

Financial Services (Exemptions) Regulations 2011 (as amended 2013 and 2016)

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FINANCIAL SERVICES ACT 2008

FINANCIAL SERVICES (EXEMPTIONS) REGULATIONS 2011 (as amended 2013 and 2016)

Approved by Tynwald 13 December 2011 (Original Regulations)

(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 1 May 2016)

The Isle of Man Financial Services Authority, after carrying out the consultations required by section 44(5) of the Financial Services Act 2008¹, makes these Regulations under sections 44(2) and (3) of that Act.

1. Title

These are the Financial Services (Exemptions) Regulations 2011.

2. Commencement

If approved by Tynwald, these Regulations come into operation on 1 January 2012.

3. Interpretation

(1) In these Regulations—

"the Act" means the Financial Services Act 2008;

"the Order" means the Regulated Activities Order 2011²;

¹ 2008 c.8

² 0884/11

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"section 4" means section 4 of the Act (prohibition of regulated activity except in accordance with a licence);

- (2) (a) References in these Regulations to activities of Class 3 which are defined in the Collective Investment Schemes Act 2008³ have the same meanings as in that Act;
- (b) other expressions have the meanings given by Schedule 3.
- (3) References in these Regulations to a numbered class or to a numbered paragraph of such a class, are to the class of regulated activities so numbered in Schedule 1 to the Order or to the paragraph so numbered of that class as the case may be.

4. Exemptions : general

Schedule 1 exempts persons that do not hold a licence issued under section 7 of the Act (issue of a licence) in respect of a particular class of regulated activity from the requirements of section 4 of the Act (prohibition of regulated activity except in accordance with a licence) in the circumstances there specified.

5. Exemption : Use of equipment on the Island

Schedule 2 exempts from the requirements of section 4 the persons, and in the circumstances, there specified.

6. Revocation

The Financial Services (Exemptions) Regulations 2009⁴ and the Financial Services (Exemptions) (Amendment) Regulations 2010⁵ are revoked.

MADE 4 November 2011

R V Penn
Commissioner

³ 2008 c.7

⁴ SD 739/09

⁵ SD 883/10

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J R Aspden
Chief Executive

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Regulation 4.

SCHEDULE 1

EXEMPTIONS FROM LICENSING

CLASS 1 – DEPOSIT TAKING

Company officers and employees

1. In relation to a regulated activity of Class 1, section 4 does not apply to an individual who—
 - (a) is not an employee, director or other officer of a company licensed to carry on activities of Class 1 ("the licenceholder"), but
 - (b) is an employee, director or other officer of another company in the same group as the licenceholder, and
 - (c) carries on that activity under the direction of and in the course of business of the licenceholder.

CLASS 2 – INVESTMENT BUSINESS

Liquidators, receivers etc.

- 2.1 (1) In relation to a regulated activity of Class 2, section 4 does not apply to a person whilst acting in his capacity as—
 - (a) (i) a liquidator or provisional liquidator of a licenceholder, provided that person complies, where appropriate, with the condition specified in sub-paragraph (2); or
 - (ii) a liquidator or provisional liquidator of any other company or limited partnership;
and any individual acting under the control or direction of a liquidator or provisional liquidator;
 - (b) a receiver or manager appointed in respect of any of the assets of a company or limited partnership;
 - (c) a trustee in bankruptcy;
 - (d) the trustee of a composition or scheme of arrangement if appointed or approved by the High Court;
 - (e) receiver of a patient; or

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(f) personal representative of a deceased person.

- (2) The condition referred to in sub-paragraph (1)(a)(i) is that the person acting as liquidator or provisional liquidator must, in the case of a voluntary liquidation, seek the prior approval of the Authority to act in that capacity for that licenceholder.

Certificates of deposit

- 2.2 In relation to a regulated activity of Class 2, section 4 does not apply to a person whose activities within that class are restricted solely to certificates of deposit.

Tied agents of friendly societies

- 2.3 In relation to an activity falling within paragraph (3) or (7) of Class 2, section 4 does not apply to a person whilst acting as a tied agent of a body which is registered as a friendly society under an enactment having effect in the Island or any part of the United Kingdom, where that person—

- (a) does not in the course of his business receive clients' money;
- (b) does not carry on any activity falling within Class 2 other than arranging deals for or giving advice to existing members of the friendly society or members of organisations associated with that friendly society (for example trade unions); and
- (c) does not deal in or give advice on any product which is not offered by the friendly society to which he is tied.

Enduring powers of attorney

- 2.4 In relation to an activity falling within paragraph (2), (3) or (4) of Class 2, section 4 does not apply to a person whilst acting under an enduring power of attorney where—

- (a) that power has been registered under section 6 of the Powers of Attorney Act 1987²; and
- (b) the attorney has entered into a discretionary management agreement with either—
 - (i) a licenceholder, or

² 1987 c.5

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- (ii) a person authorised to undertake that activity by a regulator.

Bearer instruments — 'post office' facility

2.5 In relation to an activity falling within paragraph (1) to (5) of Class 2, section 4 does not apply to a person whilst safeguarding bearer instruments of title to investments, subject to the condition that any such instrument is removed from the possession of that person by close of business on the business day following the receipt of the instrument.

