UNITED KINGDOM HOUSE OF COMMONS TREASURY COMMITTEE
INQUIRY INTO FINANCIAL STABILITY AND TRANSPARENCY:
OFFSHORE FINANCIAL CENTRES

19th June 2008

SUBMISSION TO THE TREASURY COMMITTEE ON BEHALF OF THE
ISLE OF MAN GOVERNMENT
Submitted by Mary Williams, Chief Secretary to the Isle of Man Government

---

EXECUTIVE SUMMARY

- The Isle of Man is an active, constructive and pragmatic partner in the OECD Global Forum on Taxation and is acknowledged by the OECD as a responsible international financial centre. Over recent years, the Isle of Man has striven to comply with the highest standards of international financial regulation. The Island is a mature small financial centre and has no secrecy laws or practices that protect the identity of bank customers. Whilst it is true to say that both individuals and businesses can conduct their affairs confidentially, the Island should not be bracketed with jurisdictions which have actively introduced laws and practices to promote secrecy. The Island has always been careful to maintain an appropriate balance between the confidentiality of private bank customers and businesses on the one hand, and the need for taxing and regulatory authorities to be privy to certain information on the other.

- In the operation of its legislative, legal and administrative provisions, there is no doubt that the Isle of Man is transparent and operates under the rule of law. Its laws and regulations are clearly set out in both primary and secondary legislation, which is available to all. Interpretation of certain legislative provisions by the authorities is often made the subject of practice notes, which are issued in the public domain. As in most jurisdictions, the authorities (whether tax or otherwise) can be approached on an individual basis for a private ruling, but this represents no more than confirmation of the authority’s interpretation of the Island’s laws as they apply to the facts of a particular case.

- Given their geographical and historical proximity, a strong business culture is shared between the Island and UK business. The Island has established a reputation for being internationally responsible and economically competitive. That the Isle of Man holds Moody’s and Standard & Poor’s AAA accreditation is testimony to this fact. Given the close affinity in business cultures, the Island has succeeded over recent years in becoming a gateway to the City of London in ways highly beneficial both to the Island and the UK.
“Assets worth billions of pounds held by Isle of Man companies are invested in and through the City. The way we see it is that the Isle of Man is a core asset for the City.”

The Lord Mayor of the City of London, Alderman David Lewis, 21 November 2007

---

**Constitutional, Political and Legal Background**

1. Located in the middle of the Irish Sea at the centre of the British Isles, the Isle of Man is 33 miles long and 13 miles wide at its broadest point and has a total land area of 227 square miles. The resident population is just over 80,000 (2006 interim census). There are no immigration barriers between the Island and the United Kingdom (“UK”) or Ireland, but there is a work permit system that controls the right to take up employment.

2. Constitutionally, the Island is a self-governing British Crown Dependency with its own ancient parliament (Tynwald), government and laws. The UK Government, on behalf of the Crown, is ultimately responsible for the Island’s international relations. As the Head of State, the Queen is represented on the Island by the Lieutenant-Governor. The Isle of Man has never been part of the UK nor the European Union (“EU”) and receives no funding from either. It is not represented at Westminster nor in Brussels. The Island has a limited relationship with the EU set out in Protocol 3 to the UK’s Act of Accession annexed to the Treaty of Accession by which the UK acceded to the Treaty of Rome in 1972, allowing for free trade in agricultural and manufactured products between the Isle of Man and EU members. Apart from matters relating to this special relationship, which includes customs, the Island is not bound by EU legislation.

3. The Island has no party political system and the leader of its government, the Chief Minister, is chosen by Tynwald after each general election. The Chief Minister selects nine Ministers to head the major government departments and together they make up the Council of Ministers, the central executive body or Manx “cabinet”, which is accountable to Tynwald.

4. The Island has its own legal system and jurisprudence. English law is not directly of application in general, but the Manx legal system is based on the principles of English common law which are of course shared by many Commonwealth countries. Manx law is accordingly very similar to English law in areas such as crime, contract, tort and family law. However, in certain areas, although modelled on English law, Manx law has adapted to meet the Island’s own special circumstances, particularly with regard to direct taxation, company law and financial supervision. The Island’s High Court judges hold the ancient office of Deemster and have jurisdiction over all criminal and civil matters. The rarely exercised final right of appeal to the Judicial Committee of the Privy Council remains. The Island has fully incorporated into Isle of Man law the basic rights set out in the European Convention on Human Rights.

5. The Isle of Man is committed to delivering effective regulation. It complies fully with international standards. Under the auspices of the Organisation for Economic Co-operation and Development (“OECD”), it is at the forefront of the development by small jurisdictions of a network of Tax Information Exchange Agreements (“TIEAs”), based on mutual economic benefit. It has a transparent tax code, and does not have banking secrecy laws. It has consistently shown itself to be a co-operative jurisdiction in terms of the international fight against criminal activity.

6. The Isle of Man has had one of Europe’s fastest growing economies in recent years, led by the international financial services industry. Business is attracted by the competitive tax regime, professional expertise, supportive government, world-class telecommunications infrastructure and sound financial regulation. New growth areas include e-commerce, the film industry, international shipping, aviation, and space and satellite business, whilst traditional sectors like tourism (including the famous Tourist Trophy motorcycle races) are still important.

7. In 2005/6, the Gross Domestic Product (GDP) was £1.6 billion. Over the past ten years, the Island’s average real annual rate of economic growth has been 7.8%, continuing some quarter of a century of unbroken growth. Economic sectors include: financial services (36% of GDP), construction (9%), manufacturing (7%), professional and scientific services (16%), tourism (6%), and farming/fishing (1%). The Island has a working population of around 43,000 and a current unemployment rate of 1.3%. Annual inflation to April 2008 was 4.9%.

The General Role of “Offshore” Financial Centres within the Global Financial System

8. Whilst the Isle of Man wishes to assist the Committee with its work, and therefore seeks in this submission to provide answers to the Committee's questions, nevertheless, the Island's Government also wishes to point out that there is no commonly agreed definition of the term “offshore” when linked to a financial centre. Without such a definition, those people, organisations and governments that make submissions to the Committee may be making unstated assumptions. In consequence, comparison of the submissions may prove difficult.

