



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

Lught-Reill Shirveishyn Argidoil Ellan Vannin

Licensing Policy
for regulated activities under the
Financial Services Act 2008

XXXX 2018

This licensing policy applies to persons carrying on, or intending to carry on, regulated activities under the [Financial Services Act 2008](#). Other licensing policies apply in respect of activities under the [Insurance Act 2008](#) and the [Retirement Benefit Schemes Act 2000](#) and there is a supplemental policy for persons providing services to collective investment schemes.

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Glossary

1931 Act company	a company constituted under the Companies Act 1931
2006 Act company	a company constituted under the Companies Act 2006
AML/CFT Code	means any code currently in operation made under section 157 of the Proceeds of Crime Act 2008 or 27A of the Terrorism (Finance) Act 2009 and includes the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015
Applicant	the person applying for a licence to undertake one or more regulated activities. Unless the context precludes, the term “applicant” should be read as including “licenceholder”
CIS	collective investment scheme
CISA08	Collective Investment Schemes Act 2008
Class of activity	the various classes of regulated activity are set out in the Regulated Activities Order and are grouped into the following classes – <ul style="list-style-type: none"> • Class 1 – Deposit Taking • Class 2 – Investment Business • Class 3 – Services to Collective Investment Schemes • Class 4 – Corporate Services • Class 5 – Trust Services • Class 6 – Crowdfunding Platforms • Class 7 – Management or Administration Services • Class 8 – Money Transmission Services
CODA	Company Officers (Disqualification) Act 2009
Controlled Function	certain roles within or for a licenceholder, where the persons undertaking those roles are classed generally as key persons, (see Regulatory Guidance – Fitness and Propriety) and as a result where the persons holding such roles must be fit and proper
Controller	“a person who either alone or with any associate or associates is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the [applicant/licenceholder] or of another body corporate of which it is a subsidiary” (see s. 48 of the FSA08 for full definition)
Corporate officer or corporate trustee	a company whose business consists solely of acting either as a director or secretary or as a trustee (see the Rule Book for full definitions)

CSP	Corporate Service Provider
Excluded activities / exclusions	activities that fall outside the scope of the Financial Services Act 2008. Details of excluded activities are set out under each class in the Regulated Activities Order
Exempt persons / exemptions	persons that carry on regulated activity but have been exempted from the requirement to hold a financial services licence. Details of exempted regulated activities are set out under each class in the Financial Services (Exemption) Regulations
Financial Services (Exemption) Regulations/ Exemption Regulations	this reference will always be read as the version of the Financial Services (Exemptions) Regulations which is in effect at the relevant time
Financial Services (Fees) Order	this reference will always be read as the version of the Financial Services (Fees) Order which is in effect at the relevant time
Fitness and Propriety Assessment Forms	Forms F&P 1 (Individual Questionnaire), F&P 2 (Notification Only Form), F&P 3 (Controller Questionnaire), F&P 4 (Intermediate Controller Notification Form) and F&P 5 (Individual Controlled Function Cessation Form) - before completing these forms, applicants should refer to the IoMFSA's Regulatory Guidance – Fitness and Propriety , which can be found on the IoMFSA's website
Foundation	includes Isle of Man foundations
FSA08	the Financial Services Act 2008
IoM	the Isle of Man
IoMFSA	the Isle of Man Financial Services Authority
Isle of Man foundation	a foundation within the meaning of the Foundations Act 2011
Key person	a person who has, or who appears to the IoMFSA to have, significant powers and responsibility in relation to any regulated activity (see s.48 of the FSA08 for full definition) – typically a key person will be in one of the Controlled Functions
Licence	a financial services licence issued under section 7 of the FSA08
Managed entity	a licenceholder that is managed in the IoM by a Class 7 or Class 3(9) licenceholder (the 'manager'), that manages or administers the 'managed entity' (see Appendix 3)
MLRO	the Money Laundering Reporting Officer

Permitted person	a licenceholder and/or exempt person
Person	includes individuals and any body of persons, corporate or unincorporate
Professional Officer	an individual licensed to carry on regulated activities falling within: <ul style="list-style-type: none">• Class 4 paragraph (6) acting as an officer of a company; and/or• Class 5 paragraph (2) acting as trustee (other than sole trustee) in relation to an express trust and/or (5) acting as a protector in relation to an express trust and/or (6) acting as an enforcer in relation to either a purpose trust or a foundation
Regulated activity	an activity which is a regulated activity set out in the Regulated Activities Order (see 'class of activity')
Regulated Activities Order/ RAO	this reference will always be read as the version of the Regulated Activities Order which is in effect at the relevant time
Representative Office	an entity that is licensed to carry on regulated activities falling within Class 1(3)
Restricted Depositor	a person that is permitted to deposit funds with a Class 1(2) licenceholder, subject to the restrictions set out in the Regulated Activities Order
Rule	a particular rule contained in the Rule Book
Rule Book	the Financial Services Rule Book made under the FSA08. This reference will always be read as the version of the Rule Book which is in effect at the relevant time
Scheme	a collective investment scheme
TSP	Trust Service Provider

