could be interpreted as meaning that, in order to be an operating investment-based crowd funding service, the clients of the operator need to be both “issuers of investments and direct investors”. As it is

only possible to be one or the other, it was suggested that the wording may need a tweak to make this clearer. This was acknowledged and the draft RAO has been amended to read –

*“Operating investment-based crowdfunding services, which means the operation of an electronic platform in relation to arranging deals in investments in which the operator of the electronic platform facilitates persons to become issuers of investments or direct investors.”*

- 1.3.2 In order to cater for businesses with worldwide technology footprints, it was suggested that the statement in the Licensing Policy for persons conducting regulated activity under the FSA08 –

*“The Commission would also expect the platform to be hosted on Island.”*

should be amended to read –

*“The Commission would favour platforms hosted on Island but in any event a live copy of the data must be available on the Isle of Man e.g. mirrored servers.”*

This was considered a valid point and the Licensing Policy will be amended at 2.8.2 to read -

*“Furthermore, for Class 6 (crowdfunding platform) the Authority would prefer servers to be located, and data hosted on the Isle of Man, and in any event a live copy of the data must be available at all times in the Island.”*

- 1.3.3 Some respondents felt the levels imposed on investing or lending were too low, whilst others felt they were too high. To reflect the need to protect the most vulnerable, the Authority has not raised the amount that an ordinary retail client may lend or invest; however, the middle band (high net worth client) has been amended to start from £100,000 of investable funds being held (not including the value of the family home, pensions, insurance etc.).

- 1.3.4 A concern was raised that Isle of Man based platforms may inadvertently appear to legitimise fund raising activities that may, in fact, be illegal if they do not comply with company law of other jurisdictions. There are provisions in the agreements and disclosures to make it clear that issuers and borrowers must comply with all relevant legislation of their own jurisdictions and to raise parties’ awareness of this (see draft condition 5(e)(iv) and 12(2)(b)(i)) in addition to the Risk Acknowledgement Form. However, draft condition 12(2)(c) has been extended to read –

*“(c) confirmation that the client is responsible for compliance with all applicable laws including those in its jurisdiction of incorporation in respect of fund raising or offering loans or investments.”*

1.3.5 In addition, it was felt that the platform could require borrowers or issuers to certify that they are locally compliant with their own legislation and, although not fool-proof, an amendment has been made to draft condition 10(1)(c) so that it reads –

*“(c) require the borrower or issuer to confirm its adherence to any applicable laws in its jurisdiction of incorporation, including those in relation to fund raising or offering loans or investments.”.*

1.3.6 A comment was made that if investment crowdfunding were a market for IPOs or stock-listing, the requirements for disclosure to the investors would usually be much stronger, including a detailed **disclosure of the particular risks** of each investment, rather than just a statement that “you might lose your money”. This is partially covered in draft condition 8(f) but 8(j)(i) has been expanded to read -

*“(i) a description of the investment offered, its price and a description of its particular risks;”.*

1.3.7 A query was raised in relation to what the regulation would be in the situation where a company seeking funding has already got some “commitments” and “latent investors” but the total of which is not sufficient for their intended funding round. Where a company decides to open a crowd-funding opportunity to ‘fill the gap’, it was suggested that there should be clarity about what should be disclosed to the crowd, the fees the platform can charge and how the source of different amounts (platform or not) is audited so that all are fairly treated and no one misled. The anticipated draft conditions already required existing companies to provide financial accounts, but 8(b) and (f) have been expanded (see below). The requirement to disclose fees is already covered in the draft conditions.

*“(b) a description of the body corporate’s business, the purpose of its fund raising and whether fund raising of another type is concurrently taking place or intended;”*

*“(f) a business plan which details how the body corporate intends to use the funding raised by the crowdfunding posting and, where applicable, funds sourced by other means, and the principal risks facing the business;”.*

1.3.8 A point was raised in relation to where a company raising money via a platform ends up “overfunded” and how the “overfunding” should be dealt with e.g. –

- should the company have the freedom to “increase the round size”, thereby potentially diluting the earliest crowd committers more than they had anticipated?
- should the company pare back everyone’s investment commitment proportionally to achieve the originally agreed round size, again potentially frustrating those who had made the earliest crowd commitments?
- should the round be kept at the original size but allocation on a “first come first serve” basis?