9. A concentration of activity in export service sectors in most small economies is not unexpected, given typically an absence of resources and economies of scale in production. That specialisation occurs in an area of comparative advantage, be it tourism or financial services, is then not only understandable
(and encouraged by free trade organisations such as the WTO), but also upheld in standard economic analysis to be beneficial both to the country concerned and to its trading partners. Exporting, whether of goods or services, is a fundamental part of most modern economies.

10. In a similar vein, there is often specialisation within multinational companies leading to their allocating specific functions to different jurisdictions. In the quest for maximum efficiency, large companies are legally and ethically justified (and indeed ought to be encouraged by all parties) in dividing their business operations into different functions and having organisational structures that minimise costs (including tax liabilities), whilst maximising profits and shareholder value.

11. Low tax centres, such as the Isle of Man, are a key part of the global financing system. By facilitating capital movement, often in niche segments of markets, they are able to bring on-stream what might otherwise be dormant, unproductive and ineffective financial resources.

12. As global markets have been liberalised and capital mobility increased so the smaller centres have deployed their capabilities to the mutual benefit of investors and recipient nations. In general, the small international financial centres make global financial markets more liquid, more cost-effective and more efficient in the direction, accumulation and allocation of investment capital, so providing for greater economic growth and increased living standards worldwide. The liberalisation of cross-border capital movement and the role of low tax centres within the global system have beneficially focussed the attention of governments of larger nations on their own tax systems and public finances generally.

13. It is often forgotten in the debate over taxation that there is nothing natural about taxes. Unlike the prices of goods and services, taxes are not determined by market forces. Rather, they are an artificial device to help governments attain various policy objectives. To the extent that governments will have differing policy objectives, so the structure of taxation systems, tax levels, and indeed whether taxes exist at all, will naturally differ between nations.

14. Smaller jurisdictions, unlike their larger counterparts, cannot expend vast sums on financial packages to attract inward investment or subsidies to sustain existing production. They simply do not have the funds. Tax is a competitive tool they do have available.

15. It is contended that the liberalisation of cross-border capital movement and the role of low tax centres within the global system has beneficially focussed the attention of governments of larger nations on their own tax systems and public finances generally. Lowering tax rates does not necessarily result in lower tax revenues, a fact not lost on governments of all sizes and for reasons not all connected with the competition for investment. However, tax pressure can contain government spending and accelerate consideration of the need for reform in ensuring the efficient, economic, and effective provision of public services.
16. With specific reference to the UK, the Isle of Man serves a highly important function as a gateway for channelling capital to the UK. Current data indicate that the deposit-taking institutions alone invest some £17 billion more in the UK than is sourced from there, thereby increasing liquidity to the UK financial markets and creating activity and profits for the UK’s financial services industry. In the Isle of Man’s absence, it is certain that much of the outflow of funds from the UK would still occur, but would go further afield and be reinvested in other jurisdictions. From a regulatory perspective, the recipient jurisdiction for such funds might well not be as transparent and well-regulated as the Isle of Man. During a visit to the Isle of Man on 21 November 2007, the Lord Mayor of the City of London, Alderman David Lewis, referring to the synergies between the Isle of Man and the City and citing the Island’s role as the leading offshore jurisdiction for non-UK companies joining the London Stock Exchange’s Alternative Investment Market (AIM), stated:

“We recognise how capable you are in helping companies list on AIM and thereby gain rapid, quality access to the City’s capital investment markets”.

17. The Lord Mayor described the Isle of Man and the City as “boosting each other’s competitive edge in a way which is unmatched by other financial centres given our mutual history, geographical proximity and business culture” and cited with approval “our common understanding of and approach to business”. The latest Hemscott Report (September 2007) ranks the Isle of Man first by market capitalisation in both top 100 non-UK companies listed on AIM, and in the overall list of non-UK companies listed on AIM. The report describes how, during 2007, the Isle of Man fed some £9.04-billion of AIM listings to London.

18. Further evidence of the commonality of interests in the development of the Isle of Man’s economy is provided in labour market data. A large proportion of the employment created in the Isle of Man in recent years has provided jobs for individuals from other parts of the British Isles. There can be little doubt that the growth of the Isle of Man’s economy has created jobs in the UK. If we were to think of the Isle of Man purely as a region of the UK, then it is likely that overall employment would be lower than is currently the case. The majority of jobs on the Island are filled by non-Manx born individuals. Just under half of the total workforce, and just over half of the workforce in the financial services sector, were born in the UK.

19. The Isle of Man Government allocates £10.4 million (2007/8 probable) on support to its farming and fisheries sectors, in schemes providing equivalent assistance to that available in the UK. A sum of £3.5 million (2007/8 probable) is provided to manufacturing.

20. Such finance is discretionary and based on the rigorous examination of business plans to be supplied in support of any application. The sums
provided are modest and cannot be said to constitute the subsidisation of ailing concerns or speculative initiatives, of a kind commonly and expensively adopted by larger nations and which are arguably the major distorting influence on decisions affecting the location of economic activity.

21. For any economic action or policy to be “harmful” implies that the aggressor jurisdiction is of a size significant enough to impose meaningful damage on others with which it is competing. In the context of competition for investment, it would have to be the case, on both theoretical and practical grounds, that a jurisdiction was conducting a sufficiently large volume of international business and, moreover, that it was its tax advantage alone that was responsible for the attraction of the investment. On neither count can the Isle of Man be said to constitute a source of harmful competition. The available quantitative data indicate clearly that the Isle of Man attracts and transacts a miniscule fraction of global investment capital flows, something which also makes it unlikely that it could constitute any systemic risk to the global financial system. Furthermore, the relatively low tax rate forms just one part of a package of operating advantages on offer. There is a vast quantity of empirical evidence that confirms that tax is just one, and not necessarily the key, factor that determines geographic and portfolio investment decisions.

