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FINANCIAL SERVICES ACT 2008

REGULATED ACTIVITIES ORDER 2011 (as amended 2013 and 2016)

Approved by Tynwald 13 December 2011(Original Order)

(amendments approved 22 January 2014)

(amendments approved [date] 2016)

Coming into operation 1 January 2012

(amendments in operation from 1 February 2014)

(amendments in operation from [date] 2016)

The Treasury, after carrying out the consultations required by section 44(7) of the Financial Services Act 2008², makes this Order under section 3 of that Act.

1 Title

This is the Regulated Activities Order 2011.

2 Commencement

This Order shall come into operation on 1st January 2012.

3 Interpretation

(1) In this Order –

- (a) any provision in Schedule 1 for the interpretation of any expression (marked * in that Schedule) in relation to a class referred to in article 4(1) or an exclusion referred to in article 4(2) shall have effect for the construction of that expression in relation to that class or exclusion;
- (b) other expressions in this Order have the meanings given by Schedule 2.

² 2008 c.8

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- (2) The expressions used in paragraphs (a) to (f) of section 3(2) of the Act have the meanings specified in relation to them in Schedule 3.

4 Regulated activities

- (1) Subject to paragraph (2), any activity of a class specified as a regulated activity in Schedule 1 is a regulated activity for the purpose of the Act.
- (2) Where an activity of a class referred to in paragraph (1) is carried on in circumstances specified in that Schedule as an exclusion in relation to that class, that activity shall not be treated as a regulated activity for the purpose of the Act by reason only that it falls within that class.

4A Saving for activities previously unregulated

- (1) This article applies where –
- (a) any person was, immediately before the Regulated Activities (Amendment) Order 2016³ came into operation, carrying on an activity which is a regulated activity, but
 - (b) the carrying on of that activity did not require a licence under the Act.
- (2) Where an application has been made for a licence to carry on that activity before 1 November 2016, section 4 of the Act (prohibition of unlicensed activities) shall not apply to the carrying on of that activity by that person, or an employee of that person, until –
- (i) the end of the period within which an appeal can be brought under section 32 of the Act against the decision on the application; or
 - (ii) where an appeal is brought, the determination or withdrawal of the appeal.

5 Revocations

The Regulated Activities Order 2009² and the Regulated Activities (Amendment) Order 2010⁴ are revoked.

³ XXXXXX

² SD 738/09

⁴ SD 882/10

Regulated Activities Order 2011 (as amended 2013)

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MADE 26 October 2011

W E Teare

Minister for the Treasury

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Article 4.

SCHEDULE 1

REGULATED ACTIVITIES

CLASS 1 – DEPOSIT TAKING

Regulated activity

Accepting deposits of money, where –

- (a) the money received by way of deposit is lent to others; or
- (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on the money received by way of deposit.

Exclusions

Deposits received by certain persons

- 1(a) Where the money is received by –
- (a) the Isle of Man Government;
 - (b) the Isle of Man Post Office; or
 - (c) National Savings and Investments (an executive agency of the Chancellor of the Exchequer of the United Kingdom).

Deposits made by certain persons

- 1(b) Where the money is paid by a person who, at the time when it is paid –
- (a) is a close relative of the person receiving it;
 - (b) is a director or manager of that person;
 - (c) is a close relative of a director or manager of that person;
 - (d) is an individual who controls that person; or
 - (e) is a close relative of an individual who controls that person.

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Credit unions

- 1(c) Where the money is received by a credit union in accordance with the Credit Unions Act 1993³.

Client money or trust money

- 1(d) Where the money —
- (a) is received by a person as client money or trust money, and
 - (b) is paid into a client bank account or a trust bank account.

Electronic money

- 1(e) Where the money —
- (a) consists of electronic money, and
 - (b) the funds received in settlement of the claim on the issuer are paid into a segregated payment account held on behalf of the e-money holders.

Groups

- 1(f) Where the person who pays the money and the person who receives it are —
- (a) in the same group*; or
 - (b) controlled by the same person.

Friendly societies

- 1(g) Where the activity is carried out by a body registered as a friendly society (but not as a branch of a society) under an enactment having effect in the Island or any part of the United Kingdom in respect of any business which it carries on for or in connection with any of the services for which friendly societies may provide under that or other enactments relating to friendly societies.

Diocesan Board of Finance

- 1(h) Where the activity is carried on by the Sodor and Man Diocesan Board of Finance for purposes of the Church of England.

³ 1992 c.19

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Payment institutions

- 1(i) Where the money is received by payment institutions from payment service users with a view to the provision of payment services.

Interpretation

- (1) For the purpose of exclusion 1(f) "group" includes any company in which a member of the group holds a qualifying capital interest; and for this purpose —
- (a) "qualifying capital interest" means an interest in relevant shares of the company which the member holds on a long term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest;
 - (b) "relevant shares" means shares comprised in the ordinary share capital of the company of a class carrying rights to vote in all circumstances at general meetings of the body; and
 - (c) a holding of 20 per cent or more of the nominal value of the relevant shares of a company shall be presumed to be a qualifying capital interest unless the contrary is shown;

CLASS 2 — INVESTMENT BUSINESS

Regulated activities

- (1) Dealing in investments by a professional dealer as principal.
- (2) Dealing in investments by any person as agent for another person.
- (3) Arranging deals in investments, including —
 - (a) making arrangements for another person (whether as principal or as agent for a third person) to buy, sell, subscribe for or underwrite investments; and
 - (b) making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments (whether as principal or as agent for a third person).
- (4) Managing investments belonging to another person, in circumstances involving the exercise of discretion, including —
 - (a) as an attorney managing investments under a power of attorney; and

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- (b) safeguarding bearer instruments of title to investments.
- (5) The provision of administration and safeguarding of investments under a contractual relationship, including arranging for one or more other persons to safeguard and administer the investments; and for this purpose it is immaterial that title to the investments is held in uncertificated form.
- (6) Advising a trustee or manager of a retirement benefits scheme where there are two or more members, on the suitability or otherwise of –
 - (a) buying, selling, subscribing for or underwriting investments; or
 - (b) exercising any right conferred by such investments to buy, sell, subscribe for or underwrite other investments.
- (7) Advising –
 - (a) a trustee or manager of a retirement benefits scheme where there is only one member of that scheme;
 - ~~(b) any person (other than a trustee or manager of a retirement benefits scheme)~~ in his capacity as an investor or potential investor; or
 - ~~(bc)~~ an attorney for an investor or a potential investor, on the suitability or otherwise of –
 - (i) buying, selling, subscribing for or underwriting investments; or
 - (ii) exercising any right conferred by such investments to buy, sell, subscribe for or underwrite other investments.