This raised a good point and an amendment as added to draft condition 8(d) -

*“(d) the target level of funding being sought and how overfunding will be dealt with;”.*

1.3.9 The General Warning Statement about Crowdfunding requires the platform to state -

- *That in hosting potential loans and investments no view has been taken over the commercial viability of the pitches.*

A comment was made that platforms will and should perform a range of tests / checks on each pitch before it goes live on their respective platforms in order to satisfy a duty of care to investors and to judge if the pitch may be successful. Therefore it was believed that a slight amendment to the wording would be beneficial. This point was noted, and as it is covered in other ways elsewhere, rather than amend the wording, that element of the declaration has been removed.

1.3.10 It was suggested that the Self Certification for an Unlimited Client be amended to offer further clarification and comfort that the client understands the investment / loan they are undertaking. This was considered a good point and additional wording has been included on the Risk Acknowledgement Form for High Net Worth and Unlimited clients to confirm that they consider themselves experienced in making investment / loans into early stage illiquid businesses.

1.3.11 One respondent felt that the ability to accept investments in an issuer in payment for fees should be a decision for the platform to make when negotiating terms with the issuers, particularly since platforms in other jurisdictions are permitted to ‘take a stake’ in a business as part of their fee model. This point has been accepted in part and the wording of draft condition 16(2) has been amended accordingly.

1.3.12 In relation to the fact that a crowdfunding platform and its directors would be prevented from lending or financing, or arranging lending or finance, for an investor or lender to purchase securities / make a loan, clarification was sought on whether this is only in relation to purchases or lending in relation to opportunities listed on the platform. This is correct and the wording of draft condition 16(3) has been amended accordingly.

1.3.13 Draft condition 17 was originally intended to state -

*“A crowdfunding platform may advertise its existence, the fact that crowdfunding pitches can be made through it, and the fact that information about the various pitches are available on its website, but it would be prevented from advertising or soliciting specific pitches whether for loans or investments.”*

In that form, however, it could be interpreted that the platform would not be allowed to showcase any pitches on its homepage, which would be contrary to standard industry practice. The wording of draft condition 17 has been clarified.

As previously indicated, this is a relatively new industry it is likely that the regulatory regime will change further in due course once experience of regulating this activity is gained, and as informed by that experience.

#### **1.4 Legislative and Other Changes to be made by the Authority in relation to crowdfunding**

1.4.1 In order to bring the crowdfunding regime into effect, changes need to be made to the licensing policy for regulated activities under the FSA08. These include the following –

- the requirement for crowdfunding platforms (and any applicants for other regulated activity where their business model and customer interface is exclusively or substantially electronic), to have a working test-version of the website at a suitably advanced state. This is in order to demonstrate user interface and functionality, and how it would operate if a licence is granted. The licence application will need to address linked matters, such as important technical specifications, data and system security and arrangements for IT systems maintenance and support;
- that Class 6 licences cannot be combined with any other Class of regulated activity; and
- that the Authority would prefer servers to be located, and data hosted on the Isle of Man, and in any event a live copy of the data must be available in the Island.

1.4.2 After taking consideration of the consultation responses, and undertaking further research, the Authority has prepared the draft amending legislation for –

- the RAO;
  - the ERegs; and
- a new draft Fees Order.

In order to assist in the review of the amendments, the Authority has also prepared Keeling Schedules<sup>4</sup> of the amended legislation for the RAO and ERegs - see Appendices A and B.

The new Fees Order is attached at Appendix C. The fee for the Class 6 – Crowdfunding platform has been based on the Class 2 in any other case fee (see row 11 of the Schedule to

---

<sup>4</sup> Keeling Schedules reflect the legislation as it would be once amended.

the Fees Order). This is because that is the fee an investment-based crowdfunding platform would have to pay should it be regulated using the current categories and Class 2. Changes to fees for crowdfunding platforms are likely to change in due course once regulation under Class 6 has begun and the Authority is better able to ascertain its costs and resources in relation thereto.