Company pension schemes

2.6 In relation to a regulated activity of Class 2, section 4 does not apply to a person whose activities within that class are restricted to pension schemes, the beneficiaries of which are employees, former employees or the dependants of employees or former employees of—

- (a) the person by whom the activity is carried on, or
- (b) a company in the same group as that person.

Nominee companies

2.7 (1) In relation to an activity falling within paragraph (2), (3) or (5) of Class 2, section 4 does not apply to a nominee company which is a directly and wholly-owned subsidiary of a person licensed to carry on that activity ("the licenceholder"), where—

- (a) the licenceholder is permitted by its licence to control clients' money or assets;
- (b) the activity is carried on by the nominee company solely on behalf of companies which are in the same group as the nominee company and are licensed to carry on that activity;
- (c) the nominee company complies with the relevant provisions of the Rule Book relating to clients' money and investments; and
- (d) the nominee company arranges for an annual audit report complying with the requirements of sub-paragraph (3) to be sent to the Authority, which may be provided by the auditors to the licenceholder where the nominee company is not audited and its clients' money and investment recording is undertaken by that licenceholder.

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- (2) In relation to an activity falling within paragraph (2), (3) or (5) of Class 2, section 4 does not apply to a nominee company which is a directly and wholly-owned subsidiary of a person licensed to carry on activity falling within paragraphs (1), (2) or (11) of Class 3 ("the Class 3 licenceholder"), where—
 - (a) the nominee company is providing services to participants in relevant schemes;
 - (b) the nominee company complies with the relevant provisions of the Rule Book relating to clients' money and investments; and
 - (c) the nominee company arranges for an annual audit report complying with the requirements of sub-paragraph (3) to be sent to the Authority, which may be provided by the auditors to the licenceholder where the nominee company is not audited and its clients' money and investment recording is undertaken by that Class 3 licenceholder.
- (3) The requirements referred to in sub-paragraphs (1)(d) and 2(c) are that the report—
 - (a) states whether, in the auditor's opinion—
 - (i) the nominee company has maintained throughout the year systems adequate to enable it to comply with the provisions of the Rule Book relating to clients' money and investments,
 - (ii) the nominee company was in compliance with those provisions at the balance sheet date; and
 - (iii) reconciliations of clients' money and clients' investments have been performed in accordance with those provisions; and
 - (b) where one or more of the requirements specified in sub-paragraph (a) have not been met, include a statement specifying the relevant requirements and the extent to which they have not been met; or
 - (c) where the auditor is unable to form an opinion as to whether one or more of those requirements have been met, specify those requirements and give the reasons why the auditor has been unable to form an opinion.

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- (4) For the purposes of this paragraph, "relevant schemes" means collective investment schemes to which the Class 3 licenceholder acts as manager, administrator, trustee, fiduciary custodian or custodian.

Company officers and employees

- 2.8 In relation to a regulated activity of Class 2, section 4 does not apply to an individual who—
- (a) is not an employee, director or other officer of a company licensed to carry on activities of Class 2 ("the licenceholder"), but
 - (b) is an employee, director or other officer of another company in the same group as the licenceholder, and
 - (c) carries on that activity under the direction of and in the course of business of the licenceholder.

Public authorities

- 2.9 In relation to a regulated activity of Class 2, section 4 does not apply to—
- (a) a Department,
 - (b) a Statutory Board, or
 - (c) a local authority or joint board.

Crowdfunding platforms

- 2.10 In relation to an activity falling within paragraphs (3) or (5) of Class 2, section 4 does not apply to a person operating investment-based crowdfunding services, provided that the person is licensed under Class 6(2) (crowdfunding platforms).

CLASS 3 – SERVICES TO COLLECTIVE INVESTMENT SCHEMES

Nominee companies

- 3.1 In relation to a regulated activity of Class 3, section 4 does not apply to a nominee company which is a directly and wholly-owned subsidiary of a person licensed to carry on an activity falling within paragraphs (1) to (5) or (11) of Class 3, where—
- (a) the parent company is licensed to carry on the regulated activities that the nominee company is undertaking;
 - (b) the nominee company complies with the provisions of the Rule Book relating to clients' money and clients' investments; and

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- (c) the nominee company arranges for an annual audit report complying with the requirements of paragraph 2.7(3) to be sent to the Authority.

Managers etc. of exempt schemes and exempt-type schemes

- 3.2 (1) In relation to a regulated activity falling within paragraph (11) of Class 3 consisting of services provided to an exempt scheme or an exempt-type scheme ("the scheme"), section 4 does not apply to a person carrying on that activity where—
- (a) the exempt person provides those services to no more than one exempt scheme or exempt-type scheme, and
 - (b) the conditions specified in sub-paragraph (2) are met.
- (2) The conditions referred to in sub-paragraph (1)(b) are that, in accordance with an agreement between the exempt person and a person licensed to carry on activities falling within paragraph (12) of Class 3 ("the licenceholder")—
- (a) the exempt person is responsible for providing sufficient information to the licenceholder about the exempt person and the scheme to enable the licenceholder to satisfy itself that the criteria in sub-paragraph (3) are met; and
 - (b) the licenceholder is responsible for satisfying itself, on the basis of information provided pursuant to (a) above and any other information in the possession of the licenceholder, that those criteria are met.
- (3) The criteria referred to in sub-paragraph (2) are that—
- (a) the exempt person continues to comply with the requirements of paragraph (1)(a); and
 - (b) the scheme continues to comply with the requirements of paragraph 1(1)(a) and (b) of Schedule 3 to the Collective Investment Schemes Act 2008.