Introduction

- (i) **General matters** - This licensing policy is guidance issued under s.6 of the FSA08.¹ It is intended to help those who conduct, or wish to conduct, regulated activities to understand the IoMFSA's licensing process. **It also continues to apply to persons that already hold a financial services licence.** The IoMFSA cannot provide legal advice. Licence applicants should seek appropriate legal advice on their particular circumstances.
- (ii) **Exemptions and exclusions from the licensing requirements** - Certain activities and persons may benefit from an exclusion or exemption from the financial services regulatory regime.
- An exclusion means the activity is not a regulated activity.²
 - An exemption means the activity is regulated activity but which can be performed without a licence. Exemptions can be subject to conditions. If an exempt person undertakes regulated activities outside the exemption, or in contravention of conditions, the IoMFSA's enforcement powers come into effect.³
 - If a person is obliged to obtain a licence for some of its regulated activities then its licence (and hence the IoMFSA's Rule Book) applies to all regulated activities conducted by that person, including those which, had a licence not been held, potentially would have been exempt.
- (iii) **Licensing requirement** - It is an offence to undertake a regulated activity by way of business without a licence or an applicable exemption⁴.
- (iv) **Application of the licensing policy –**

Before being granted a licence the applicant must positively satisfy the IoMFSA that the applicant is fit and proper to undertake the regulated activity. Where the IoMFSA is not positively satisfied, an application will be turned down. It is for the applicant and relevant persons to satisfy the IoMFSA that they are fit and proper, rather than the IoMFSA to prove that the applicant and relevant persons are not fit and proper. The licenceholder's continuing obligation in this matter is covered in Rule 7.12 of the Rule Book. As an aspect of integrity, the IoMFSA expects openness and honesty and to be informed by the applicant and relevant persons of anything that the IoMFSA ought to know that may be of any relevance to the application.

The IoMFSA exercises its functions, so far as reasonably practicable, in line with its regulatory objectives⁵. In determining licence applications, the IoMFSA will consider the

¹ s6 FSA08 (3): The IoMFSA may publish guidance setting out the criteria that it will normally apply in assessing whether it is satisfied as required by subsection (1).

² The exclusions are set out under each class in the Regulated Activities Order

³ The exemptions are set out under each class in the Financial Services (Exemption) Regulations

⁴ s4 of the FSA08

⁵ s2(2) of the FSA08:(a) securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity; (b) the reduction of financial crime; and (c) the maintenance of confidence in the

potential impact of granting a licence on its ability to meet its regulatory objectives, the impact of its licensing decision on the stability of the financial system of the Island, and the effect the granting of the licence could have on the reputation of the Island.

The IoMFSA will objectively take into consideration the cumulative effect of the information before it in relation to the fitness and propriety of the applicant, and any person that will hold a Controlled Function⁶ for the applicant, and how this could impact upon its regulatory objectives. The IoMFSA may also consider any other persons employed or to be employed by the applicant, or associated with the applicant for the purposes of its business⁷. It is possible that single matters (which, taken in isolation, would not justify a refusal to issue a licence) may, when considered alongside other matters have the cumulative effect of being sufficient to refuse to issue a licence.

The circumstances of each applicant will not be identical. The IoMFSA examines all relevant matters and considers each application on its own merits. Having examined an application the IoMFSA may decide to make more extensive enquiries to satisfy itself about particular risks or concerns.

Where an applicant demonstrates that the risks associated with its business can be addressed in a different way, the IoMFSA may agree to modify the application of this policy for that applicant. In other cases, where there is a particular risk, the IoMFSA may put additional conditions/directions and requirements on a licence to reflect the individual circumstances or it may refuse to issue a licence.

If a licenceholder ceases to undertake a class of regulated activity for which it holds a licence, or ceases to employ persons competent to undertake that activity, the IoMFSA expects the licenceholder to surrender that element of its licence permission.

This document is not exhaustive or binding on the IoMFSA. The licensing regime requires the IoMFSA to exercise discretion; how it does this will depend on the applicant's particular circumstances.

- (v) **The licence application process and review of decisions** - Licence applicants are required to submit a completed [licence application form](#) with all necessary supporting documentation, including a [business plan, and the relevant application fee](#).