Exclusions

Acceptance of instruments creating or acknowledging indebtedness

- 2(a) Where a person accepts an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided (including where he becomes a party to an instrument otherwise than as a debtor or a surety).

Issue of own shares or debentures

- 2(b) Where a person issues its own shares, share warrants, debentures or debenture warrants.

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Groups and joint enterprises

- 2(c) Where the persons engaged in the activity —
- (a) are acting for companies in the same group and the activity is undertaken solely for the group and not for any clients of companies within the group; or
 - (b) are, or propose to become, participators in a joint enterprise and the activity is wholly incidental to that joint enterprise.

Transactions with overseas persons

- 2(d) Where the activity is carried on by an overseas person who is authorised to conduct that activity by an overseas regulator, and either —
- (a) the carrying on of the activity is the direct result of an approach made to the overseas person by or on behalf of an Isle of Man person which has not been solicited by the overseas person (otherwise than by means of an advertisement which is neither —
 - (i) targeted at Isle of Man persons, nor
 - (ii) disseminated by a medium which is targeted at Isle of Man persons,) or
 - (b) the client or potential client in the Isle of Man is either —
 - (i) a licenceholder,
 - (ii) a person falling within exclusion 2(r) below, or
 - (iii) a person whose ordinary business activities involve him in acquiring, holding, managing or disposing of shares or debentures (as principal or agent), for the purposes of his business.

Venture capital

- 2(e) Where the activity consists of the acquisition or disposal of, or anything done for the purposes of the acquisition or disposal of, shares in a company, and —
- (a) either —
 - (i) the shares consist of or include shares carrying 75 per cent or more of the voting rights attributable to share

Regulated Activities Order 2011 (as amended 2013)

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- capital which are exercisable in all circumstances at any general meeting of the company; or
- (ii) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and
- (b) the acquisition and disposal is, or is to be, between parties who are connected individuals.

Employees' share schemes

- 2(f) Where the activity is carried on by a company* for the purpose of enabling or facilitating transactions in securities in the company between or for the benefit of relevant persons* or the holding of such securities by or for the benefit of relevant persons.

Corporate services

- 2(g) In the case of an activity falling within paragraph (1), (2), (3) or (5) of Class 2, but only where the activity is also a regulated activity within Class 4.

Nominees and bare trustees

- 2(h) In the case of an activity falling within paragraph (1), (2) or (5) of Class 2, where a nominee company deals in an investment which —
 - (a) consists of securities issued by a private company, and
 - (b) is or is to be held by the nominee company as nominee or bare trustee.

Trustees and personal representatives (1)

- 2(i) In the case of an activity falling within paragraph (1) to (5) of class 2, where a person acts in his capacity as a trustee (otherwise than as bare trustee or nominee or as trustee of a collective investment scheme), or as the personal representative of a deceased person, unless that person holds himself out as prepared to carry on that activity in addition to the discharge of his duties as trustee or personal representative.

Trustees and personal representatives (2)

- 2(j) In the case of an activity falling within paragraph (6) of Class 2, where a person who is a trustee (otherwise than a bare trustee or nominee or a

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trustee of a collective investment scheme) or the personal representative of a deceased person advises —

- (a) a fellow trustee or personal representative for the purposes of the relevant trust or estate; or
- (b) a beneficiary under the relevant trust, will or intestacy concerning his interest in the trust or estate,

unless that person holds himself out as prepared to carry on that activity in addition to the discharge of his duties as trustee or personal representative.

Enabling parties to communicate

- 2(k) In the case of an activity falling within paragraph (3) of Class 2, where a person merely provides the means by which one party to a transaction or potential transaction is able to communicate with other such parties.

Arranging transactions to which the arranger is a party

- 2(l) In the case of an activity falling within paragraph (3) or (6) of Class 2, where a person (otherwise than a professional dealer or attorney) makes arrangements with a view to a transaction to which he will be a party.

Introductions

- 2(m) In the case of an activity falling within paragraph (3) of Class 2, where the activity consists of arrangements under which a person will be introduced to another person who is —

- (i) a person licensed to carry on regulated activities falling within Class 2; or
- (ii) a person exempted by regulations under section 44(2) of the Act in relation to activities falling within Class 2 who is acting in the course of a business comprising such an activity;

and the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to investments generally or to any class of investments.

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Professional services

- 2(n) In the case of an activity falling within paragraph (3) to (7) of Class 2, where the activity –
- (a) is carried on by a specified person,
 - (b) is wholly incidental to, or forms part of, advice given or another professional activity undertaken by that person in his professional capacity and such activity is not prohibited by that person's professional body; and
 - (c) is carried on at the time when, or within a reasonable period after, the advice is given or the professional activity is undertaken,

unless that person holds himself out as being available to carry on that activity in addition to his professional services.

Introduction to eligible custodians

- 2(o) In the case of an activity falling within paragraph (5) of Class 2, where a person is introduced to another person who is an eligible custodian.

Activities not constituting safeguarding and administration

- 2(p) In the case of an activity falling within paragraph (5) of Class 2, where the activity consists of –
- (a) providing information as to the number of units or the value of any assets safeguarded; or
 - (b) converting currency; or
 - (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs; or
 - (d) safekeeping title documents relating to investments contained within sealed packages, where the packages remain sealed and the contents of which are not known to the person providing the safekeeping service.

Advice given in media

- 2(q) In the case of an activity falling within paragraph (6) or (7) of Class 2, where –

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- (a) advice in writing or other legible form is contained in a newspaper, journal, magazine or other periodical publication, or given by way of a service comprising regularly updated news or information, or
- (b) advice is given in any service consisting of a sound, television, world wide web or internet broadcast or transmission,

if the principal purpose of the publication or service, taken as a whole and including any advertisement or other promotional material contained in it, is neither —

- (i) giving advice of a kind mentioned in paragraph (6) of Class 2, nor
- (ii) leading or enabling persons to buy, sell, subscribe for or underwrite investments.