As these draft documents also incorporate changes unrelated to crowdfunding (see Part 2), the amendments are colour-coded with crowdfunding changes in **Green**. In addition, Appendix D details the rules which will apply to crowdfunding platforms taken from the Rule Book<sup>5</sup> as well as draft crowdfunding specific new provisions, all of which will be applied by way of licence condition in the first instance. Comments are sought on all of these documents.

## **1.5 Other Legislative Changes to be made by the OFT**

- 1.5.1 Equity crowdfunding is currently a Class 2 (Investment Business) regulated activity under the FSA08 and is therefore already covered by the FSOS. If this activity is transferred into the new Class 6 regulated activity of crowdfunding, an amendment will need to be made to the Financial Services Disputes (Definition) Order to bring the new class into the remit of the FSOS. This will enable both equity crowdfunding and loan crowdfunding to be covered by the FSOS giving added consumer protection to individuals.

The draft Financial Services Disputes (Definition) (Amendment) Order 2016 which is attached at **Appendix E** will modify the definition of 'financial service' to include the new class of regulated activity and enable the FSOS to consider complaints about the licenceholder which will be the business operating the crowdfunding platform.

- 1.5.2 A company operating a crowdfunding platform will be required to register as a moneylender under the Moneylenders Act 1991 to enable it to act as a collection agent for investors. To avoid this duplication and to ensure that all aspects of crowdfunding are regulated by the Authority, the OFT will exempt the new regulated activity from the scope of the Moneylenders Act 1991 via the Moneylenders (Exempt Transactions) Regulations 2016, a draft of which is attached at **Appendix F**.

---

<sup>5</sup> <http://www.fsc.gov.im/lib/docs/fsc/consultations/financialservicesrulebook20131.pdf>

## **PART 2**

### **Other non-crowdfunding related changes to the RAO, ERegs and Fees Order**

#### **2.1 Background to Other Legislative Changes**

As the Authority is proposing changes to the RAO, ERegs and Fees Order in respect of crowdfunding platforms, in order to make the best use of its resources and Tynwald time the opportunity has also been taken to make some house-keeping and other amendments to these documents.

***Most of the changes detailed in this Part are house-keeping and clarifying measures. However, the change in relation to directorships at 2.3.3 is more significant. The change may mean that some individuals will cease to benefit from as many existing exemptions, and as a result they may need to apply for a financial services licence or reduce the number of directorships.***

#### **2.2 Legislative Changes to the RAO**

2.2.1 Class 2 regulated activity is investment business. In Class 2(7) – *advising any person (other than a manager or trustee of a retirement benefit scheme) on the suitability or otherwise of an investment*, a new sub-paragraph (a) has been included to permit licenceholders to advise a trustee or manager of a retirement benefits scheme where there is only one member of that scheme under this sub-class rather than requiring a sub-class (6) – *advising a trustee or manager of a retirement benefit scheme on the suitability or otherwise of an investment*. The rationale for this change is to permit financial advisers (who hold Class 2(3) – *arranging deals in investments* and (7)) to advise on Self Invested Personal Pensions where there is only one member, which is similar to advising an individual on a personal pension scheme. Sub-class (6) is considered more onerous and attracts a higher fee as advice to a trustee or manager of other retirement benefits scheme would impact on all the members of the scheme rather than just one.

2.2.2 The Professional Services exclusion in paragraph 2(n) excludes the activities of arranging deals, managing investments, administering and safeguarding investments and advising on investments where that activity is carried on by a ‘specified person’<sup>6</sup>, provided that it is –

- wholly incidental to, or forms part of, advice given or another professional activity undertaken by that person in his professional capacity; and

---

<sup>6</sup> A ‘specified person’ is an advocate or firm of advocates, a registered legal practitioner or firm of registered legal practitioners or a member of the Institute of Chartered Accountants in England and Wales, the Institute of Chartered Accountants in Scotland, the Institute of Chartered Accountants in Ireland or the Association of Chartered Certified Accountants

- is carried on at the time when, or within a reasonable period after, the advice is given or professional activity is undertaken,

unless that person ‘holds himself out’ as being available to carry on that activity in addition to his professional services. It is understood that some professional bodies do prohibit their members from undertaking certain activities. It is therefore considered appropriate that this exclusion clarifies that any activity undertaken by a person in his professional capacity must not be prohibited by that person’s professional body.