22. In the Isle of Man’s case there are equally important factors including the scope, space and commitment to growth, the range and depth of professional skills, the excellent quality of life in terms of recreation, education, travel to work and housing, political stability, the English common law basis to the legal system, cost advantages, extensive communications links, the capacity and security of telecom systems, and the business benefits of the time zone.

23. The Isle of Man Government is fully cognisant of its economic interests being inextricably related to the maintenance, and indeed improvement, of its reciprocal access to overseas markets. Government’s position in matters of international co-operation is therefore one of full and open participation whilst defending its own economic interests. It holds the view that its present role in the international financial and trading system will be sustained only through open engagement with current and prospective trade partners, with standards and requirements set by mutual agreement, be it on a multilateral or bilateral basis.

24. Clearly, anything which significantly damaged the economic interests of the Isle of Man would have negative effects elsewhere, primarily in the UK, but also in the EU. Significant economic damage would consign the Isle of Man to the economic status of a deprived area which, in an EU context, would necessitate financial assistance. On the UK scale, the size of the Isle of Man would rank it only alongside a small local council. The Island’s GDP figures would suggest it is typical of areas within assisted regions throughout the EU. There are innumerable areas of similar size within EU Member States that will be receiving vast sums of EU finance, whilst also being the target for investment attracted under preferential tax schemes sanctioned by the EU, because of geographical location and low *per capita* GDP.
25. There is very little evidence that the Isle of Man financial services industry poses a threat to international financial stability. As indicated above, the scale of the flows of funds involving the Island is relatively miniscule seen against global movements (see, for example, the figures quoted in HM Treasury’s paper, “Embracing financial globalisation”, May 2008, Crown Copyright) and the recognisedly advanced level of regulation and law enforcement cooperation and assistance, coupled with the on-going programme of Double Taxation Agreements and TIEAs, serve to negate such threat as there might theoretically be.

26. The Isle of Man is generally not a jurisdiction that engages in complex financial instruments, so this is not an area of financial services that is of much importance in the Island.

**Taxation**

**Direct Tax**

27. Income Tax and National Insurance (social security) are the two significant direct taxes levied on the Island. National Insurance contributions, classes and rates are structured in a similar way to the UK’s system, as there is a reciprocal agreement on pensions and health care.

28. Resident persons (natural and legal) are taxed on worldwide income while non-resident persons are taxed only on Isle of Man source income.

**Personal Income Tax**

29. The Island’s personal income tax system for individuals is as follows:

- All sources of income are taxed on a current year basis of assessment.
- Joint assessment for married couples is available by election.
- Various personal allowances and other deductions from income are available, such as relief for interest, covenanted payments and approved pension arrangements. The main tax-free personal allowance is £9 200.
- Taxable income in excess of allowances is then subject to a standard rate of tax of 10% (residents only) on the next £10 500 and thereafter at the higher rate of 18%.
- A system of deduction of tax at source on earnings called the Income Tax Instalment Payments Scheme (ITIP) is operated, and there is a similar scheme specifically for persons involved in the building industry.
- Where a person’s total income is less than their personal allowance, up to £500 is payable directly to them annually as a tax credit.
- Personal income tax is capped at £100 000 (£200 000 for a jointly assessed married couple).
Corporate Income Tax

30. Major changes in the Isle of Man’s corporate income tax system took effect from 6 April 2006:

- The standard rate of corporate income tax is 0% on all income, except for two defined activities: (a) a licensed banking business; and (b) corporate income from Manx land and property (property development, commercial letting and rents and mineral extraction). Corporate income from these two activities is taxed at 10%.

- Corporate income from all other regulated activities, e.g., insurance, fund management, etc. are taxed at the standard rate of 0%.

- Special regimes (Non-resident Company Duty, Exempt Companies, Exempt Insurance Companies, Exempt Managed Banks, International Business Companies and other international regimes) were repealed from 6 April 2007. New entrant applications for any of the special regimes ceased to be accepted from 6 April 2006.

Indirect Taxation – Value Added Tax

31. The Isle of Man’s indirect taxation system is a mature, advanced system which in short parallels the system in operation in the UK and is in accordance with all EC/EU rules, regulations, directives, etc. Through the Customs and Excise Agreement with the United Kingdom and the Protocol 3 arrangement, the Island is part of the EC customs territory and is treated as if it were part of the fiscal territory of the EC. EC/EU legislation in most customs matters applies directly. Although EC/EU Value Added Tax and excise legislation does not apply in the Isle of Man, the provisions of the relevant directives are given legal effect through Manx legislation. The Isle of Man is almost unique amongst jurisdictions outside the EU in that it levies such taxes on everyone, including businesses, financial institutions, trusts, etc., in the same manner and at the accepted rates as for any full Member State. This levying of indirect taxes results in a substantial loss of business to many traders in the Isle of Man in that their clients can and do use other jurisdictions which do not enforce or apply such taxes and duties. The taxes imposed in the Isle of Man include VAT at a standard rate of 17½%, Customs duties, agricultural levies, excise, alcohol and tobacco, and air passenger duty. In terms of an agreement between the Isle of Man and the UK, for VAT, customs and most excise duty purposes, the two territories are treated as if one. These indirect taxes and duties are pooled and shared. This negates the need for customs barriers between the two jurisdictions. Most, but not all, excise duties are covered by the agreement. All these are subject to rules and liability similar to what applies in the UK and Europe. These taxes are enforced in the same way as in the UK, and, where the trader has not complied with the rules, penalised in the same way as in the UK. Traders have the same rights as those in the UK, whether by appeal to the UK VAT and Duties Appeals Tribunal, the European Courts or by seeking equity of treatment in the Single European Market.
32. The Island’s customs and excise (although not its direct taxation) administration and collection procedures are subject to annual audit by the UK National Audit Office. The Island’s indirect taxation receipts are included in the European Court of Auditors’ annual checks and the accounts are laid before the UK Parliament annually.

33. The Island has agreements with all member states of the EU in relation to the Directive on the Taxation of Savings Income in the Form of Interest payments, and has operated local legislation equivalent to the Directive effectively and in accordance with all EU requirements since 2005.