Applicants for a Class 1(3) Representative Office licence (see below) should note that there is separate [guidance](#) and a separate licence application form in ([Word](#) and [pdf](#)).

Licence applicants for Class 6 regulated activity (crowdfunding platforms), as well as any applicants for other regulated activity where their business model and customer interface is exclusively or substantially electronic, must have a working test-version of the website at a suitably advanced state. This is in order to demonstrate user interface and functionality, and how it would operate if a licence is granted.

Island's financial services, insurance and pensions industries through effective regulation, thereby supporting the Island's economy and its development as an international financial centre.

⁶ See Regulatory Guidance – Fitness and Propriety for details of the Controlled Functions

⁷ s6(2)(d) of the FSA08

The licence application will need to satisfactorily address linked matters, such as system governance, data and system security, arrangements for IT systems maintenance, resilience and support and important technical specifications, and must be supported by an acceptable assurance provided by an independent IT expert.

The IoMFSA's current service standard for processing an application, from receipt of a **fully completed application** to consideration by the Board, is 3 months. However, this service standard will only be achievable if **all** the required information is provided at the time the application form is submitted. The IoMFSA is not responsible for delays arising from the submission to it of incomplete, inaccurate or changing applications, and if further information is sought from the applicant by the IoMFSA, the period between the request being made and a satisfactory response being received will be discounted from the time accrued.

If the licence application process is not completed within 6 months, due to outstanding items required from the applicant, then the IoMFSA can require a new application, a further application fee and updated supporting documentation (e.g. a refreshed business plan and financial information).

Once an application has been determined, the applicant has 3 months to fulfil any licensing conditions. If these conditions are not met within 3 months, the IoMFSA may require a new application to be made. Where a new application is required the relevant application fee is also payable.

A licenceholder is expected to start its regulated activities within 6 months of the date on which a licence is issued unless the IoMFSA has agreed otherwise in writing. A licenceholder must notify the IoMFSA if it has not started regulated activities within 4 months of the licence date. Failure to commence business in a timely manner could indicate solvency or competence issues which can lead to suspension or revocation of the licence.

Further information on the licensing procedure, and how to seek a review of a licensing decision, is set out on the IoMFSA's website.

- (vi) **Extensions to licences** - If a licenceholder wishes to extend its existing financial services licence to cover additional classes of regulated activity the IoMFSA will require an application form to be submitted. The applicant will undergo the full licensing process for the new classes of regulated activity. Applications must also be made if the additional regulated activity falls within the same class of regulated activity already undertaken by the licenceholder. In this case, discretion will be exercised as to the necessary process on the basis of the level of disparity between the current and proposed regulated activities within that particular class.
- (vii) **Classes 2 and 4** – Class 2 licence permissions may only be combined with Class 4 regulated activity in very limited situations. Normally this would only be permissible if the main regulated activity of the licenceholder is Class 2 or 3 activity, and the desired Class 4 activity is limited to incidental activity occasioned in the provision of the typically Class 2 or 3 services to closed ended investment companies or collective investment schemes.

- (viii) **Class 4 regulated activities** – Except for Professional Officers, the IoMFSA expects applicants wishing to carry on Class 4 regulated activities to offer and undertake a full range of Class 4 services including company management and administration. The IoMFSA will not licence a business that only offers registered agent services, sales of companies or provides premises for use as a registered office.
- (ix) **Class 5(4) regulated activities** - Class 5 licences do not automatically permit a licenceholder to act as a Trust Corporation (Class 5(4)). A Trust Corporation is able to undertake all the activities of a trust company plus functions reserved to a Trust Corporation. These functions include (but are not limited to):
- competence to undertake matters of probate;
 - ability to act alone to give valid receipt for money arising under a trust;
 - being named as attorney in an enduring power of attorney.
- (x) **Class 6 regulated activities** – Class 6 licences may not be combined with any other Class of regulated activity.
- (xi) **Other relevant guidance and information⁸**
- 1 [Training and Competence Framework](#)
 - 2 [Regulatory Guidance – Fitness and Propriety](#)
 - 3 [Business plan guidance](#)
 - 4 [Licensing procedure](#)
 - 5 [The IoMFSA’s Supervisory Approach under the FSA08](#)
 - 6 [Guidance Note on Outsourcing/ Delegation of Functions](#)
 - 7 [Supplemental licensing policy for Class 3 licenceholders](#)
 - 8 [Graduated Manager licensing procedure – Class 3 \(services to collective investment schemes\)](#)
 - 9 [Guidance note on exempt schemes and limited partnerships](#)
 - 10 [Guidelines on being licensed as a Representative Office of a foreign deposit taker](#)
 - 11 [Guidance for Class 1\(2\) applicants](#)

Part 1 – The IoMFSAs ‘Fit and Proper’ Criteria for Regulated Activities Under the FSA08

1.1 General

1.1.1 Before granting a licence the IoMFSAs must be satisfied that the applicant is fit and proper to undertake the regulated activity. The fit and proper test is applied to the business as a whole and also to the persons responsible for the management and control of the business (including owners) and key persons (persons in Controlled Functions), as well as other persons employed or to be employed by the applicant, or associated with the applicant for the purposes of its business⁹.