Exempt managers of experienced investor funds and professional investor funds

- 3.3 (1) In relation to a regulated activity of Class 3, section 4 does not apply to the manager of a scheme which is—

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- (a) an experienced investor fund within the meaning of the Financial Supervision (Experienced Investor Fund) (Exemption) Order 1999³; or
- (b) a professional investor fund within the meaning of the Financial Supervision (Professional Investor Fund) (Exemption) Order 1999⁴;

where the conditions specified in sub-paragraph (2) are met.

- (2) The conditions referred to in sub-paragraph (1) are that, in accordance with an arrangement between the manager and a person licensed to carry on activities falling within paragraph (9) of Class 3 ("the licenceholder")—

- (a) all activities of the manager in relation to the scheme that would (apart from this paragraph) constitute regulated activities of Class 3 are delegated to the licenceholder;
- (b) no activity of the manager in relation to the scheme, other than the termination of a delegation under condition (a) above, may be carried on by the manager without the prior written approval of the licenceholder;
- (c) the manager may only introduce subscribers to the scheme where a director of the licenceholder is also a director of the manager;
- (d) the licenceholder may perform any function or activity on behalf of or in the name of the manager that a manager would normally undertake as manager of a scheme of the kind referred to in paragraph (1)(a) or (b), as the case may be.

Company officers and employees

3.4 In relation to a regulated activity of Class 3, section 4 does not apply to an individual who—

- (a) is not an employee, director or other officer of a company licensed to carry on activities of Class 3 ("the licenceholder"), but

³ SD 603/99 as amended by SD 407/00, 87/03, 347/03 and 806/07

⁴ SD 602/99 as amended by SD 81/03

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- (b) is an employee, director or other officer of another company in the same group as the licenceholder, and
- (c) carries on that activity under the direction of and in the course of business of the licenceholder.

Liquidators and receivers

- 3.5 (1) (a) In relation to a regulated activity of Class 3, section 4 does not apply to an individual whilst acting as—
- (i) a liquidator or provisional liquidator of a licenceholder, provided that person complies, where appropriate, with the condition specified in sub-paragraph (2); and
 - (ii) any individual acting under the control or direction of a liquidator or provisional liquidator; or
 - (iii) a receiver or manager of a licenceholder.
- (2) The condition referred to in sub-paragraph (1)(a)(i) is that the person acting as liquidator or provisional liquidator must, in the case of a voluntary liquidation, seek the prior approval of the Authority to act in that capacity for that licenceholder.

Functionaries of exempt or exempt-type schemes which are wholly-owned subsidiaries of licenceholders

- 3.6 (1) In relation to a regulated activity falling within paragraph (11) of Class 3 consisting of services provided to an exempt scheme or an exempt-type scheme ("the scheme"), section 4 does not apply to a person carrying on that activity where—
- (a) the company appointed to the exempt scheme is a directly and wholly-owned subsidiary of the licenceholder;
 - (b) the parent licenceholder holds the requisite Class 3(11) and 3(12) licence permissions;
 - (c) both the person defined at (a) and the licenceholder have common management and staff;
 - (d) the Class 3(11) permission held by the licenceholder includes the relevant activity to be undertaken by the direct, wholly-owned subsidiary; and
 - (e) the licenceholder submits details of the person(s) defined at (a) together with scheme statistics to the Authority on a calendar quarter basis,

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and, the exempt persons must comply with the conditions in subparagraph (2).

- (2) The conditions referred to in paragraph (1) are that, in accordance with an agreement between the exempt person and a person licensed to carry on activities falling within paragraph (12) of Class 3 ("the licenceholder") —
 - (a) the exempt person is responsible for providing sufficient information to the licenceholder about the exempt person and the scheme to enable the licenceholder to satisfy itself that the scheme continues to comply with the requirements of paragraph 1(1)(a) and (b) of Schedule 3 to the Collective Investment Schemes Act 2008; and
 - (b) the licenceholder is responsible for satisfying itself, on the basis of information provided pursuant to (a) above and any other information in the possession of the licenceholder, that the scheme continues to comply with the requirements of paragraph 1(1)(a) and (b) of Schedule 3 to the Collective Investment Schemes Act 2008.

Appointments under section 13(1) of the Collective Investment Schemes Act 2008

3.7 In relation to a regulated activity of Class 3, section 4 does not apply to a person appointed under section 13(1) of the Collective Investment Schemes Act 2008.