Insurers etc.

- 2(r) Where the activity is carried on by a person who is —
- (a) authorised under section 8 of the Insurance Act 2008⁵;
 - (b) the holder of a permit issued under section 22 of that Act;
 - (c) registered under section 23 of that Act;
 - (d) the subject of an exemption under sections 5(2)(c) or 5(2)(d) of that Act; or
 - (e) registered as a scheme administrator under section 36(1) of the Retirement Benefits Schemes Act 2000⁶,
- as part of any business carried on by virtue of that authorisation, permit, registration or exemption.

Friendly societies

- 2(s) Where the activity is carried out by a body registered as a friendly society (but not as a branch of a society) under an enactment having effect in the Island or any part of the United Kingdom in respect of any business which it carries on, for or in connection with any of the

⁵ 2008 c.16

⁶ 2000 c.14

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services for which friendly societies may provide under that or other enactments relating to friendly societies.

Court officers etc.

2(t) Where the activity is carried on by any judge of the High Court, the Chief Registrar or any receiver or officer of the High Court in the exercise of his functions as such.

Diocesan Board of Finance

2(u) Where the activity is carried on by the Sodor and Man Diocesan Board of Finance for purposes of the Church of England.

Collective investment schemes

2(v) Where the activity is carried on by the governing body of a collective investment scheme or a collective investment scheme for the scheme's own account.

Investment-based crowdfunding services

2(w) Where the activity is a regulated activity under Class 6(2) (investment-based crowdfunding services).

Interpretation

In exclusion 2(f) —

- (a) the reference to an activity carried on by a company includes a reference to such an activity carried on by a company in the same group or a relevant trustee;
- (b) "relevant person" means any of the following —
 - (i) a bona fide employee or former employee of the company or a company in the same group; or
 - (ii) the wife, husband, widow, widower, or child or stepchild under the age of 18, of any such employee or former employee;

and in (a) above "relevant trustee" means a person holding securities in the company as trustee in pursuance of arrangements made by the company or a group company for the purpose mentioned in exclusion 2(f).

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CLASS 3 — SERVICES TO COLLECTIVE INVESTMENT SCHEMES

Regulated activities

- (1) Acting as a manager* of a collective investment scheme* other than an exempt scheme or an exempt-type scheme.
- (2) Acting as an administrator* of a collective investment scheme other than an exempt scheme or an exempt-type scheme.
- (3) Acting as a trustee* of a collective investment scheme other than an exempt scheme or an exempt-type scheme.
- (4) Acting as a fiduciary custodian* of a collective investment scheme other than an exempt scheme or an exempt-type scheme.
- (5) Acting as a custodian* of a collective investment scheme other than an exempt scheme or an exempt-type scheme.
- (6) Acting as an asset manager to a collective investment scheme.
- (7) Acting as an investment adviser* to a collective investment scheme.
- (8) Acting as a promoter* of a collective investment scheme which is subject to a legislative requirement that the promoter of the scheme be regulated as a promoter.
- (9) Providing management or administration services to a person acting as mentioned in paragraphs (1), (2), (6) or (7).
- (10) Providing administration services to the manager or administrator of a collective investment scheme where that manager or administrator is located outside the Island.
- (11) Acting as a manager, administrator, trustee, fiduciary custodian or custodian to a collective investment scheme which is an exempt scheme or exempt type scheme.
- (12) Providing administration services to a person who is exempt from licensing under section 4 of the Act by virtue of paragraphs 3.2 or 3.6 of the Financial Services (Exemptions) Regulations 2011 in relation to an exempt scheme or an exempt-type scheme.
- (13) Providing services set out in Schedule 4 paragraph ~~(2)~~(8) of the Collective Investment Schemes Act 2008 in relation to an individually recognised scheme.

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Exclusion

In the case of an activity falling within paragraph (11) of Class 3, where —

- (a) the person by whom it is carried on acts as manager, administrator, trustee, fiduciary custodian or custodian of no more than one exempt scheme or exempt-type scheme; and
- (b) no person in the same economic group as that person is acting in the same capacity in relation to an exempt scheme or exempt-type scheme.

Interpretation

- (1) For the purpose of Class 3 —
 - (a) the following terms have the same meanings as in the Collective Investment Schemes Act 2008 —
 - "administrator"
 - "asset manager"
 - "collective investment scheme"
 - "custodian"
 - "fiduciary custodian"
 - "investment adviser"
 - "manager"
 - "promoter"
 - "trustee"
 - "exempt scheme"
 - (2) For the purpose of the above exclusion persons are in the same economic group where a person, either alone or with an associate or associates, is entitled to exercise or control the exercise of 50% or more of the voting power at any general meeting of any of those persons or of another company of which they are subsidiaries.

CLASS 4 – CORPORATE SERVICES

Regulated activities

- (1) Providing services with respect to the formation of companies.
- (2) The sale, transfer or disposal of companies.

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- (3) Providing or arranging for premises for use as a registered office for a company.
- (4) Providing or arranging for accommodation address facilities for a company.
- (5) Acting as a registered agent under the Limited Liability Companies Act 1996, the Companies Act 2006⁷ or the Foundations Act 2011⁸.
- (6) Acting as director ~~or alternate director~~ of a company.
- (7) Acting as secretary of a company.
- (8) Arranging for another person to act as a director, alternate director or secretary of a company.
- (9) Acting or arranging for another person to act as a nominee shareholder or nominee member of a company or a limited partner of a limited partnership which has elected to have legal personality~~limited partnership~~.
- (10) Providing administration services to a company.
- (11) Providing services with respect to the formation of partnerships.
- (12) Providing or arranging for premises for use as a place of business by a partnership.
- (13) Providing or arranging for accommodation address facilities for a partnership.
- (14) Acting as or arranging for another person 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 1909⁹.
- (15) Arranging for another person to act as a partner in a partnership.

Exclusions

Landlord, property manager or estate agent

- 4(a) In the case of an activity falling within paragraph (3), (4), (12) or (13) of Class 4, where a person acts in his capacity as landlord, property manager or estate agent and such activity is wholly incidental to that

⁷ 2006 c.13

⁸ 2011 c.17

⁹ VIII p.327

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capacity, subject to the activity resulting in the granting of exclusive possession of the premises or accommodation address in question.