The fit and proper test is an initial test (at licensing) and a continuing test (in the ongoing conduct of the regulated activities). The IoMFSAs can take regulatory action including the suspension or revocation of a licence if a licenceholder does not continue to satisfy the fit and proper criteria.

It is for the applicant and relevant persons to satisfy the IoMFSAs that they are fit and proper, rather than the IoMFSAs to prove that the applicant and relevant persons are not fit and proper.

This document sets out the criteria the IoMFSAs normally applies when assessing the fitness and propriety of an applicant.

1.1.2 In assessing fitness and propriety the IoMFSAs considers:

- (a) the applicant’s integrity, competence, financial standing, structure and organisation (both internally and from a group perspective);
- (b) the integrity, competence and financial standing of the applicant’s controllers, directors and persons in Controlled Functions (see Regulatory Guidance – Fitness and Propriety);
- (c) the nature of the business the applicant proposes to carry on;
- (d) any other persons employed or to be employed by the applicant, or associated with the applicant for the purposes of its business; and
- (e) the risk posed by the applicant to the stability of the Isle of Man financial system.

1.1.3 When considering licence applications, the IoMFSAs makes an assessment of the applicant’s ability to comply with:

- The [FSA08](#);
- the [Rule Book](#);
- the [AML/CFT Code](#) and any related IoMFSAs guidance; and

⁹ s6(2)(d) of the FSA08

where relevant, standard or anticipated licence conditions, [CISA08](#) and applicable regulations and orders made under it.

1.1.4 An applicant's business should be structured and carried on in a fit and proper manner. An applicant must demonstrate to the IoMFSA that -

- its systems, controls and resources are adequate and appropriate for the regulated activities it wishes to conduct; and
- it has an honest and fair attitude in its dealings with clients and others.

1.1.5 Serious or repeated breaches of legislation or codes of conduct in the Island, or in another jurisdiction, by an applicant, its directors, controllers or persons in Controlled Functions, will, prima facie, suggest a lack of competence and/or integrity.

1.1.6 In assessing the fitness and propriety of a controller that is not an individual the IoMFSA will consider that entity's business activities, its financial standing and the integrity, competence and financial standing of its directors and its controllers (see Regulatory Guidance – Fitness and Propriety).

1.1.7 As part of its consideration of applications, the IoMFSA will require information on the source of wealth and source of funds of prospective controllers.

1.2 'Not fit and proper' directions and warning notices

1.2.1 The IoMFSA can issue a 'not fit and proper' direction where it has reasonable grounds to believe a person proposed as a controller, director or key person is not fit and proper¹⁰. Where the IoMFSA believes the conduct of such a person means they are no longer fit and proper, it can issue a 'not fit and proper' direction requiring they shall not continue in that role¹¹. The applicant / licenceholder must not appoint or continue the appointment of a person in a role which contravenes any such direction.

1.2.2 The IoMFSA can issue a warning notice¹² where it believes that activities or circumstances are prejudicial to a relevant person's fitness and propriety. A warning notice can (but need not) require that the person take specific action or request the person to propose action.

1.2.3 Conduct which, taken in isolation, is not sufficiently severe to demonstrate a lack of fitness and propriety can, cumulatively with other behaviour, lead to a warning notice or a not fit and proper direction. As such the IoMFSA can take account of the cumulative effect of a person's conduct.

¹⁰ s10(1) FSA08

¹¹ s10(2) FSA08

¹² s11 FSA08

1.3 Prohibitions

1.3.1 The IoMFSA can impose a prohibition if it appears that any individual is not a fit and proper person to perform one or more functions in relation to a regulated activity¹³. The prohibition can apply to any role in relation to a regulated activity, and not only Controlled Functions.

1.3.2 A prohibition may prevent an individual from performing:

- any function;
- a specified function; or
- a function of a specified class

and can be in relation to a particular permitted person, a specified class of permitted person, or all permitted persons.