Court appointed scheme functionaries

3.8 In relation to a regulated activity of Class 3, section 4 does not apply to a person appointed under section 15(1) of the Collective Investment Schemes Act 2008.

CLASS 4 — CORPORATE SERVICES

Interpretation

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;

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- (d) a foundation established under the law of the Island.

Regulated entities

4.1 Section 4 does not apply to a person —

- (a) providing regulated activities falling within paragraph (2) of Class 4 to a Class 4 licenceholder; or
- (b) providing regulated activities falling within paragraph (6) or (7) of Class 4 to —
 - (i) a regulated entity; or
 - (ii) a collective investment scheme established under Schedule 1, or paragraph 2 of Schedule 2 to the Collective Investment Schemes Act 2008.

Directorships - de minimis activities

- 4.2 (1) In relation to an activity falling within paragraph (6) of Class 4, section 4 does not apply to an individual who holds 10 or fewer appointments as a director.
- (2) Any exemption for a group under paragraph 4.3 will be counted as one appointment for the purpose of paragraph 4.2(1).
- (3) Any appointment exempted under paragraph 4.7 must be included in the calculation of appointments for the purpose of paragraph 4.2(1).

Directorships – transitional arrangements

- 4.2A (1) Subject to (2), and as a result of paragraphs 4.2(3) and 4.3(2), in relation to a regulated activity falling within paragraph (6) of Class 4, section 4 does not apply where—
 - (a) any individual was, immediately before the coming into operation of the Financial Services (Exemptions) (Amendment) Regulations 2016, carrying on that regulated activity;
 - (b) the carrying on of that activity did not require a licence; and
 - (c) that individual has applied for a licence to carry on that activity before 30 November 2016.
- (2) The exemption in (1) will apply only until —

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- (a) 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
- (b) where an appeal is brought, the determination or withdrawal of the appeal.

Group officers

- 4.3 (1) Subject to (2), in relation to an activity falling within paragraph (6) of Class 4, section 4 does not apply to 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.
- (2) This exemption only applies to an individual who acts as a director of companies falling within one group.

Corporate officers

- 4.4 In relation to an activity falling within paragraph (6) or (7) of Class 4, section 4 does not apply to a person which is a directly and wholly-owned subsidiary of a body corporate that is licensed to carry on activities of Class 4 and whose business consists **solely** of acting as director or secretary (but not both) of the client companies of that licenceholder.

Nominee services

- 4.5 In relation to an activity falling within paragraph (9) of Class 4, section 4 does not apply to a person acting **solely** in the capacity of a nominee, whether as one or a combination of a nominee shareholder, or a nominee member of a company, or a nominee partner to a limited partnership, where—
- (a) that person is a directly and wholly-owned subsidiary of a body corporate that is licensed to carry on activities of Class 4 (“the licenceholder”); and
 - (b) the first-mentioned activity is wholly incidental to, and being conducted exclusively in connection with, the Class 4 regulated activity undertaken by the licenceholder.

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Company officers and employees

- 4.6 (1) In relation to a regulated activity of Class 4, section 4 does not apply to an individual who—
- (a) is an employee, director or other officer of a company licensed to carry on activities of Class 4 ("the licenceholder"), and
 - (b) carries on that activity in the course of his employment or as holder of that office, as the case may be.
- (2) In relation to a regulated activity of Class 4, section 4 does not apply to an individual who—
- (a) is not an employee, director or other officer of a company licensed to carry on activities of Class 4 ("the licenceholder"), but
 - (b) is an employee, director or other officer of another company in the same group as the licenceholder, and
 - (c) carries on that activity on behalf of the licenceholder.
- (3) In relation to a regulated activity of Class 4, section 4 does not apply to an individual who—
- (a) is an employee, director or other officer of a company licensed to carry on that activity ("licenceholder A"), and
 - (b) carries on that activity under the direction of, and in the course of a business carried on by, another person licensed to carry on that activity ("licenceholder B") pursuant to arrangements made between licenceholder A and licenceholder B.
- (4) In relation to an activity falling within paragraph (6) of Class 4, section 4 does not apply to an individual who is appointed as director of a company pursuant to arrangements between the company and a person licensed to carry on activities of Class 4 ("the licenceholder") which comply with the conditions specified in sub-paragraph (5).
- (5) The conditions referred to in sub-paragraph (4) are that the arrangements—

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- (a) require that the licenceholder be and remain satisfied that the individual is suitable and competent for the office he holds;
- (b) require that the licenceholder be and remain satisfied that the individual understands the duties and responsibilities pertaining to the office he holds under the relevant laws;
- (c) require that the licenceholder be satisfied, and continue to satisfy the Authority, that the individual is a fit and proper person to carry on the activity;
- (d) provide that the arrangements shall be terminated if the requirements of conditions (a) to (c) cease to be fulfilled; and
- (e) have not been terminated pursuant to condition (d) or otherwise.

Domestic services

4.7 (1) Subject to paragraph 4.2, in relation to an activity falling within paragraphs (1) to (4) and (6) to (15) of Class 4, section 4 does not apply to a person who is resident in the Island and where the company or partnership which is the subject of the activity—

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

(2) For the purpose of this paragraph—

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

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"company" does not include an open-ended investment company;

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

"resident" means a resident in the Island for the purposes of income tax.