Isle of Man’s Position in Respect of Exchange of Information for Tax Purposes

34. The Isle of Man is an active, constructive and pragmatic participating partner in the OECD Global Forum on Taxation and is acknowledged by the OECD as a responsible International Finance Centre.

35. Recognising that exchange of information on request is the appropriate international standard, the Island is negotiating Tax Information Exchange Agreements (TIEAs) which are in the Island’s interest and of mutual economic benefit.

36. A TIEA with the United States was signed on 3 October 2002, was ratified by Tynwald in April 2006 and entered into force on 26 June 2006.

37. A TIEA with the Netherlands was signed on 12 October 2005 and was ratified in May 2006. Discussions for the development of a Double Taxation Agreement (DTA) are under way.

38. TIEAs were concluded with the seven members of the Nordic Council – Denmark, the Faroe Islands, Finland, Greenland, Iceland, Norway and Sweden – in October 2007 and with Ireland in April 2008.

39. TIEA negotiations are at various stages with other countries, and further new negotiations have commenced this year. The Isle of Man expects to sign a number of further TIEAs before the end of the year.

40. In a Press Release dated 12th October 2005, the OECD welcomed the tax information exchange agreement between the Isle of Man and the Netherlands. OECD Secretary-General Donald J. Johnston hailed the agreement as an important step forward in the global effort to detect and deter abuses of the global financial system:

“I congratulate both parties for having strengthened their bilateral cooperation to counter tax abuses. This agreement confirms the Isle of Man’s commitment to implement high international standards, thereby reinforcing its stature as a responsible international financial centre”.

9
41. On signature of the tax information exchange agreement between the Isle of Man and Ireland on 25 April 2008, Paolo Ciocca, the Chair of the OECD’s Committee on Fiscal Affairs welcomed such agreements as enhancing the international reputation of the Isle of Man as a legitimate financial centre and thereby strengthening its integration into the international financial system.

42. The veteran District Attorney for New York County, Robert Morgenthau, has expressed his view in writing that the Isle of Man is well-regulated and co-operated in assisting his office in investigations and, in 2003, the following statement was made through the US Embassy in London:

“US Customs Agents based in the US Embassy in London have confirmed that, contrary to various recent reports, in all their dealings and requests for assistance, the Isle of Man has been fully co-operative and takes an aggressive position in joint investigations involving money laundering and fraud”.

43. In the Financial Times of 21 February 2008, the Secretary-General of the OECD, Angel Gurría, referred to the need to secure a commitment to transparency and the effective exchange of information from the three financial centres which remain on the OECD’s most recent list (August 2007) of unco-operative tax havens: Liechtenstein, Monaco and Andorra. He commented that, in comparison with these financial centres, other “financial centres, such as Jersey and the Isle of Man, have made great strides in strengthening their bilateral tax co-operation and are thriving. I hope Liechtenstein continues down this path of greater co-operation.”

Blacklists

44. The Isle of Man has been labelled in the past either as a “tax haven” or as having “harmful tax practices”, or both. Whilst not accepting the legitimacy of these labels nor the methodology on which they are based, the Isle of Man nevertheless wishes to ensure that its international reputation is that of a well-regulated jurisdiction that is prepared to comply with appropriate worldwide economic and fiscal standards. As a consequence, the Isle of Man has both played an active role in, for example, the OECD Global Forum on Taxation and has rapidly updated its domestic legislation and practices to meet international benchmarks.

45. Certain countries have included so-called “subjective tests” in their fiscal legislation in relation to the OECD “tax haven” list. This list is acknowledged to be out of date. The OECD has posted a covering memorandum to its 2000 Harmful Tax Practices Report that states:

“The report includes a list of tax havens on page 17. That list should be seen in its historical context and as an evaluation by OECD member countries at a particular point in time of which countries met the criteria set out in the 1998 Report, "Harmful Tax Competition: An Emerging Global Issue". More than five years have passed since the publication of the OECD list contained in the 2000 Report and positive
changes have occurred in individual countries’ transparency and exchange of information laws and practices since that time. The list has not been updated to reflect such changes.

If a country chooses to use a list of countries derived from the OECD list, it should do so based on the relevant current facts. Thus, progress made in the implementation of the principles of transparency and effective exchange of information in tax matters should be taken into account by such countries and their legislatures. This statement does not reflect any judgment on the tax or other policies underlying country lists.”

46. According to Angel Gurría (again writing in the Financial Times of 21 February 2008), “almost all the jurisdictions identified as potential tax havens by the OECD in 1998 have committed to the principles of transparency and effective exchange of information.” As a reflection of the Isle of Man’s commitment to these principles, the Isle of Man has not appeared on the OECD’s list of unco-operative tax havens since 2001. Moreover, since 2001, the Isle of Man has taken a place in its own right at the OECD’s regular Global Forum meetings, where only unlisted jurisdictions have the right to a seat.

47. In relation to blacklisting, Jeffrey Owens, Director of the OECD’s Centre for Tax Policy and Administration, testified in 2007 before the United States Senate Finance Committee:

“Lack of transparency and lack of effective exchange of information are the key attractions for tax cheats because they can place their assets in a jurisdiction with these features in the knowledge that information on their activities will not be disclosed to the tax authorities back home. They are also the key factors in identifying tax havens.”

48. During his visit to the Isle of Man in November 2007, the Lord Mayor of the City of London, Alderman David Lewis, affirmed that:

“From the City’s point of view, your brand was immensely strengthened when you committed to work with the OECD on improving transparency and tax information, and then backed it up with a host of Tax Information Exchange Agreements.”

49. The Isle of Man has a transparent tax system, provides prompt and effective co-operation to countries which request assistance in accordance with the Island’s financial crime legislation and is able to provide tax information on the basis of TIEAs.

Regulation

50. The Island is a relatively small, but nonetheless mature, international financial services centre. As such, it is acutely aware that it must act responsibly and
co-operatively at all times, in order to enjoy the confidence of standard setters and assessment bodies and secure reciprocal access to other markets. The Island’s principal asset as a financial centre is its reputation, and sustaining that reputation is the most important discipline imposed upon it.