Company administration services

- 4(b) In the case of an activity falling within paragraph (10) of Class 4, where the company is —
- (a) an open-ended investment company; or
 - (b) a body incorporated under an enactment having effect in the Island or any part of the United Kingdom relating to building societies, industrial and provident societies or credit unions.

Professional services

- 4(c) Where the activity —
- (a) is carried on by a specified person,
 - (b) is wholly incidental to, or forms part of, advice given or another professional activity undertaken by that person in his professional capacity; and
 - (c) is carried on at the time when, or within a reasonable period after, the advice is given or the professional activity is undertaken,
- unless that person holds himself out as being available to carry on that activity in addition to his professional services.

Group transactions

- 4(d) Where the activity is undertaken by —
- (a) a company which is part of a group;
 - (b) a company which is an officer of a company and which is part of a group; or
 - (c) an individual who is a member or employee of a company which is part of a group,
- for or in respect of* a company which is a member of that group.

Joint enterprises

- 4(e) Where 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.

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Introductions

- 4(f) Where the activity consists of arrangements under which a person will be introduced to another person who is licensed to carry on any regulated activity falling within Class 4.

Employment agencies

- 4(g) Where the activity is undertaken by the holder of an employment agency licence or employment business licence under the Employment Agencies Act 1975¹⁰ and the activity is wholly incidental to the business which it is licensed to carry on under that Act.

Officers

- 4(h) Where the activity consists of an individual acting as a director or secretary of a company which is wholly and beneficially owned by any of the following —
- (a) that individual; and / or
 - (b) one or more close relatives of his.

Insurers etc.

- 4(i) Where the activity is carried on by a person who is —
- (a) authorised under section 8 of the Insurance Act 2008;
 - (b) the holder of a permit issued under section 22 of that Act;
 - (c) registered under section 23 of that Act;
 - (d) the subject of an exemption under sections 5(2)(c) or 5(2)(d) of that Act; or
 - (e) registered as a scheme administrator under section 36(1) of the Retirement Benefits Schemes Act 2000,
- as part of any business carried on by virtue of that authorisation, permit, registration or exemption.

¹⁰ 1975 c.20

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Court officers etc.

- 4(j) Where the activity is carried on by any of the judges of the High Court, the Chief Registrar or any receiver or officer of the High Court in the exercise of his functions as such.

Interpretation

- (1) For the purpose of this Class "company" includes —
- (a) a *Stiftung* (foundation) established under the law of Austria, Germany or Liechtenstein;
 - (b) an *Anstalt* (institution) established under the law of Liechtenstein;
 - (c) a foundation or similar entity established under the law of a country or territory outside the Island;
 - (d) a foundation established under the Foundations Act 2011;
 - (e) a limited partnership under the Partnership Act 1909 which has elected to have legal personality.
- (2) For the purpose of exclusion 4(d) an 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 where 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;
- and for this purpose "third party" means —
- (i) an individual who is not a member (legal or equitable), officer or employee of any company which is a member of the group;
 - (ii) a company which is not a member of the group;

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- (iii) 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.

CLASS 5 – TRUST SERVICES

Regulated activities

- (1) Acting as sole trustee in relation to an express trust (including the administration of such trust(s)).
- (2) Acting as trustee (other than sole trustee) in relation to an express trust (including the administration of such trust(s)).
- (3) Providing trust administration services (including providing or arranging for accommodation address facilities for a trust) in relation to an express trust.
- (4) Acting as a trust corporation.
- (5) Acting as a protector in relation to an express trust (that is, a person other than a trustee who, as the holder of an office created by or under the terms of the trust, is authorised or required to participate in the administration of the trust).
- (6) Acting as an enforcer (within the meaning of the Purpose Trusts Act 1996¹¹) in relation to a purpose trust or acting as an enforcer (within the meaning of the Foundations Act 2011) in relation to a foundation.

Exclusions

Professional services

- 5(a) Where the activity –
 - (a) is carried on by a specified person,
 - (b) is wholly incidental to, or forms part of, advice given or another professional activity undertaken by that person in his professional capacity; and
 - (c) is carried on at the time when, or within a reasonable period after, the advice is given or the professional activity is undertaken,

¹¹ 1996 c.9

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unless that person holds himself out as being available to carry on that activity in addition to his professional services.

Group transactions

- 5(b) Where the activity is undertaken by —
- (a) a company which is part of a group; or
 - (b) an individual who is a member, officer or employee of a company which is part of a group,
- for or in respect of* an express trust which is established for the benefit of that group*. The making of a donation from the express trust to a registered charity does not invalidate this exclusion.

Joint enterprises

- 5(c) Where 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.

Insurers etc.

- 5(d) Where the activity is carried on by a person who is —
- (i) authorised under section 8 of the Insurance Act 2008;
 - (ii) the holder of a permit issued under section 22 of that Act;
 - (iii) registered under section 23 of that Act;
 - (iv) the subject of an exemption under sections 5(2)(c) or 5(2)(d) of that Act;
 - (v) registered as a scheme administrator under section 36(1) of the Retirement Benefits Schemes Act 2000; or
 - (vi) a trustee of a retirement benefits scheme that is authorised or recognised under the Retirement Benefits Schemes Act 2000,
- as part of any business carried on by virtue of that authorisation, permit, registration or exemption.

Court officers etc.

- 5(e) Where the activity is carried on by any of the judges of the High Court, the Chief Registrar or any receiver or officer of the High Court in the exercise of his functions as such.

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Interpretation

- (1) For the purpose of exclusion 5(b) —
- (a) an activity is not undertaken for or in respect of a trust mentioned in that exclusion if it is undertaken —
 - (i) in a fiduciary capacity and wholly or partly in the interests of a third party;
 - (ii) as a nominee of a third party;
 - (iii) as an attorney for a third party;
 - (iv) as the agent of a third party; or
 - (v) otherwise on behalf of or with the consent of a third party;
 - (b) a trust is not established for the benefit of a group if any beneficiary under the trust is a third party;
- and for this purpose "third party" means —
- (i) an individual who is not a member (legal or equitable), officer or employee of any company which is a member of the group;
 - (ii) a company which is not a member of the group; or
 - (iii) 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.