Liquidators, receivers etc.

4.8 (1) In relation to a regulated activity of Class 4, section 4 does not apply to a person whilst acting in his capacity as—

(a) (i) a liquidator or provisional liquidator of a licenceholder, provided that the person complies, where appropriate, with the condition specified in sub-paragraph (2); or

(ii) a liquidator or provisional liquidator of a company or limited partnership;

and any individual acting under the control or direction of a liquidator or provisional liquidator;

(b) a receiver or manager appointed in respect of any of the assets of a company or limited partnership; or

(c) receiver of a patient.

(2) The condition referred to in sub-paragraph (1)(a)(i) is that the person acting as liquidator or provisional liquidator must, in the case of a voluntary liquidation, seek the prior approval of the Authority to act in that capacity for that licenceholder.

Administration for licenceholder

4.9 In relation to a regulated activity of Class 4, section 4 does not apply to a person who carries on the activity solely on behalf of a person licensed to carry on that activity.

Activities of the Isle of Man Post Office

4.10 In relation to a service or activity falling within paragraphs (4) or (13) of Class 4, section 4 does not apply to the Isle of Man Post Office.

Secretaryships – de minimis activities

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- 4.11 In relation to an activity falling within paragraph (7) of Class 4, section 4 does not apply to an individual who holds 10 or fewer appointments as a secretary.

Entrepreneur directorships

- 4.12 In relation to a regulated activity falling within paragraph (6) of Class 4, section 4 does not apply to an individual providing those services to a company where the individual has an investment of 10% or more in the issued share capital of that company.

Charities

- 4.13 In relation to a regulated activity falling within paragraph (6) or (7) of Class 4, section 4 does not apply to an individual providing those services to a company registered under the Charities Registration Act 1989 if the individual receives no remuneration for providing the service. For the avoidance of doubt, remuneration does not include reimbursement of reasonable expenses.

CLASS 5 –TRUST SERVICES

Corporate trustees, protectors and enforcers

- 5.1 In relation to an activity falling within paragraph (1), (2), (5) or (6) of Class 5, section 4 does not apply to a company ("company A") acting as trustee or protector in relation to an express trust, or as enforcer in relation to a purpose trust or a foundation, for which another company ("company B") provides trust administration services where—
- (a) company B is—
 - (i) the immediate and sole parent of company A, and
 - (ii) licensed to carry on activities falling within paragraph (1), (2), (5) or (6) of Class 5; and
 - (b) the activities of company A are restricted to activities falling within paragraphs (1), (2), (5) and (6) of Class 5 which company B is permitted to carry on by virtue of its licence.

Company officers and employees

- 5.2 (1) In relation to a regulated activity of Class 5, section 4 does not apply to an individual who—

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- (a) is an employee, director or other officer of a company licensed to carry on activities of Class 5 ("the licenceholder"); and
 - (b) carries on that activity in the course of his employment or as holder of that office, as the case may be.
- (2) In relation to a regulated activity of Class 5, section 4 does not apply to an individual who—
- (a) is not an employee, director or other officer of a company licensed to carry on activities of Class 5 ("the licenceholder"), but
 - (b) is an employee, director or other officer of another company in the same group as the licenceholder, and
 - (c) carries on that activity under the direction of and in the course of business of the licenceholder.
- (3) In relation to a regulated activity of Class 5, section 4 does not apply to an individual who—
- (a) is an employee, director or other officer of a company licensed to carry on that activity ("licenceholder A"), and
 - (b) carries on that activity under the direction of, and in the course of a business carried on by, another person licensed to carry on that activity ("licenceholder B") pursuant to arrangements made between licenceholder A and licenceholder B.

Employee pension schemes, share schemes etc.

- 5.3 (1) Subject to sub-paragraph (2), in relation to an activity falling within paragraph (1) or (2) of Class 5 in respect of an employee pension scheme or an employee share or debenture scheme, section 4 does not apply to an individual who—
- (a) is an employee, former employee, director, former director or other officer or former officer of a company licensed under the Act to carry on activities of Class 5); and
 - (b) carries on that activity in the course of or as a result of his employment or former employment or as holder of that office.
- (2) Paragraph (1) does not apply if—

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- (a) the employment, or the appointment to the office, is or was solely for the purpose of enabling that individual to carry on that activity; or
- (b) in the case of a former employee, director or other officer, the appointment as trustee was made after his employment ceased or after he ceased to hold that office.

De minimis activities

- 5.4 (1) In relation to an activity falling within paragraphs (1), (2), (5) and (6) of Class 5, section 4 does not apply to a specified person who is not, and does not hold more than 10 appointments as either a trustee or protector of a trust or as an enforcer of a trust or foundation.
- (2) For the purpose of this paragraph, in determining the number of trusts in respect of which a specified person is or acts as trustee, or protector, or trusts or foundations of which a specified person acts as enforcer, no account shall be taken of any trust in respect of which, by virtue of this Schedule (other than this paragraph), section 4 would not apply to that person in relation to any activity of Class 5.