Furthermore, a prohibition may relate to:

- any regulated activity;
- a regulated activity specified in the prohibition; or
- a regulated activity of a specified class.¹⁴

1.3.3 The applicant/ licenceholder commits an offence if without reasonable excuse it permits an individual to perform a function which the individual has been prohibited from performing. Likewise an individual commits an offence if he or she performs, or agrees to perform, a function which he or she is prohibited from performing.¹⁵

¹³ s10A(1) FSA08

¹⁴ s10A (3) & (4) FSA08

¹⁵ s10A (5) & (6) FSA08

Part II - Structure and Organisation of the Applicant

2.1 New business start-ups and track record

- 2.1.1 When licensing a new business start-up, the IoMFSA considers the likely potential risk to customers' interests, as well as any potential reputational risk to the IOM.
- 2.1.2 An applicant is expected to demonstrate a satisfactory track record in the regulated activity for which it seeks a licence. This can relate to the applicant in its own right (for example, where it is already licensed to carry on the same or similar regulated activities in another jurisdiction), or as part of a group that includes entities licensed to carry on that class of regulated activity.
- 2.1.3 The IoMFSA can consider applications for a licence to carry on regulated activities within Classes 2 to 8 where the applicant has no track record, and is not part of a group with a track record, provided that the applicant's key persons have a proven track record at a senior level in a relevant licensed business. Such operations can have inherent risks and will be considered accordingly.

The specific considerations for different classes of regulated activities in respect of track record and new business start-ups are set out in [Appendix 2, Table B](#).

- 2.1.4 A new start-up Class 1(1) deposit taking business, that is not part of an established group of companies with an existing deposit taking business within that group, is not permitted because of the inherent risks to depositors. However, a new start-up Class 1(2) deposit taking business may be permitted, if it is part of a substantial, established group and subject to the relevant competency and experience of the key persons, and adequate financial resources being available to support the establishment of the business.
- 2.1.5 An applicant should restrict its activities to the regulated activities which it is licensed to conduct and other wholly incidental activities. If an applicant or licenceholder plans to conduct ANY activities other than those regulated activities for which it has applied for/holds a licence, it must pre-notify the IoMFSA per Rule 8.13 of the [Rule Book](#). This applies both to activities for which a licence is required as well as any other activities¹⁶.
- The IoMFSA will consider how the applicant (plans to) conduct(s) that other activity, because any lack of integrity or competence in that regard can affect the conduct of the regulated activities.

2.2 Structure

- 2.2.1 The ownership structure of an applicant should be as simple and transparent as possible, so that the structure does not inhibit the IoMFSA's supervision of the licence applicant. If an ownership structure is unduly complex and/or lacks transparency, the applicant must explain and justify the rationale for the structure.

¹⁶ For example: sub-letting premises, catering, vehicle hire, travel services, office cleaning etc

The specific considerations for different classes of regulated activities in respect of business structures are set out in [Appendix 2, Table A](#).

- 2.2.2 The licence applicant's structure should enable the IoMFSa to identify –
- the ultimate beneficial owners of the business;
 - the persons who exercise control over the appointment of the management team (directors and controllers);
 - the management team; and
 - persons in Controlled Functions and any other key persons.
- 2.2.3 An applicant must be publicly transparent about its ownership structure. See 2.4.2 for details of the minimum public disclosure for applicants/ licenceholders incorporated under the Companies Act 2006.
- 2.2.4 As the exercise of options over a company's shares can impact on the company's controlling interests, the IoMFSa expects to be notified of any existing options and may wish to consider the terms of any such options.
- 2.2.5 ***The IoMFSa will only licence corporate entities (with the exception of Professional Officers). However, when considering corporate applications, the IoMFSa will not licence protected cell companies, incorporated cell companies or foundations.***

2.3 Applicants that are part of groups

- 2.3.1 The IoMFSa will normally supervise a licenceholder on both a solo and consolidated basis. Where a licenceholder is part of a group, the IoMFSa may want to assess the whole group – such assessment would be tailored to the licenceholder's and group's specific circumstances. This means that the IoMFSa reserves the right to ask for information about other group entities from the applicant, other regulators and, if necessary, the group entities themselves.
- 2.3.2 An IoM incorporated applicant wishing to carry on Class 1(1) activities (deposit taking) must be part of a group that has an existing deposit taker as part of that group, and must supply the IoMFSa with a letter of comfort¹⁷ from its parent, or immediate owner if appropriate. The IoMFSa may require the letter of comfort to be renewed from time-to-time.

For any IoM incorporated applicant (subsidiary) that wishes to accept retail deposits, the group of which it is part should also have experience in that market.