51. In regulatory terms, the first priority which this requires is for the Island to adhere to accepted international standards in all areas of financial activity which it regulates. In particular, this refers to the core principles and recommendations of the Basel Committee on Banking Supervision, the International Organisation of Securities Commissions (“IOSCO”), the International Association of Insurance Supervisors and the Financial Action Task Force (“FATF”). The Island is committed to adherence to the principles of all the FATF recommendations.

52. The Island’s regulatory arrangements are grouped under the Financial Supervision Commission (“FSC”) which oversees all banking, funds, investment, corporate and trust service providers business, and the Insurance & Pensions Authority (“IPA”) which supervises insurance and pensions business. Both are independent statutory bodies with their own legislation and powers of supervision and intervention. The Companies Registry is also part of the FSC.

53. The FSC’s Annual Report is available on its website (www.fsc.gov.im) and that of the IPA on its website (www.gov.im/ipa). Both go into detail about their regulatory operations.

54. Licensing of institutions and individuals is subject to a comprehensive regime for establishing the fitness and propriety of applicants and their key staff on an initial and ongoing basis. This includes important elements of competence and financial soundness. Supervision is exercised on a consolidated basis, and embraces on-site visits to licenceholders as a core element.

55. The FSC has a pro-active enforcement unit which is responsible for AML/CFT policy for FSC licenceholders. It also investigates and pursues unlicensed regulated activity. It petitions the High Court for the disqualification of directors of companies in deserving cases, and has published a record of successful action (see Appendix A).

56. In 2000, the Financial Stability Forum gave recognition to the Island’s premier position and announced that it was placing the Isle of Man in the Group 1 category of offshore jurisdictions, based on responses from the major centres and their experiences in dealing with the Island.

57. The Island has been assessed under the auspices of the FATF on two occasions in respect of anti-money laundering measures and was judged to be co-operative and significantly in compliance with all key FATF recommendations. At no time has the Island been listed as unco-operative by the FATF. All anti-money laundering initiatives on the Island are co-ordinated through an industry-wide Joint Anti-Money Laundering Advisory Group.
58. In 2002/03, the IMF conducted a full assessment of the Island’s compliance with all of the international standards referred to above. Its report was published and is available on the FSC’s website. The Island was “assessed to have a high level of compliance”. It was commended for the attention given to:

“upgrading the financial regulatory and supervisory system to meet international supervisory and regulation standards in banking, insurance, securities, and anti-money laundering and combating the financing of terrorism”.

59. The IMF’s assessment of the Island’s regulatory arrangements was very important because, apart from reviewing the legislative infrastructure, it focussed on how implementation was being carried out in practice.

60. In common with the other Crown Dependencies, the Island is shortly to be visited again by the IMF as part of its ongoing programme of assessment. The Island is confident that it will be shown to have maintained a high degree of compliance with evolving standards. Meanwhile, staff of the FSC have participated in assessing other jurisdictions as members of IMF and FATF missions.

61. As a jurisdiction in which companies and trusts are administered, it was decided that all service providers in this area should be regulated pro-actively to ensure that high levels of due diligence are applied in all areas of the business. Applicable legislation was introduced in 2000. In particular, this ensured that the legal requirement for intermediaries to know the ultimate beneficial owners of all companies administered though the Island, as well as the identity of all settlors, beneficiaries and other persons involved with trusts, could be enforced pro-actively. When requested, these regulated intermediaries are in a position to provide relevant information to the regulators and law enforcement authorities who use appropriate powers to assist in domestic and cross-border investigations.

62. The regulation of corporate and trust service providers was a clear example of the Island identifying a potential threat to its reputation and introducing pioneering legislation to prevent malpractice. In so doing, and in regulating business which still remains unsupervised in most major jurisdictions, including the UK, the Island has been determined not to see its hospitality abused.

63. On taxation, the FSC’s stance is that individuals have a right to plan their tax affairs efficiently in compliance with the law. However, it does not regard aggressive tax avoidance for clients as a prudent part of any licenceholder’s business strategy. Any suspicion of tax evasion would need to be reported immediately as a suspicious transaction to the Financial Crime Unit of the Isle of Man Constabulary.
64. The ability to penetrate the corporate veil as outlined above has been especially important in the securities arena, where the Island has become a full signatory to the benchmark IOSCO Multilateral Memorandum of Understanding: as such, the Island has been judged by its peers to have the legislative ability to provide full co-operation in dealing with market manipulation and abuse, insider dealing and other securities malpractices. The FSC has established a strong track record of co-operation in this area (see Appendix A).

65. The Island has also exchanged individual memoranda of understanding with a number of international regulators to underpin its co-operation in the cross-border supervision of international financial services groups. Because of the large number of regulated businesses with UK connections, the regulators here have good relations with the FSA. The supervisory regimes in both the UK and Isle of Man complement each other well. The FSC provides copies of its on-site visit reports to the FSA where the latter is lead regulator for the group concerned. There are regular meetings and communication with the FSA, and the FSA has visited the Isle of Man. This dialogue has been especially close, for example, in the context of the current liquidity difficulties in the money markets generally.

66. A number of financial services groups have operations in two or more Crown Dependencies. It is therefore important that these jurisdictions co-ordinate their regulatory policies wherever possible, to try and eliminate unnecessary distinctions and reduce the scope for regulatory arbitrage. Regular meetings take place, and indeed joint papers on certain topics have been published.

67. HM Treasury has granted the Island designated territory status, which provides arrangements for the distribution of the Island’s authorised collective investment schemes in the UK. This status is subject to regular review, normally by the FSA on behalf of HM Treasury.

68. The Island operates compensation schemes for depositors, investors and policyholders, as well as a financial services ombudsman scheme as part of the Office of Fair Trading.

[It is noted that the Treasury Committee wishes to examine how the Island’s regulators “address the issues that concern the UK”. However the FSC and IPA are unaware of any regulatory issues which currently concern the UK.]