Liquidators, receivers etc.

- 5.5 (1) In relation to a regulated activity of Class 5, section 4 does not apply to an individual whilst acting as—
- (a) (i) a liquidator or provisional liquidator of a licenceholder, provided that person complies, where appropriate, with the condition specified in sub-paragraph (2); or
 - (ii) a liquidator or provisional liquidator of any other company or limited partnership;
and any individual acting under the control or direction of a liquidator or provisional liquidator;
 - (b) a receiver or manager appointed in respect of any of the assets of a company or limited partnership;
 - (c) the trustee of a composition or scheme of arrangement if appointed or approved by the High Court; or
 - (d) receiver of a patient.

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- (2) The condition referred to in sub-paragraph (1)(a)(i) is that the person acting as liquidator or provisional liquidator must, in the case of a voluntary liquidation, seek the prior approval of the Authority to act in that capacity for that licenceholder.

Private trust companies

- 5.6 (1) In relation to a regulated activity of Class 5, section 4 does not apply to a company—
- (a) the sole purpose of which is to provide services in respect of a specific trust or trusts; and
 - (b) which does not otherwise undertake or, directly or indirectly, hold itself out to the public as undertaking, any regulated activity of Class 5;
- where —
- (i) the administration of the trust or trusts is carried out by a person licensed to do so, and
 - (ii) that person has notified the Authority in writing of the name of the company.
- (2) Without prejudice to the generality of paragraph (1)(b), a company shall be treated for the purpose of paragraph (1) as holding itself out to the public as undertaking a regulated activity of Class 5 if it undertakes that activity in response to introductions from third parties (not being persons licensed to carry on a regulated activity of Class 5) who hold themselves out to the public (whether within or outside the Island) as—
- (a) carrying on any regulated activity of Class 5; or
 - (b) arranging for any such activity to be undertaken by others.

Personal representatives etc.

- 5.7 In relation to a regulated activity of Class 5, section 4 does not apply to an individual whilst acting in his capacity as personal representative or as trustee (including as trustee for sale), if the activity is wholly incidental to, or for the sole purpose of facilitating, the winding up of the estate of a deceased person.

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Administration for licenceholder

5.8 In relation to a regulated activity falling within paragraph (2) of class 5, section 4 does not apply to a person who carries on the activity on behalf of, and under the direction of, a person licensed to carry on that activity.

Testamentary trusts

- 5.9 (1) In relation to a regulated activity of Class 5, section 4 does not apply to a specified person where—
- (a) the activity is carried on in respect of a trust created by or arising under the will of a deceased person;
 - (b) the trust is governed by the law of the Island;
 - (c) the testator was resident or domiciled in the Island at his death;
 - (d) the activity is ancillary to a professional activity undertaken by the specified person in his professional capacity.
- (2) In relation to a regulated activity of Class 5, section 4 does not apply to a specified person where—
- (a) the activity is carried on in respect of a trust created in the lifetime of the settlor;
 - (b) the funds of the trust consist only of funds settled or provided —
 - (i) by the settlor when the trust was created; or
 - (ii) subsequently under the will of the settlor or his spouse;and any income or gain arising from those funds;
 - (c) the settlor was resident or domiciled in the Island when the trust is created;
 - (d) where (b)(ii) applies, the settlor or spouse was resident or domiciled in the Island at the date of death; and
 - (e) the activity is ancillary to a professional activity undertaken by the specified person in a professional capacity.

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Small domestic trusts

- 5.10 In relation to a regulated activity of Class 5, section 4 does not apply to a specified person where—
- (a) at the time the trust was created, the settlor was resident or domiciled in the Island;
 - (b) no funds have been settled or provided to the trust other than those settled or provided by the settlor or his spouse when the trust was created; and
 - (c) at the time the activity is undertaken, the gross assets of the trust do not exceed £5,000.

Statutory corporations

- 5.11 In relation to regulated activity of Class 5, section 4 does not apply to—
- (a) a Department,
 - (b) a Statutory Board, or
 - (c) a local authority or joint board.

CLASS 6 – CROWDFUNDING PLATFORMS

CLASS 7 – MANAGEMENT OR ADMINISTRATION SERVICES

Liquidators, receivers etc.

- 7.1 (1) In relation to a regulated activity of Class 7, section 4 does not apply to—
- (a) an individual whilst acting in the capacity of liquidator or provisional liquidator of a licenceholder, provided that person complies, where appropriate, with the condition specified in sub-paragraph (2); and
 - (b) any individual acting under the control or direction of a liquidator or provisional liquidator.
- (2) The condition referred to in sub-paragraph (1)(a) is that the person acting as liquidator or provisional liquidator must, in the case of a voluntary liquidation, seek the prior approval of the Authority to act in that capacity for that licenceholder.

Court appointed managers

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- 7.2 In relation to a regulated activity of Class 7, section 4 does not apply to a manager appointed by the High Court to manage the affairs of a person, in so far as those affairs relate to the carrying on of a regulated activity.