¹⁷ A letter of comfort is a written commitment from an applicant's parent to the IoMFSa which acknowledges that the parent accepts responsibility for the applicant and its business. For Classes 1(1) and 1(2) deposit takers a parental letter of comfort is a licensing prerequisite. A letter of comfort may be required for other classes of licence dependent on individual circumstances. In the course of day-to-day supervision, the IoMFSa takes account of a wide range of local and international matters. The existence of a parental letter of comfort is not a substitute for other ongoing supervisory requirements and actions

- 2.3.3 Any applicant wishing to carry on Class 1(2) activities (deposit taking) must be part of a substantial and established group, but the group need not include an existing deposit taker. However, any such applicant must have suitable financial resources, track record and relevant competency, and it must employ key persons that have relevant experience in that market. In addition, it must supply the IoMFSA with a letter of comfort from its parent, or immediate owner if appropriate. The IoMFSA may require the letter of comfort to be renewed from time-to-time.
- 2.3.4 Class 1(3) is a Representative Office licence. Such an entity may not carry on deposit taking (or any other regulated activities) in or from the Isle of Man and may only administer its own office. Class 1(3) licenceholders will be subject to periodic reviews, including consideration of whether transitioning to another class of licence would be appropriate.
- 2.3.5 Letters of comfort should record the deposit taker's parent or immediate owner's acknowledgement that it bears a responsibility, over and above any statutory obligations, for the applicant's continuing financial viability. The terms of the letter of comfort must be acceptable to the IoMFSA.
- 2.3.6 Where a deposit taker is a branch of a company incorporated outside of the Isle of Man, written confirmation is required from the applicant's head office that it accepts full responsibility for branch liabilities.
- 2.3.7 An applicant for a licence to conduct any regulated activities in Classes 2 to 8 may be required to supply the IoMFSA with a letter of comfort from its parent or immediate owner. The letter of comfort may need to be renewed periodically.

2.4 Applicants that are companies under the Companies Act 2006

- 2.4.1 The IoMFSA will not normally grant a Class 1(1) (deposit taking) licence to a 2006 Act company¹⁸, unless in exceptional circumstances.
- 2.4.2 The IoMFSA may grant a licence to a 2006 Act company to conduct Class 1(2) (deposit taking) activity, or regulated activities within Classes 2 to 8. However, an applicant for Class 4 permissions, established under the 2006 Act is not expected to be a registered agent of itself.

A licenceholder must not be styled 'xxx plc' unless the company is a public company. Licence applicants that are 2006 Act companies, but that are not public companies, must have the suffix 'Limited'.

To ensure appropriate levels of public disclosure, a licence issued to a 2006 Act company will be subject to the following requirements, either via the Rule Book or specified in licence conditions, as follows:

"The licenceholder shall, at all times:

¹⁸ This restriction is imposed principally because the IoMFSA does not consider it appropriate for a deposit taker to be able to reduce its capital without more stringent safeguards being in place than those in the 2006 Companies Act

- i maintain in force elections under section 203 (filing of the register of members) and section 204 (filing of the register of directors) of the Companies Act 2006 ('the Act') and shall comply with the requirements of the Act in respect of such elections;*
- ii have only natural persons as directors;*
- iii have at least two directors; and*
- iv maintain up to date copies of the minutes of its Board meetings and members' meetings either at the licenceholder's business premises in the IoM or at the office of its registered agent."*

2.4.3 Auditor liability – if the auditor of a 2006 Act company licenceholder has capped liability it must not be capped below the level of PII cover needed to comply with the requirement at rule 5.2 (2)(c) of the [Rule Book](#).

2.5 Professional Officers

2.5.1 The IoMFSA will only consider an application from an individual if it is for a licence to act as a Professional Officer undertaking Class 4 (corporate services) and/or Class 5 (trust services) activities.

2.5.2 Part 9 of the Rule Book contains the Rules which are applicable to Professional Officers.

2.6 Ownership by a trust or a foundation

2.6.1 The IoMFSA will only exceptionally grant a licence for Class 1(1) or Class 1(2) (deposit taking) regulated activities where the applicant has a trust or foundation in its ownership structure. Class 1(3) Representative Offices may only be branches of foreign banks.

2.6.2 The IoMFSA may grant a licence to an applicant which has a trust or Isle of Man foundation in its ownership structure where -

- the regulated activities of the applicant fall within Classes 2 to 8, or exceptionally Class 1, (but not Class 3(3)/(4) activities where the licenceholder will act for authorised / full international collective investment schemes); and
- the IoMFSA can look through the trust or Isle of Man foundation and identify the persons who could control and/or could exercise significant influence over the applicant.

2.6.3 In considering an application involving a trust in the ownership structure the IoMFSA will examine the trust deed or other document relating to its establishment and any other documents it considers relevant (e.g. the settlor's letter of wishes, deeds of appointment etc). In addition, the applicant must provide full details of the rationale and commercial reasons which justify the use of the trust in its ownership structure as

well as the details of persons directly or indirectly involved with the trust arrangements.