2.2.3 Class 4 regulated activity is corporate services. In Class 4(6) - *acting as director or alternate director of a company*, “or alternate director” has been deleted from the activity and included for clarity in the definition of “director” in Schedule 2. Also in the definition –

- reference to a council member of a foundation has been deleted as this is now contained in the definition of “director” in the FSA08 and should not be repeated in secondary legislation; and
- for clarity, where a limited partnership which has elected to have legal personality, a person who is a general partner has been inserted.

2.2.4 In Class 4(9) - *acting or arranging for another person to act as a nominee shareholder or nominee member of a company or limited partnership*, it has been clarified that the activity extends to a limited partner of a limited partnership which has elected to have legal personality.

2.2.5 Exclusion 4(a) - *landlord, property manager or estate agent*, excludes the provision of or arranging for –

- premises for use as a registered office for a company;
- accommodation address facilities for a company or partnership; and
- premises for use as a place of business by a partnership.

Potential abuse of this exclusion has been identified where a landlord purported to have leased his own undivided premises to multiple “tenants” (companies) for such activities and it is therefore appropriate that the exclusion be limited to where a person acts in his capacity as landlord, property manager or estate agent, such activity is wholly incidental to that capacity and the activity must result in the granting of exclusive possession of the premises or accommodation address in question.

2.2.6 In the Interpretation section of Class 4, the definition of “company” is extended to include a limited partnership under the Partnership Act 1909 which has elected to have legal personality.

- 2.2.7 The definition of “accommodation address facilities” in Schedule 2 has been amended to clarify, that the receipt or dispatch on behalf of a person of any communication or packet by post or a courier service, does not constitute accommodation address facilities which would require a Class 4 financial services licence, but that the provision of an address to undertake such activity would do so. The definition also makes reference to the Foreign Companies Act 2014.
- 2.2.8 The reference to “the Commission” in the definition of “administration services (in relation to a company)” in Schedule 2 has been changed to “the Department of Economic Development” as responsibility for the Companies Registry has moved to that department. All other references to “Commission” have been changed to “Authority”.
- 2.2.9 A definition of “person” has been included which reflects that of the current Interpretation Act 1976 and therefore retains the status quo. This is required because the new Interpretation Act 2015 (which may come into effect in 2016) takes unincorporated bodies out of the definition. It is important that the original definition is retained for the Authority’s purposes.
- 2.2.10 The definition of “Retirement Benefits Schemes” has been extended to include the statement “regardless of any exceptions contained in the Retirement Benefits Schemes (Excepted Schemes) Regulations 2001”, to ensure that all relevant schemes are caught.

### **2.3 Legislative Changes to the ERegs**

- 2.3.1 Reference to the “Financial Supervision Commission” have been changed to “Isle of Man Financial Services Authority” and all references to “Commission” have been changed to “Authority”.
- 2.3.2 Regulation 4 has been clarified to state that the exemptions from the requirements of section 4 of the Act - *prohibition of regulated activity except in accordance with a licence*, only apply to persons that do not already hold a financial services licence issued under section 7 of the Act - *issue of a licence*, in respect of a particular class of regulated activity, in the circumstances there specified.
- 2.3.3 Acting as a director by way of business is a regulated activity in order to ensure persons acting in that capacity meet standards such as fitness and propriety, which assists to maintain confidence in the Island’s financial services industry. However, there are a number of exemptions relating to this activity. Currently, exemption 4.2 - *Directorships – de minimis activities*, exempts an individual from the requirement to hold a financial services licence if that individual acts as director of no more than 10 companies. Exemption 4.3 – *Group officers*, exempts an individual who is an officer of a company which is part of a group, for

any company which is a member of that group; the number of groups being limited to 3 and each group counting as one of the de minimis under exemption 4.2.

It has become apparent that some individuals are taking advantage not only of the exemptions under 4.2 and 4.3 but also other exemptions such as –

- 4.1 – *Regulated activities* where acting as director (or secretary) to a regulated company is exempted; and
- 4.7 *Domestic services* where acting as a director to a local asset holding, manufacturing, property holding companies or those providing goods and services is exempt.