CLASS 8 – MONEY TRANSMISSION SERVICES

De minimis activities

- 8.1 (1) In relation to a regulated activity of Class 8, section 4 does not apply to a person where—
- (a) that person notifies the Authority in writing that he carries on, or intends to carry on, that activity; and
 - (b) the turnover of that activity, or where that activity is part of a business comprising other activities, the turnover from that part only, at the end of any month was equal to or less than £50,000 in the preceding 12 months.
- (2) In relation to a regulated activity of Class 8, section 4 does not apply to a person—
- (a) to whom section 4 previously did not apply by virtue of sub-paragraph (1), and
 - (b) who, before the relevant date, applied to the Authority for a licence under the Act to carry on that activity,
- until application is granted or refused.
- (3) In this paragraph—
- "the relevant date" means the date when the person in question knew, or ought reasonably to have known, that the turnover referred to in sub-paragraph (1)(b) exceeded £50,000;
- "turnover" in relation to a service or activity falling within paragraph (2) of Class 8, means the cumulative total, during the 12 months in question, of all or any of the following—
- (a) foreign currency which the person, in the course of carrying on the business of a bureau de change, bought from, or sold to, customers of the bureau de change;
 - (b) payment services provided and executed by the person in the course of carrying on the business of payment services either directly or as agent;

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- (c) cheques cashed by the person in the course of providing cheque cashing services;

measured in sterling in accordance with generally accepted accounting principles;

"turnover" in relation to a service or activity falling within paragraph (4) of Class 8, means the cumulative total, during the 12 months in question, of all money converted to electronic money, measured in sterling in accordance with generally accepted accounting principles.

- (4) For the purposes of sub-paragraph (3)(a), a calculation of turnover in relation to a bureau de change shall include, in relation to any transaction, the amount of money bought from a customer, or the amount of money sold to a customer, but not both.

Transactions with overseas persons

8.2 In relation to a service or activity falling within paragraph (2) of Class 8, section 4 does not apply to an overseas person where the service or activity is conducted by a permitted person as agent or representative for the overseas person, provided—

- (a) the overseas person is authorised to conduct that service or activity off the Island by an overseas regulator;
- (b) the overseas person does not establish a permanent place of business on the Island for the purpose of carrying on such service or activity; and
- (c) the overseas person has notified the Authority of its and its agent's services or activities on the Island.

Activities of certain persons

8.3 In relation to a regulated activity of Class 8, section 4 does not apply to a person where the person is—

- (a) licensed to carry on a regulated activity falling within Class 1; or
- (b) the Isle of Man Post Office; or
- (c) the National Savings and Investments (an executive agency of the Chancellor of the Exchequer of the United Kingdom); or

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- (d) the Isle of Man Treasury, the Bank of England, the European Central Bank and the national central banks of EEA States other than the United Kingdom; or
- (e) Departments, Statutory Boards and local authorities.

Activities of certain agents

8.3A In relation to a service or activity falling within paragraph (2) of Class 8, section 4 does not apply to a person where the person is the agent of a person licensed to carry on a regulated activity falling within Class 1 (“the principal”), where that service or activity is conducted for that principal.

Liquidators, receivers etc.

- 8.4 (1) In relation to a regulated activity of Class 8, section 4 does not apply to—
- (a) an individual whilst acting in the capacity of liquidator or provisional liquidator of a licenceholder, provided that person complies, where appropriate, with the condition specified in sub-paragraph (2); and
 - (b) any individual acting under the control or direction of a liquidator or provisional liquidator.
- (2) The condition referred to in sub-paragraph (1)(a) is that the person acting as liquidator or provisional liquidator must, in the case of a voluntary liquidation, seek the prior approval of the Authority to act in that capacity for that licenceholder.

Payment institutions – transitional arrangements

- 8.5 (1) Subject to (2), in relation to a regulated activity falling within paragraph (2) of Class 8, section 4 does not apply where—
- (a) any person was immediately before 1 January 2011 carrying on that regulated activity;
 - (b) the carrying on of that activity did not require a licence; and
 - (c) that person has applied for a licence to carry on that activity before 31 March 2011.
- (2) The exemption in (1) will apply only until –

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- (a) 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
- (b) where an appeal is brought, the determination or withdrawal of the appeal.

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Regulation 5.

SCHEDULE 2

USE OF EQUIPMENT ON THE ISLAND

Exemption

1. Section 4 does not apply to any person who utilises equipment where that person is—
 - (a) a permitted person; or
 - (b) a person regulated by another regulator either in the Island or elsewhere (“the regulator”),so long as the conditions specified in paragraph 2 are satisfied.

Conditions

2. The conditions referred to in paragraph 1 are as follows—
 - (a) the Authority has been notified of the presence of the equipment on the Island;
 - (b) the person must not establish a permanent place of business on the Island for the purpose of carrying on a regulated activity;
 - (c) the only regulated activity carried on in the Island is to utilise the equipment to conduct a regulated activity;
 - (d) the person must not hold themselves out as carrying on a regulated activity in or from the Island; and
 - (e) in the case of paragraph 1(b), the regulator has been made aware of the utilisation of the equipment on the Island.