The applicant must satisfy the IoMFSA that all 'influential parties' to that trust meet the fit and proper criteria. 'Influential parties' are likely to be considered to be in the Controlled Functions of controller (R1, R2 or R3) or otherwise key persons (R10)¹⁹, and include:

- the trustee(s); and
- any person (in relation to the applicant, its administration or ownership) that the trustee(s) turn to for guidance, views or advice, or to whom they are obliged, instructed or requested to turn for advice or instructions, or on whose directions or instructions they are accustomed to act (other than a person advising purely in a professional capacity); and possibly,
- the settlor, protector and beneficiaries of the trust, depending on their formal powers and/or level of influence over the trustees.

The IoMFSA should be notified about any subsequent changes to the trust deed or other document relating to the trust's establishment and / or changes to the influential parties.

2.6.4

In considering an application involving an Isle of Man foundation in the ownership structure the IoMFSA will examine the foundation instrument and the foundation rules and any other document relating to the foundation's establishment, or that the IoMFSA considers relevant. In addition, the applicant must provide full details of the rationale and commercial reasons which justify the use of the Isle of Man foundation in its ownership structure as well as the details of persons directly or indirectly involved with the foundation arrangements.

The applicant must satisfy the IoMFSA that all relevant 'Influential Parties' in relation to the Isle of Man foundation meet the fit and proper criteria. 'Influential Parties' are likely to be considered to be in the Controlled Functions of controller (R1, R2 or R3) or otherwise key persons (R10)²⁰, and include:

- the members of the Council of a Foundation;
- any person (in relation to the applicant, its administration or ownership) that the Council members turn to for guidance, views or advice, or to whom they are obliged, instructed or requested to turn for advice or instructions, or on whose directions or instructions they are accustomed to act (other than a person advising purely in a professional capacity); and possibly,
- the founders, dedicators, enforcers and beneficiaries of the foundation, depending on their formal powers and/or level of influence over the Council.

¹⁹ See Regulatory Guidance – Fitness and Propriety

²⁰ See Regulatory Guidance – Fitness and Propriety

The IoMFSA should be notified about any subsequent changes to the foundation instrument or rules or other document relating to the foundation's establishment and / or changes to the influential parties.

2.7 Branches

2.7.1 The IoMFSA will not grant a licence to a branch unless its head office is licensed to conduct the relevant regulated activity or activities in another jurisdiction with licensing and regulatory standards equivalent to those of the IoM. In assessing the jurisdiction the IoMFSA may contact the relevant regulatory authority and consider any published reports on the jurisdiction by the IMF or other similar bodies, and in particular assessments related to the supervision of relevant regulated activities and compliance with FATF standards. The IoMFSA will also consider the quality of its relationship with the relevant regulatory authority, whether there is a memorandum of understanding in place between the regulators and that regulator's willingness and ability to supply necessary information to the IoMFSA.

2.7.2 In the case of a branch which undertakes Class 1(1) or 1(2) (deposit taking) activities, the IoMFSA will not grant a licence unless it is satisfied that:

- the regulator of the relevant head office (the 'home regulator'), is prepared to exercise consolidated supervision with the IoMFSA; and
- this consolidated supervision includes consideration of capital adequacy and liquidity.

In addition to the above, if a branch wishes to accept retail deposits, i.e. hold a Class 1(1) licence, the IoMFSA will also expect the following:

- the deposit taker / bank must have at least a 5 year track record; and;
- the deposit taker / bank, or group of which it is part, should have a credit rating of at least investment grade.

The IoMFSA will also take into account the standing of the deposit taker / bank / group in its home jurisdiction including matters such as systemic importance.

2.7.3 The level of autonomy granted to a branch by its head or principal office will depend upon the approach and structure of the relevant group (for example, the persons with effective powers over the branch's operation can be employed in the branch or in the head office). Whilst the IoMFSA will apply the fit and proper test to branches at the same standard as for other applicants, it can modify how the test is satisfied to reflect the particular circumstances of the case.

2.7.4 The IoMFSA must be satisfied that persons fulfilling Controlled Functions are fit and proper and it will assess the fitness and propriety of Head Office personnel who have a direct responsibility for the branch or who will be overseeing the work of the branch, as such persons are considered to be within Controlled Function R22 (see Regulatory Guidance – Fitness and Propriety).

- 2.7.5 A Class 6 (crowd-funding platform), Class 8(4) (E-money) licenceholder or a Class 8(2)(a) (payment services directly) cannot be established as a branch.