This has resulted in some individuals holding significant numbers of directorships (some in excess of licensed professional officers), by way of business without a financial services licence.

This situation —

- creates an unlevel playing field for Professional Officers as they have come forward for licensing, are required to abide by the rules applied to them and have to pay fees (which are now based on the number of directorships they hold); and
- is perceived as being outwith the original spirit and intention of the legislation.

On the basis of the above, it is considered that the use of the exemptions should be restricted. Exemption 4.2 has therefore been amended so that persons wishing to take advantage of the de minimis level of 10 directorships or less, have to take account of any directorships under exemption 4.7 - *Domestic services*. In addition, in exemption 4.3 - *Group officers*, the number of directorships relating to groups has been reduced from 3 groups to 1 group (which will count as one of the de minimis directorships). As this is likely to mean that individuals will need to come forward for a financial services licence, or reduce the number of directorships held. In order to assist, a transitional provision has been included which requires an application to be made by 30 November 2016.

2.3.4 Exemption 4.5 - *Nominee services* exempts persons acting solely in the capacity of a nominee, whether as one or a combination of a nominee shareholder, nominee member of a company or nominee partner to a limited partnership provided that the nominee is a directly and wholly-owned subsidiary of a licenceholder and the activity is wholly incidental to the regulated activity. The amendment clarifies that, in order to be exempt, the activity carried on by the nominee company must be solely on behalf of companies which are in the same group as the nominee company.

2.3.5 Exemption 4.6(2) - *Company officers and employees*, exempts an individual who is not an employee, director or other officer of a Class 4 licenceholder but is an employee, director or other officer of a company in the same group as the licenceholder and carries on the activity

“under the direction of and in the course of business of the licenceholder”. The wording has been amended to read “carries on that activity on behalf of the licenceholder” as under the original wording could be misunderstood.

2.3.6 The definition of “director” has been amended to align with that in the RAO (see 2.1.3 above).

2.3.7 A new definition of “person” has been included to align with the RAO (see 2.1.9 above).

2.3.8 The definition of “regulated entity” has been amended to remove reference to companies regulated by the IPA as it is now superfluous.

## **2.4 Legislative Changes to the Fees Order**

2.4.1 The changes in the Fees Order are to provide clarity and amend errors. Licence fees are not being amended at this time, apart from to introduce a fee for Class 6 – crowdfunding platforms and a fee for Class 2(3) only.

2.4.2 In article 3, “nominee exception” has been corrected to “nominee exemption” and the definition has also been extended to include wholly owned subsidiaries of a Class 4 licenceholder whose business consists solely of acting as director or secretary (but not both) of the client companies of the licenceholder (exemption 4.4 – *Corporate officers*).

2.4.3 In the Schedule to the Fees Order –

- in row 1, it is clarified that the figures should be taken from the deposit taking return for 31 March before the annual review date;
- in row 5, a new Class 2(3) (*arranging deals in investments*) fee has been inserted, which reflects the fee payable under the previous Fees Order, as the wording of row 6 has been amended and does not now cover Class 2(3) activity;
- in row 6 (previously row 5), reference to Class 2(6) (*advising a trustee or manager of a retirement benefits scheme*) has been removed and the fee now relates to Class 2(3) and (7) (financial adviser);
- in row 8 (previously row 7), Class 2(7) (*advising*) has been included to permit investment advisers to retirement benefit schemes to also provide advice to other persons;
- in row 14, the explanation has been corrected to read “Where the above licenceholder is also licensed to carry on Class 1 regulated activity, the annual fee in this row is not payable”;



- in row 25, it is clarified that the figures should be taken from the last annual regulatory return made to the Authority on or before 30 April before the annual review date;
- in row 26, Class 5(6) (*acting as an enforcer*) has been added to the professional officer activities and it is clarified that the figures should be taken from the last annual regulatory return made to the Authority on or before 30 April before the annual review date;
- in table 2 of the Schedule, “annual compliance return” is replaced with “annual regulatory return”.