CLASS 6 — CROWDFUNDING PLATFORMS

Regulated activities

- (1) Operating loan-based crowdfunding services including-
- (a) the operation of an electronic platform in relation to lending in which the operator of the electronic platform facilitates persons to become lenders and borrowers; and
 - (b) the administration of crowdfunded lending, including the transfer of repayment funds from borrower to lender and debt collection in relation thereto.
- (2) 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.

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CLASS 7 – MANAGEMENT OR ADMINISTRATION SERVICES

Regulated activity

Management or administration of a person licensed to carry on a regulated activity (other than one falling within Class 3).

Exclusion

Groups

- 7(a) Where the person who is providing management or administration services and the person who receives the services are in the same group.

CLASS 8 – MONEY TRANSMISSION SERVICES

Regulated activities

- (1) Operation of a bureau de change.
- (2)
 - (a) Provision and execution of payment services directly.
 - (b) Provision and execution of payment services as agent.
- (3) Provision of cheque cashing services.
- (4) Issue of electronic money.

Exclusions

Client money, trust money and 'client company' money

- 8(a) In the case of an activity falling within paragraph (2) of Class 8, where the money –
- (a) is client money, trust money or 'client company' money,
 - (b) is received or transmitted by a person licensed to carry on a regulated activity falling within Class 2, 3, 4, 5 or 6, and
 - (c) is held in a client bank account, trust bank account or 'client company' bank account as defined in rule 3.4 of the Financial Services Rule Book 2013.

Activities incidental to professional services

- 8(b) In the case of an activity falling within paragraph (2) of Class 8, where the activity –

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- (a) is carried on by a specified person;
- (b) is wholly incidental to, or forms part of, advice given or another professional activity undertaken by that person in his professional capacity; and
- (c) is carried on at the time when, or within a reasonable period after, the advice is given or the professional activity is undertaken,

unless that person holds himself out as being available to carry on that activity in addition to his professional services.

Activities incidental to provision of goods or services

8(c) In the case of an activity falling within paragraphs (1) or (2) of Class 8, where the activity —

- (a) is carried on by way of business which consists of the provision of goods or services (not being services the provision of which would, apart from this exclusion, be a regulated activity), and
- (b) is wholly incidental to, or forms part of, the provision of those goods or services; and
- (c) is carried on at the time when, or within a reasonable period after, the goods or services are provided,

unless that person holds himself out as being available to carry on that activity in addition to the provision by him of those goods or services.

Insurance etc.

8(d) In the case of an activity falling within paragraph (2) of Class 8, where the activity is carried on by a person who is —

- (a) authorised under section 8 of the Insurance Act 2008;
- (b) the holder of a permit issued under section 22 of that Act;
- (c) registered under section 23 of that Act;
- (d) the subject of an exemption under sections 5(2)(c) or 5(2)(d) of that Act; or
- (e) registered as a scheme administrator under section 36(1) of the Retirement Benefits Schemes Act 2000,

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- (f) registered as an insurance intermediary under the Insurance Intermediaries (General Business) Act 1996¹²,

as part of any business carried on by virtue of that authorisation, permit, registration or exemption.

Giving of change for goods or services

8(e) In the case of an activity falling within paragraph (1) of Class 8, where the activity carried on consists of an exchange of money in which —

- (a) payment for goods or services is made in cash or by travellers' cheque; and;
- (b) the change due in respect of that payment is tendered —
 - (i) in a different currency from that in which that payment is made, and
 - (ii) by the person to whom that payment is made.

Friendly societies

8(f) In the case of an activity falling within paragraph (1) of Class 8, where the activity is carried out by a body registered as a friendly society (but not as a branch of a society) under an enactment having effect in the Island or any part of the United Kingdom in respect of any business which it carries on for or in connection with any of the services for which friendly societies may provide under that or other enactments relating to friendly societies.

Diocesan Board of Finance

8(g) In the case of an activity falling within paragraph (2) of Class 8, where the activity is carried on by the Sodor and Man Diocesan Board of Finance for purposes of the Church of England.

Other activities which do not constitute payment services

8(h) In the case of an activity falling within paragraph (2) of Class 8, where the activity consists of —

¹² 1996 c.4

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- (a) payment transactions executed wholly in cash and directly between the payer and the payee, without any intermediary intervention;
- (b) payment transactions between the payer and the payee through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the payer or the payee;
- (c) the professional physical transport of banknotes and coins, including their collection, processing and delivery;
- (d) payment transactions consisting of non-professional cash collection and delivery as part of a non-profit or charitable activity;
- (e) services where cash is provided by the payee to the payer as part of a payment transaction for the purchase of goods or services following an explicit request by the payment service user immediately before the execution of the payment transaction;
- (f) money exchange business consisting of cash-to-cash operations where the funds are not held on a payment account;
- (g) payment transactions based on any of the following documents drawn on the payment service provider with a view to placing funds at the disposal of the payee—
 - (i) paper cheques of any kind, including traveller's cheques;
 - (ii) bankers' drafts;
 - (iii) paper-based vouchers;
 - (iv) paper postal orders;
- (h) payment transactions carried out within a payment or securities settlement system between payment service providers and settlement agents, central counterparties, clearing houses, central banks or other participants in the system;
- (i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in subparagraph (h) or by investment businesses, deposit takers,

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collective investment schemes or asset management companies providing investment services or by any other entities allowed to have the custody of financial instruments;

- (j) services provided by technical service providers, which support the provision of payment services, without the provider entering at any time into possession of the funds to be transferred, including—
 - (i) the processing and storage of data;
 - (ii) trust and privacy protection services;
 - (iii) data and entity authentication;
 - (iv) information technology and communication network provision; and
 - (v) the provision and maintenance of terminals and devices used for payment services;
- (k) services based on instruments that can be used to acquire goods or services only—
 - (i) in or on the issuer's premises; or
 - (ii) under a commercial agreement with the issuer, either within a limited network of service providers or for a limited range of goods or services,

and for these purposes the "issuer" is the person who issues the instrument in question;

- (l) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;
- (m) payment transactions carried out between payment service providers, or their agents or branches, for their own account;
- (n) payment transactions between a parent undertaking and its subsidiary or between subsidiaries of the same parent undertaking, without any intermediary intervention by a

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payment service provider other than an undertaking belonging to the same group;

- (o) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not party to the framework contract with the customer withdrawing money from a payment account, where no other payment service is conducted by the provider.