Law and rule enforcement: Transparency and Co-operation

69. Money laundering is criminalised in the Isle of Man. The current statutory basis of that criminalisation is contained in the Drug Trafficking Act 1996 (drug trafficking offences), the Anti-Terrorism and Crime Act 2003 (terrorism) and the Criminal Justice Act 1990 (all other crimes). Draft legislation in the form of the Proceeds of Crime Bill 2008 has been passed by Tynwald’s House of Keys and is currently before the Legislative Council. When enacted later this year, it will consolidate and reform the criminal law in the Island with regard to money laundering, replacing separate drug trafficking...
and criminal justice legislation with a consolidated and updated set of provisions.

70. The offence of money laundering extends to any type of property, regardless of its value that directly or indirectly represents the proceeds of crime. The provisions of the Drug Trafficking Act 1996, the Criminal Justice Act 1990 and the Anti-Terrorism and Crime Act 2003 relating to money laundering are broadly drafted and, for example, in the Drug Trafficking Act 1996, refer to any property which represents the proceeds of drug trafficking. Similar provisions are found in the other statutes referred to above. No type of property is excluded and there is no minimum or maximum value. Predicate offences for money laundering under the Drug Trafficking Act 1996 and Anti-Terrorism and Crime Act 2003 are specified and self-explanatory, namely drug trafficking (as defined in section 1 of the Drug Trafficking Act) and terrorism as defined in section 1 of the Anti-Terrorism and Crime Act. With regard to “all crimes” involving money laundering, as defined in sections 17A to 17C of the Criminal Justice Act 1990, there is no list of predicate offences. The money laundering offences in the Criminal Justice Act 1990 apply in respect of the proceeds of criminal conduct which is defined to mean conduct which-

(a) constitutes an offence to which this Part (Part 1 of the Criminal Justice Act 1990) applies; or

(b) would constitute such an offence if it had occurred in the Island.

71. Part 1 of the Criminal Justice Act 1990 defines such an offence in the following terms:

“References to an offence to which this part applies are references to an offence which-

(i) is a prescribed offence; or

(ii) if not a prescribed offence, is an offence triable on information (whether or not it is exclusively so triable), other than a drug trafficking offence or an offence under any of sections 7 to 10 of the Anti-Terrorism and Crime Act 2003.” [at section 1(9)(c)]

72. All serious and intermediate offences are therefore caught by this definition as these are triable on information (indictment) and there is a power by subordinate legislation to prescribe less serious offences which would be triable in the summary (lower) courts. To date, no such subordinate legislation has been prepared.

73. The Proceeds of Crime Bill defines money laundering in relation to criminal property which is defined as the benefit from criminal conduct which is itself defined as conduct which constitutes an offence in the Island or would constitute an offence if it occurred there. Criminal conduct will not therefore
be restricted to offences which are triable on information, but will encompass all offences.

74. The legislation which contains provisions relating to the financing of terrorism is the Anti-Terrorism and Crime Act 2003. Terrorist financing is criminalised in the Isle of Man by sections 7–10 of the Anti-Terrorism and Crime Act 2003. Section 7 deals with the offence of fund-raising for terrorism, section 8 the offence of use and possession of property for the purposes of terrorism, section 9 the offence of entering into an arrangement for the purposes of financing terrorism and section 10 the offence of money laundering of terrorist property. Each of these sections provides for penalties on summary conviction including custody for a term not exceeding 6 months or a fine not exceeding £5000 or to both, or on conviction on information to custody for a term not exceeding 14 years or an unlimited fine or both.

75. Terrorist financing offences extend to any person who wilfully provides or collects funds by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used in full or in part to carry out a terrorist act, by a terrorist organisation or by an individual terrorist. The offence of fund-raising as defined in section 7 provides that a person commits an offence if he invites another to provide money or other property and intends that it should be used or has reasonable cause to suspect that it may be used for the purposes of terrorism, if he receives money or other property and intends that it should be used or has reasonable cause to suspect that it may be used for the purposes of terrorism, if he provides money or other property and knows or has reasonable cause to suspect that it may be used for the purposes of terrorism. Terrorism is broadly defined in section 1 to include terrorist acts and action taken for the benefit of proscribed organisations.

76. The terrorist financing offences do not require that the funds are actually used to carry out or attempt a terrorist act or be linked to a specific act. The offences refer to funds being used “for the purposes of terrorism”, which is defined broadly to include the use or threat of terrorist action and the benefitting of a proscribed organisation.

77. There is no specific offence of attempting to commit the offence of terrorist financing, but section 9 of the Criminal Law Act 1981 provides that an attempt to commit an offence shall be an offence punishable as if the offence itself had been committed. Attempts to commit the offences of terrorist financing are therefore criminalised.

78. Whilst there are currently no ancillary offences defined in the legislation specific to the financing of terrorism offences, ancillary offences in general are covered by section 330 of the Criminal Code 1872 which deals with conspiracy and sections 350, 351 and 354 which deal with accessories. Section 330 of the Criminal Code 1872 provides that conspiracy to commit any offence constitutes a misdemeanour with conviction attracting a sentence of a term of imprisonment of up to 10 years. Sections 350, 351 and 352 define the law in relation to accessories to felony (serious crimes which are triable on information) and provide that the accessory before the fact “to any felony shall
be guilty of felony and may be indicted or proceeded against by information, tried, convicted and punished in all respects as if he were a principal felon.”

79. Part 7 of the Proceeds of Crime Bill 2008 specifies that the Council of Ministers may by order extend provisions relating to investigations, including production orders, search and seizure warrants, disclosure orders, customer information orders and account monitoring orders, to external investigations. It may also make provision for prohibition on dealing with property which is the subject of an internal request and for the realisation of property for the purpose of giving effect to an external order.

80. The Isle of Man is able to provide a wide range of mutual legal assistance involving the production, search and seizure of information

81. Sections 24 and 25 of the Island’s Criminal Justice Act 1990 (“the 1990 Act”) provide powers to obtain information, search warrants and answers to questions.