Interpretation

3. For the purposes of this Schedule, “equipment” means computer apparatus located in the Island which is used to transact any regulated activity either for temporary business continuity purposes or otherwise.

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Regulation 3.

SCHEDULE 3

INTERPRETATION

<i>Expression</i>	<i>Definition</i>
The Authority company	Means the Isle of Man Financial Services Authority; includes any body corporate, whether constituted under the law of the Island or elsewhere;
composition or scheme of arrangement	includes a deed of arrangement within the meaning of section 78 of the Bankruptcy Code 1892 ⁵ ;
director	has the same meaning as in the Act but also includes – (i) an alternate director; and (ii) in relation to a limited partnership which has elected to have legal personality, an individual who is a general partner;
electronic money	has the same meaning as in the Order;
Group	has the same meaning as in the Act;
joint board	has the same meaning as in the Local Government Act 1985 ⁶ ;
licenceholder	means the holder of a licence issued under section 7 of the Act;
licensed	means licensed under section 7 of the Act;
nominee company	means a company whose sole activity is to hold as nominee or bare trustee monies or investments beneficially owned by other persons;
overseas person	has the same meaning as in the Order;
payment institution	has the same meaning as in the Order;

⁵ V1 p.312

⁶ 1985 c.24

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payment services	has the same meaning as in the Order;
person	includes any body of persons, whether incorporated or unincorporated, as well as an individual;
receiver of a patient	means a receiver of a patient appointed, or treated as if appointed, under Part 7 of the Mental Health Act 1998 ⁷ , and includes a person acting by the authority of a judge of the High Court or the Attorney General pursuant to the said Part 7;
registered legal practitioner	means a person who is entered in the register maintained under the Legal Practitioners Registration Act 1986; ⁸
regulator	means a person (whether or not a public authority) whose functions are or include the regulation in a country or territory outside the Island of activities which would be regulated activities if they were carried on in or from the Island;
regulated entity	means a company which is – (a) licensed under the Act; (b) authorised under section 8 of the Insurance Act 2008; (c) the holder of a permit issued under section 22 of the Insurance Act 2008; (d) registered under section 25 of the Insurance Act 2008; (e) registered under section 36(1) of the Retirement Benefits Schemes Act 2000; (f) a trustee of a retirement benefits scheme that is registered as authorised or recognised under the Retirement Benefits Schemes Act 2000; or (b) the Gambling Supervision Commission;
the Rule Book	means the rules, or any part of the rules, made by the Authority under section 18 of the Act;

⁷ 1998 c.3

⁸ 1986 c.13

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- 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.
- trustee in bankruptcy means a trustee appointed under section 7(1) of the Bankruptcy Code 1892, and includes an official trustee nominated to act as trustee under that section.

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EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the 2009 and 2010 Regulations which set out exemptions for certain persons from section 4 of the Financial Services Act 2008, which prohibits the carrying on of regulated activities except in accordance with a licence. The amendments in these Regulations include references to foundations under the Foundations Act 2011 and move the exemptions for Class 6 – e-money into its new Class 8. There is also a new exemption for agents of Class 8(2) payment services.

Amendments made in 2013 –

- (a) add an exemption from Class 2 in relation to nominee companies of Class 3 licenceholders that hold unit holdings on behalf of participants in a collective investment scheme;
- (b) make a consequential change to the definition of “relevant schemes”;
- and
- (c) add to the exclusion from Class 4(9) a reference to limited partnerships.

Amendments made in 2016 –

- (a) references 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”;
- (b) 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 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, and in the circumstances there specified;
- (c) a new exemption has been inserted to exempt persons holding a licence to operate investment-based crowdfunding services from paragraph (3) or (5) of Class 2;
- (d) the extension of the Class 4 regulated entities exemption to include directors of collective investment schemes established under Schedule 1

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or paragraph 2 of Schedule 2 of the Collective Investment Schemes Act 2000;

- (e) exemption 4.2 - *Directorships – de minimis activities*, has 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*
- (f) 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). The amendments to exemptions 4.2 and 4.3 is likely to mean that individuals will need to come forward for a financial services licence, therefore a transitional provision has been included which requires an application to be made by 30 November 2016;
- exemption 4.5 - *Nominee services* has been amended to clarify that, in order to be exempt, the activity carried on by the nominee company must be exclusively in connection with the Class 4 regulated activity undertaken by its parent company;
- the wording in exemption 4.6(2) - *Company officers and employees*, has been amended to read “carries on that activity on behalf of the licenceholder” as the original wording could be misunderstood;
- new exemptions have been included for pro bono directorships or secretaryships of charities and directorships where the director has an investment in the company of 10% or more of this issued share capital;
- the insertion of a new Class 4 de minimis exemption for secretaryships;
- to clarify that Class 6 relates to crowdfunding platforms;
- the definition of “director” has been amended to include “alternate director” and also includes –
 - 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, an individual who is a general partner has been inserted;
- a definition of “person” has been included which reflects that of the current Interpretation Act 1976 and therefore retains the status quo.

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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 “regulated entity” has been amended to remove reference to companies regulated by the Insurance and Pensions Authority as it is now superfluous.