Electronic money - exclusions

- 8(i) For the purposes of this Order electronic money does not include—
 - (a) monetary value stored on instruments that can be used to acquire goods or services only—
 - (i) in or on the electronic money issuer's premises; or
 - (ii) under a commercial agreement with the electronic money issuer, either within a limited network of service providers or for a limited range of goods or services;
 - (b) monetary value that is used to make payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services.

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Article 3.

SCHEDULE 2
INTERPRETATION

PART 1 – DEFINITIONS

<i>Expression</i>	<i>Definition</i>
accommodation address facilities	means <u>the provision of an address at, or within, which any of the following services are provided</u> any of the following services – (a) the receipt or dispatch on behalf of a person of any communication or packet by post, a courier service, hand delivery, a telecommunications system, wireless telegraphy or any electronic medium; (b) the redirection of communications or packets on behalf of a person; (c) the provision of an address at which services within (a) or (b) are provided; (d) <u>facilities for the provision of an address at which process and notices may be serviceeed of process and notices</u> on a company as provided by section 313(1)(c) of the Companies Act 1931 ¹³ <u>or section 11(4) of the Foreign Companies Act 2014;</u>
the Act	means the Financial Services Act 2008;
administration services (in relation to a company)	includes the following activities – (a) the keeping of any register which is required to be kept by a company under the Companies Acts 1931 to 2004; (b) the keeping of accounting records and the preparation of accounts which are required to

¹³ ~~XIII~~ p.235

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be kept or prepared by the company under the Companies Act 1982;

(c) the preparation and making of returns required to be made by a company to the Commission Department of Economic Development under the Companies Acts 1931 to 2004;

(d) the preparation and submission of documents which a company is required to prepare and submit under the Companies Acts 1931 to 2004;

(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 of a company;

(g) the entry of written resolutions which are required to be entered in a minute book by a 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 a company under section 119B of the Companies Act 1931,

(i) equivalent activities in relation to companies which are not constituted under the Companies Acts 1931 to 2004.

agent	includes an attorney and a nominee, and also, for the purposes of Class 8 regulated activity, agent includes a person who provides payment services on behalf of an issuer of electronic money or a payment institution;
attorney	means the donee of a power of attorney acting under that power;
buy	means acquire for valuable consideration;
certificate representing	means any certificate or other instrument which

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securities	confers — (a) property rights in respect of any share, debenture, government security or warrant; (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription;
client	includes a customer (and vice versa)
client bank account	means a bank account which is — (a) specially created for the purpose of holding client money, and (b) segregated from any account holding money which is not client money;
client money	means money which, for the purpose or in the course of a business carried on by him, a person holds or receives on behalf of a customer or client;
close relative	means parent, step-parent, spouse, child, step-child, brother or sister (including a brother or sister of the half blood);
collective investment scheme	has the same meaning as in the Collective Investment Schemes Act 2008 ¹⁴ ;
company	includes any body corporate, whether constituted under the law of the Island or elsewhere;
connected individuals (in relation to a disposal or acquisition of shares in a company)	means persons each of whom is, or is a close relative of, a person who is or (as the case may be) is to be a director or manager of the company;

¹⁴ 2008 c.7

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- debenture includes debenture stock, loan stock, bonds and certificates of deposit and other instruments creating or acknowledging indebtedness, but does not include –
- (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;
 - (b) a cheque or other bill of exchange, a banker's draft or a letter of credit;
 - (c) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) relating to a lease or other disposition of property, a deed of bond and security or an insurance policy;
 - (d) a government security;
- debenture warrant means an instrument entitling the holder to, or to subscribe for, a debenture;
- deposit means a sum of money paid (otherwise than for or in respect of a debenture, government security, warrant or certificate representing securities) on terms –
- (a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
 - (b) which are not referable to the provision of property (other than currency) or services or the giving of security, and references in this Order to money deposited and to the making of a deposit shall be construed accordingly;
- and includes a sum of money paid by an investing member to a building society held in share and /

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or savings accounts, but not sums invested in permanent interest bearing shares.

A sum is not a deposit if it is received by a payment institution from a payment service user with a view to the provision of payment services; nor is it a deposit if it is immediately exchanged for electronic money.

For the purposes of this definition, money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if, —

- (i) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or
- (ii) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (iii) without prejudice to (ii) above, it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise;

director

has the same meaning as in the Act but also includes ~~-, in relation to a foundation established under the Foundations Act 2011, a member of the council of a foundation~~

(a) an alternate director; and

(b) in relation to a limited partnership which has elected to have legal personality, a person who is a general partner;

disposal

includes —

- (a) in the case of an investment consisting of rights

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- under a contract or other arrangements, assuming the corresponding liabilities under the contract or arrangements;
 - (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
 - (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights;
- electronic money means electronically (including magnetically) stored monetary value as represented by a claim on the electronic money issuer which is —
- (a) issued on receipt of funds for the purpose of making payment transactions;
 - (b) accepted by a person other than the electronic money issuer; and
 - (c) is not excluded by exclusion 8(i);
- e-money has the same meaning as electronic money;
- eligible custodian means —
- (a) a licenceholder authorised to carry on activities falling within paragraph (5) of Class 2;
 - (b) a wholly-owned subsidiary of such a licenceholder which —
 - (i) carries on no other business than those activities, and
 - (ii) acts only in accordance with the directions or instructions of the licenceholder; or
 - (c) in relation to such a licenceholder, a person carrying on business in a country or territory outside the Island —
 - (i) whose business includes activities which, if carried on in the Island, would fall