82. Section 24 of the 1990 Act provides for investigatory powers exercisable at the discretion of the Attorney General where there is a suspected offence (wherever committed) involving serious or complex fraud. Section 25 of the 1990 Act allows for dissemination of information obtained to certain authorities outside the Isle of Man. Under section 24 of the 1990 Act, a person under investigation or any other person may be required to produce specified documents and if necessary provide an explanation of them. Section 24 goes on to provide for a warrant to be issued to enter and search premises and take possession of documents in certain circumstances, for example, where serving notice might seriously prejudice the investigation.

83. Sections 21 and 22 and Schedule 2 of the Criminal Justice Act 1991 (“the 1991 Act”) provide powers to obtain evidence, witness statements and search warrants.

84. Section 21 of the 1991 Act mirrors section 4 of the Criminal Justice (International Co-operation) Act 1990 of England and Wales, providing for evidence to be received by a nominated court. Upon receipt of a request for assistance in obtaining evidence in the Island in connection with a criminal investigation or proceedings in another country, the Attorney General may make an application to the High Bailiff to receive evidence. In doing so, he must be satisfied that there are reasonable grounds to suspect that an offence has been committed and that an investigation or proceedings are in progress.

85. Section 22 of the 1991 Act provides for search and seizure in relation to material relevant to section 21. In order to invoke section 22, an application to a Deemster (i.e. a higher court) is necessary. The Deemster must be satisfied that proceedings have been instituted or an arrest made, that the offence in the requesting country would constitute an arrestable offence if it had occurred in the Island and that there are reasonable grounds for suspecting that there is evidence on premises on the Island which the suspect occupies or controls.
86. Schedule 2 of the 1991 Act provides a framework for the use of section 21 dealing with securing the attendance of witnesses, the power of the High Bailiff to administer oaths, transmission of evidence and costs. Schedule 2 also deals with privilege of witnesses.

87. The Isle of Man courts have over time laid down extensive case law in relation to these provisions.

88. Sections 52 to 54 of the Drug Trafficking Act 1996 and section 17J of the Criminal Justice Act 1990 confer powers on the High Court to grant production orders and search warrants – since it is not stipulated that the drug trafficking, criminal conduct or proceeds of crime must have occurred in the Isle of Man, these provisions are used to provide mutual legal assistance.

89. Sections 11 and 12 and Schedule 1 of the Police Powers and Procedures Act 1998 enable a constable to obtain further production orders and search warrants to seize material on specified premises which is likely to be of substantial value to the investigation and these powers can be invoked in respect of requests for mutual legal assistance.

90. The Isle of Man is able to provide assistance in a timely, constructive and effective manner. Letters of request for assistance are received by the Attorney General’s Chambers and dealt with by two full-time advocates with the title “Legal Officer (Financial Crime).”

91. The most common type of request for mutual legal assistance is for the production of evidence and witness statements for use outside the Isle of Man and this is usually achieved via section 21 of the 1991 Act. As outlined above, this section requires that there are reasonable grounds to suspect that an offence under the law of the requesting country has been committed, not necessarily an offence under the law of the Isle of Man. It is possible to invoke this section either when criminal proceedings have been instituted or a criminal investigation is being carried on.

92. The requirements for proceeding under section 24 of the 1990 Act are similar, there must be grounds to suspect serious or complex fraud (in the ordinary meaning of the word) and it is sufficient that an investigation has commenced.

93. Section 21 (3) of the 1991 Act stipulates:

   “Where it appears to the Attorney General that the request relates to a fiscal offence in respect of which proceedings have not yet been instituted he shall not exercise his powers under subsection (2) unless-

   (a) the request is from a country or territory which is a member of the Commonwealth or is made pursuant to a treaty to which the United Kingdom is a party and which extends to the Island; or

   (b) he is satisfied that the conduct constituting the offence would constitute an offence if it had occurred in the Island.”
94. Therefore, a request may be refused on the sole ground that it relates to a fiscal offence only in rare cases and not simply where the offence is considered to involve fiscal matters. Mutual legal assistance can be rendered in the absence of dual criminality with the exception of cases involving a fiscal offence where proceedings have not been instituted and where the request is received from a country or territory which is not a member of the Commonwealth or is not made pursuant to a treaty to which the UK is a party and which extends to the Island. The Isle of Man has the ability to and in practice does take expeditious action in response to requests by foreign countries for mutual legal assistance. Assistance is almost always granted when requests merely require evidence to be obtained. When requests are for restraint, freezing, seizure or confiscation, assistance can only be granted if the requesting country or territory is either the UK or a “designated country or territory”, as designated by secondary legislation.

95. To put some flesh onto these rather legalistic bones, one might refer to a case that arose in 2001 from a complex share-pricing fraud perpetrated against an American company. Heeding their statutory obligations under the Criminal Justice Act 1990 to curb money laundering, local banks made a spontaneous suspicious transaction report to the Financial Crimes Unit (FCU) concerning the transfer of some $200-million to the Island from Switzerland. Following close co-operation between the Island’s Attorney General and the United States Securities and Exchange Commission (SEC), a restraint order was eventually granted locally under the Criminal Justice Act 1990, freezing part of the funds in local bank accounts in contemplation of criminal proceedings against the responsible individual in the US which would in turn lead to a forfeiture order enforceable against the Isle of Man funds. Following extensive litigation, including an appeal, the Isle of Man High Court upheld the restraint order and affirmed the Island’s statutory duty to recognise and enforce the external confiscation order made in the US. As a result of this textbook case of co-operation between the law enforcement and judicial authorities of the two jurisdictions, some $175-million was repatriated to the US.

96. The Isle of Man has established an asset forfeiture fund in respect of drug trafficking. Confiscated proceeds of drug trafficking are deposited in the fund and are used for law enforcement, health, education and other appropriate purposes. Confiscated proceeds of other crimes are currently paid to Treasury, but it is envisaged that a similar proceeds of crime fund will be established in respect of the proceeds of non-drug trafficking criminal conduct. There are currently no specific legislative provisions relating to the sharing of confiscated assets with other jurisdictions. Asset sharing is currently negotiated on an individual case by case basis, but the Proceeds of Crime Bill contains provision that: “The Treasury may enter into asset sharing agreements on behalf of the Island.” A draft asset-sharing agreement is therefore currently being negotiated between the Isle of Man and the United States and it is envisaged that further such agreements will be entered into once the Bill becomes law.
Appendix B reflects the statistics for international requests for assistance received by HM Attorney General under the relevant mutual legal assistance criminal justice legislation.