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	within paragraph (5) of Class 2, and
	(ii) who the licenceholder reasonably believes is subject to regulation and supervision in relation to those services by a regulatory body or agency of government in that country or territory;
enactment	includes a statute or other instrument of a legislative character having effect in the Island or a country or territory outside the Island;
exempt collective investment scheme	has the same meaning as in the Collective Investment Schemes Act 2008;
exempt-type scheme	means a scheme which does not, but would be an exempt scheme if it did, comply with paragraph 1(2) of Schedule 3 to the Collective Investment Schemes Act 2008;
express trust	means a trust created by the intentional act of the settlor either orally or evidenced in writing;
government security	means loan stock or a bond or other instrument creating or acknowledging indebtedness issued by or on behalf of — (a) the government of the Island or of any country or territory outside the Island; (b) a local authority in the Island or elsewhere; (c) any international organisation the members of which include the Island or any Member State of the European Union; but does not include — (i) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services; (ii) a cheque or other bill of exchange, a banker's draft or a letter of credit;

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- (iii) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy;
- instrument includes any record which may be produced in a visible and legible form;
- investment means any of the following —
- (a) a share;
 - (b) a debenture;
 - (c) a government security;
 - (d) a warrant;
 - (e) a certificate representing securities;
 - (f) a unit in a collective investment scheme, including a share in, or security of, an open-ended investment company;
 - (g) an option to acquire or dispose of —
 - (i) an investment falling within this or any other paragraph of this definition;
 - (ii) currency of any country or territory,
 - (iii) gold, palladium, platinum or silver; or
 - (iv) a commodity or goods of any description except under an option entered into for commercial and not investment purposes; or
 - (v) an option to acquire or dispose of an option falling within sub-paragraph (i), (ii), (iii) or (iv).
 - (h) rights under a contract for the sale of a commodity or goods of any other description under which delivery is to be made at a future date and at a price agreed on when the contract

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is made, except rights under a contract made for commercial and not investment purposes;

- (i) rights under a contract for differences, or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract;
- (j) long-term insurance;
- (k) rights to and interests in anything falling within any other paragraph of this definition, except interests under the trusts of an occupational pension scheme.

Isle of Man person

means –

- (a) an individual who is resident in the Isle of Man; or
- (b) a company incorporated or carrying on business in the Isle of Man.

joint enterprise

means an enterprise into which 2 or more persons ("participators") enter for commercial reasons related to a business or businesses (other than activities falling within Class 2) carried on by them, but does not include an enterprise the whole or main purpose of which is to undertake any regulated activity; and for this purpose, where a participator is a company and a member of a group, each other member of the group shall also be regarded as a participator in the enterprise;

licensed

means licensed under section 7 of the Act

long-term insurance

means rights under a contract of insurance of the following descriptions, namely life, annuity, marriage, birth, permanent health, tontines, capital redemption and pension fund management, but does not include pure

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	protection contracts;
money remittance	means a payment service where funds are received from a payer, without any payment accounts being created in the name of the payee or payer, for the sole purpose of transferring a corresponding amount to a payee or another payment service provider acting on behalf of the payee or where such funds are received on behalf of and made available to the payee;
nominee company	means a company whose sole activity is to hold as nominee or bare trustee <u>monies or</u> investments beneficially owned by other persons;
offer	includes an invitation to treat;
open-ended investment company	has the same meaning as in the Collective Investment Schemes Act 2008;
overseas person	means a person who – (a) does not carry on a regulated activity from a permanent place of business maintained by him in the Island; and (b) is not – (i) a company incorporated in the Island under the Companies Acts 1931 to 2004 or the Companies Act 2006; or (ii) a company incorporated outside the Island which is registered under Part XI of the Companies Act 1931; or (iii) a limited partnership registered in the Island under Part II of the Partnership Act 1909; (iv) a foundation established in the Island under the Foundations Act 2011;
<u>p</u> Payee	means a person who is the intended recipient of

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	the funds which have been the subject of a payment transaction;
p Payer	means— (a) a person who holds a payment account and initiates, or consents to the initiation of, a payment order from that payment account; or (b) where there is no payment account, a person who gives a payment order;
payment account	means an account held in the name of one or more payment service users which is used for the execution of payment transactions;
payment institution	means— (a) a person licensed by the Commission Authority to undertake the regulated activity of Class 8(2); or (b) a person subject to the transitional arrangements in paragraph 8.5 of Schedule 1 to the Financial Services (Exemption) Regulations 2011;
payment instrument	means any— (a) personalised device; or (b) personalised set of procedures agreed between the payment service user and the payment service provider, used by the payment service user in order to initiate a payment order;
payment order	means any instruction by a payer or a payee to their respective payment service provider requesting the execution of a payment transaction;
payment services	means any of the following activities when carried out as a business activity - (a) services enabling cash to be placed on a payment account together with all of the

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operations required for operating a payment account;

(b) services enabling cash withdrawals from a payment account together with all of the operations required for operating a payment account;

(c) the execution of the following types of payment transaction—

(i) direct debits, including one-off direct debits;

(ii) payment transactions executed through a payment card or a similar device;

(iii) credit transfers, including standing orders;

(d) the execution of the following types of payment transaction where the funds are covered by a credit line for the payment service user—

(i) direct debits, including one-off direct debits;

(ii) payment transactions executed through a payment card or a similar device;

(iii) credit transfers, including standing orders;

(e) issuing payment instruments or acquiring payment transactions;

(f) money remittance;

(g) the execution of payment transactions where the consent of the payer to execute the payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator acting only as an intermediary between the payment service user and the supplier of the goods or services;

payment service provider

means any of the following persons when they carry out payment services—

(a) deposit takers;

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	(b) issuers of electronic money;
	(c) the Isle of Man Post Office;
	(d) payment institutions;(e) the Isle of Man Treasury, the European Central Bank and the national central banks of EEA States other than the United Kingdom, other than when acting in their capacity as a monetary authority or carrying out other functions of a public nature; and
	(f) Departments, Statutory Boards and local authorities, other than when carrying out functions of a public nature;
payment service user	means a person when making use of a payment service in the capacity of a payer or payee, or both;
payment transaction	means an act, initiated by the payer or payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and payee;
<u>person</u>	<u>includes any body of persons, whether incorporated or unincorporated, as well as an individual</u> means an individual, an incorporated body or an unincorporated body;
private company	means a company which is prohibited by the law of the country or territory in which it is incorporated from making an offer (either in that country or territory or elsewhere) to the public or inviting any section of the public to subscribe for shares in or debentures of the company, and also for the purposes of this Order includes a company registered under the Companies Act 2006 that does not offer its shares or debentures to the public;
professional dealer	means any person who — (a) is a market maker in investments; or (b) regularly solicits members of the public

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(whether in the Island or elsewhere) to deal in investments;

and for this purpose "market maker", in relation to an investment of any description, means a person who (otherwise than in his capacity as the manager or administrator of a collective investment scheme) holds himself out as able and willing to enter into transactions of buying or selling investments of that description at prices determined by him generally and continuously rather than in respect of each particular transaction;

property	includes the currency of any country or territory;
pure protection contract	means a long term insurance contract in respect of which the following conditions are met — (a) the benefits are payable only on death or in respect of incapacity due to injury, sickness or infirmity; (b) there is no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and (c) there is no provision for its conversion or extension in a manner that would result in its ceasing to comply with (a) or (b) of this definition;
registered legal practitioner	means a person who is entered in the register maintained under the Legal Practitioners Registration Act 1986; ¹⁵
retirement benefits scheme	has the same meaning as in the Retirement Benefits Schemes Act 2000; ¹⁶ <u>regardless of any exceptions contained in the Retirement Benefits</u>

¹⁵ 1986 c.13

¹⁶ 2000 c.14

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	<u>Schemes (Excepted Schemes) Regulations 2001:</u>
the Rule Book	means the rules, or any part of the rules, made by the Commission <u>Authority</u> under section 18 of the Act;
securities	means shares, debentures, warrants or certificates representing securities and any rights to or interests in such securities;
sell	means dispose of for valuable consideration;
share	a share, including stock, in the share capital of a company;
share warrant	means an instrument entitling the holder to, or to subscribe for shares;
specified person	means a person who — (a) is an advocate or firm of advocates; or (b) is a registered legal practitioner or a firm of registered legal practitioners; (c) is a member of one of the following 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.
trust	means a legal relationship which falls within Article 2 of the Convention set out in the Schedule to the Recognition of Trusts Act 1988 ¹⁷ , whether such relationship was created in, or under the law

¹⁷ 1988 c.8

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	of, the Island or any other country or territory;
trust bank account	"trust bank account" means an bank account held by a trustee of a trust which — (a) holds, and is intended to hold, trust money of that trust (and no other money), and (b) is segregated from any account holding money which is not trust money of that trust.
trust money	means money, forming part or all of the assets of a trust, which a person holds or receives as, or as agent or nominee of, a trustee of that trust;
units (in relation to a collective investment scheme)	has the same meaning as in the Collective Investment Schemes Act 2008;
unit trust scheme	has the same meaning as in the Collective Investment Schemes Act 2008;
warrant	includes — (a) a share warrant, (b) a debenture warrant, or (c) an instrument entitling the holder to, or to subscribe for, a government security.

PART 2 — FURTHER INTERPRETATION PROVISIONS

- (1) References in this Order to a numbered class are to the class of regulated activities so numbered in Schedule 1.
- (2) For the purposes of Schedule 1 a person controls another person if, and only if, —
 - (a) it is a controller of that person within the meaning of the Act, and
 - (b) either alone or with any associate or associates it is entitled to exercise or control the exercise of 15 per cent or more of the voting power at any general meeting of that person or of another body corporate of which it is a subsidiary.

Regulated Activities Order 2011 (as amended 2013)

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- (3) References in this Order to dealing, making arrangements, managing and advising include offering or agreeing to deal, make arrangements, manage or advise respectively.
- (4) In determining for the purposes of this Order whether anything constitutes an investment or an activity falling within Class 2, the provisions of any enactment relating to gaming, betting or lotteries shall be disregarded.

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Article 3.

SCHEDULE 3

MEANING OF EXPRESSIONS IN SECTION 3(2) OF THE ACT

<i>Expression</i>	<i>Meaning</i>
(a) Deposit taking	Any activity of Class 1
(b) Investment business	Any activity of Class 2
(c) Any service to a collective investment scheme	Any activity of Class 3
(d) Corporate services	Any activity of Class 4
(e) Trust services	Any activity of Class 5
(f) Any service or activity involving money transmission	Any activity of Class 8

EXPLANATORY NOTE

(This note is not part of the Order)

This Order replaces the 2009 and 2010 Orders which specify the activities which constitute "regulated activities" for the purpose of the Financial Services Act 2008. It also defines expressions used in section 1(2) of that Act.

The amendments contained in this Order include references to the Foundations Act 2011 and move the regulated activity of e-money from Class 6 to Class 8. The amendments also split the regulated activity of payments services (Class 8(2)) into two parts: providing payment services directly and providing payment service as agent.

Amendments made in 2013 -

- require persons to be licensed if they provide administration services to persons exempt from licensing by virtue of paragraph 3.6 of the Financial Services (Exemption) Regulations 2011;
- change "individual" to "person" in the interpretation of Class 3;

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- change the interpretation of Class 4 to specify that "company" includes a limited partnership in Class 4(9);
- add to the exclusion from Class 5 in respect of charitable donations;
- change exclusion (a) from Class 8 to link the definition of client/trust bank account to the Rule Book definition;
- extend exclusion (a) from Class 8 to include client company money; and
- change the definitions in Schedule 2 in respect of payment services; long-term insurance and pure protection contracts.

Amendments made in 2016 –

- a new Class 6 for Crowdfunding Platforms has been introduced and a transitional provision for applications to be made by 1 November 2016 has been included. Also, investment crowdfunding has been excluded from Class 2 where a Class 6 licence is held;
- Class 2(7) has been amended to permit licenceholders to advise a trustee or manager of a retirement benefits scheme where there is only one member of that scheme;
- Exclusion 2(n) has been clarified to extend only where the activity is not prohibited by the specified person's professional body;
- in Class 4(6) - acting as director or alternate director of a company, "or alternate director" has been deleted from the activity and included instead 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 Financial Services Act 2008; and
 - for clarity, where a limited partnership which has elected to have legal personality, a person who is a general partner has been inserted;
- in Class 4(9) it has been clarified that the activity extends to a limited partner of a limited partnership which has elected to have legal personality;
- Exclusion 4(a) has been 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;

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- 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;
- 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;
- 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”;
- 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 is expected to 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 or unincorporated bodies could undertake regulated activities without requiring a licence.
- 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.