Conclusion

98. The Isle of Man is a mature, responsible small financial centre. The Island has striven over recent years to comply with the highest standards of international financial regulation. The Isle of Man has no secrecy laws or practices that protect the identity of bank customers. Whilst it is true to say that both individuals and businesses can conduct their affairs confidentially, the Island should not be bracketed with jurisdictions which have taken positive action to introduce laws and practices to promote secrecy. The Island has always been careful to maintain an appropriate balance between the confidentiality of private individuals and businesses on the one hand and the need for taxing and regulatory authorities to be privy to certain information on the other.

99. In the operation of its legislative, legal and administrative provisions, there is no doubt that the Isle of Man is transparent. Its laws and regulations are clearly set out in both primary and secondary legislation, which is available to all. Interpretation of certain legislative provisions by the authorities is often made the subject of practice notes, which are also issued in the public domain. As in most countries, the authorities (whether tax or otherwise) can be approached on an individual basis for a private ruling, but this represents no more than confirmation of the authority’s interpretation of the Island’s laws as they apply to the facts of a particular case.

100. Given their geographical and historical proximity, a strong business culture is shared between the Island and UK business. Given this close affinity, the Island has succeeded over recent years in becoming a core asset for the City of London in ways highly beneficial both to the Island and the UK.
APPENDICES

Appendix A

Successful Company Director Disqualifications undertaken under Section 26 of Companies Act 1992

<table>
<thead>
<tr>
<th>Year</th>
<th>1999</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
<th>2006</th>
<th>2007</th>
<th>2008</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3</td>
<td>6</td>
<td>6</td>
<td>1</td>
<td>5</td>
<td>5</td>
<td>1</td>
<td>3</td>
<td>1</td>
<td>2</td>
</tr>
</tbody>
</table>

IOSCO requests since the Isle of Man signed the IOSCO Multilateral Memorandum of Understanding (Oct 2005)

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3</td>
<td>4</td>
<td>8</td>
</tr>
</tbody>
</table>

Insider Dealing Cases in which the Isle of Man FSC has provided External Assistance

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>3</td>
<td>5</td>
<td>9</td>
<td>2</td>
</tr>
</tbody>
</table>
# Appendix B

**ACTION TAKEN IN RELATION TO INTERNATIONAL LETTERS OF REQUEST RECEIVED BY HM ATTORNEY GENERAL**

**YEAR 2006 TOTAL = 90 REQUESTS**

<table>
<thead>
<tr>
<th>ACTION TAKEN</th>
<th>NUMBER OF REQUESTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 21 Criminal Justice Act 1991 powers used</td>
<td>42</td>
</tr>
<tr>
<td>Section 24 Criminal Justice Act 1990 powers used</td>
<td>16</td>
</tr>
<tr>
<td>Further information sought from Requesting Authority – none provided</td>
<td>3</td>
</tr>
<tr>
<td>Request withdrawn by Requesting Authority</td>
<td>3</td>
</tr>
<tr>
<td>No information in Isle of Man to assist/unable to assist (unable to serve witness summons)</td>
<td>11</td>
</tr>
<tr>
<td>Criminal Justice Act Restraint Order obtained</td>
<td>0</td>
</tr>
<tr>
<td>Restraint order varied/discharged</td>
<td>2</td>
</tr>
<tr>
<td>Section 52 Drug Trafficking Act Production Order obtained</td>
<td>0</td>
</tr>
<tr>
<td>Section 26 Drug Trafficking Act Restraint Order obtained</td>
<td>0</td>
</tr>
<tr>
<td>Section 30 Criminal Justice Act 1991 used for service of process, etc.</td>
<td>1</td>
</tr>
<tr>
<td>Voluntary assistance provided</td>
<td>3</td>
</tr>
<tr>
<td>Request refused</td>
<td>0</td>
</tr>
<tr>
<td>AG’s consent to share proceeds granted</td>
<td>2</td>
</tr>
<tr>
<td>Ongoing requests</td>
<td>7</td>
</tr>
</tbody>
</table>

**YEAR 2007 TOTAL = 72 REQUESTS**

<table>
<thead>
<tr>
<th>ACTION TAKEN</th>
<th>NUMBER OF REQUESTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 21 Criminal Justice Act 1991 powers used</td>
<td>38</td>
</tr>
<tr>
<td>Section 24 Criminal Justice Act 1990 powers used</td>
<td>12</td>
</tr>
<tr>
<td>Further information sought from Requesting Authority – none provided</td>
<td>4</td>
</tr>
<tr>
<td>Request withdrawn by Requesting Authority</td>
<td>0</td>
</tr>
<tr>
<td>No information in Isle of Man to assist/unable to assist (unable to serve witness summons)</td>
<td>6</td>
</tr>
<tr>
<td>Description</td>
<td>Count</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Criminal Justice Act Restraint Order obtained</td>
<td>0</td>
</tr>
<tr>
<td>Restraint order varied/discharged</td>
<td>0</td>
</tr>
<tr>
<td>Section 52 Drug Trafficking Act Production Order obtained</td>
<td>0</td>
</tr>
<tr>
<td>Section 26 Drug Trafficking Act Restraint Order obtained</td>
<td>0</td>
</tr>
<tr>
<td>Section 30 Criminal Justice Act 1991 used for service of process, etc.</td>
<td>1</td>
</tr>
<tr>
<td>Voluntary assistance provided</td>
<td>0</td>
</tr>
<tr>
<td>Request refused</td>
<td>0</td>
</tr>
<tr>
<td>AG’s consent to share proceeds granted</td>
<td>0</td>
</tr>
<tr>
<td>Ongoing requests</td>
<td>11</td>
</tr>
</tbody>
</table>