2.8 Real presence

- 2.8.1 It is a fundamental requirement that a licenceholder should not be a mere shell; an applicant must establish a real presence in the IoM. An applicant can demonstrate real presence by satisfying the IoMFSA that the business' centre of activity will be in the IoM.
- 2.8.2 The IoMFSA can not issue any licence unless the applicant is managed and controlled in the Island²¹. Furthermore, for Class 6 (crowdfunding platforms) the IoMFSA would prefer servers to be located, and data hosted, on the Isle of Man, and in any event a live copy of the data must be available at all times in the Island.
- 2.8.3 A Professional Officer must be resident in the IoM and carrying on regulated business in or from the Island.
- 2.8.4 An Isle of Man branch of a company incorporated in another jurisdiction, must demonstrate real presence by registering under the Foreign Companies Act 2014 as a foreign company that has established a place of business in the IoM. The centre of the branch's regulated business should be in the IoM and there should be a sufficient degree of local management and control to ensure that there is accountability in the Island for the conduct of the regulated activities, and to meet the requirements of the FSA08. There should be a minimum of 2 IoM resident officers²².
- 2.8.5 The IoMFSA expects all business records to be located in, or be accessible from, the IoM without recourse to third parties. (This is subject to any outsourcing, or branch, arrangements for which the IoMFSA may give consent.) This includes minutes of directors' and shareholders' meetings of IoM incorporated entities.
- 2.8.6 An applicant is expected to have sufficient staff and adequate systems to undertake its proposed activities. The IoMFSA will consider this on a case-by-case basis as the requirement will vary according to the scale and complexity of the proposed business.

2.9 Managed businesses

- 2.9.1 Although the IoMFSA will not licence a business that is a mere shell without real presence, it may grant a licence to an applicant for certain classes of regulated activity where the applicant on its own does not fully meet the real presence test if the applicant's regulated activity will be managed in the IoM by a Class 7 or Class 3(9) licenceholder (the 'manager').

²¹ Section 6(1)(d) FSA08

²² Rule 8.25 of the Rule Book

See Appendix 3 for details of the licensing requirements and Appendix 2 Table A for the classes of regulated activity which can be managed.

2.10 Overseas businesses

- 2.10.1** An overseas office, branch or subsidiary which carries on regulated activities outside the Island ('overseas business') may impact on the fitness and propriety of an applicant. Therefore, where an applicant has already established an overseas business or wishes to do so in future, the applicant's level of control over the operation of the overseas business, including in respect of corporate governance and risk management, will be relevant to its licence application and to the ongoing assessment of its fit and proper status.
- 2.10.2** A licenceholder must obtain the IoMFSAs prior consent before establishing an overseas business²³. The potential risks of the overseas business and any detrimental effect the overseas business may have on the IoM operation or the Island's reputation will be considered when assessing whether the applicant is and remains fit and proper.
- 2.10.3** In assessing the overseas business the IoMFSAs will consider:
- any published reports on the jurisdiction by the IMF or other similar bodies and in particular assessments related to the supervision of relevant regulated activities and compliance with FATF standards;
 - the nature of activity that the overseas business will undertake;
 - whether the activity is regulated; and
 - whether the activity would be a regulated activity in the Isle of Man.
- 2.10.4** Where the activity is regulated in the overseas jurisdiction the IoMFSAs will contact the relevant regulatory authority in that jurisdiction. The IoMFSAs will consider the quality of its relationship with the regulatory authority, whether there is a memorandum of understanding in place with that regulator and that regulator's willingness and ability to supply information to enable IoMFSAs to act as lead supervisor of the group.

2.11 Representative Offices

- 2.11.1** An office (branch) in the IoM of a foreign bank that represents, or holds itself out as representing, an off-Island deposit taking business must hold a licence authorising it to carry on Class 1(3) regulated activities.²⁴ The Representative Office must employ a Main Representative who will be considered to be within Controlled Function R22 (see Regulatory Guidance – Fitness and Propriety) as the person responsible for the licenceholder's activities in the IoM. The licenceholder must have dedicated office accommodation.

²³ Rule 7.3 / 7.4 of the Rule Book

²⁴ s7 FSA08

A Class 1(3) licenceholder may not undertake any deposit taking or other regulated activity transactions. It may only administer its own office (e.g. pay utility bills and staff salaries).

Currently, the Rule Book does not apply to Representative Offices, but standard licence conditions are imposed instead.

The [Class 1\(3\) guidance provides further information.](#)

- 2.11.2 In relation to an off-Island business undertaking regulated activities other than Class 1 deposit taking, please refer to the information in 2.7 - Branches.

2.12 Changes to ownership structure once a licence has been granted

- 2.12.1 If a licenceholder wishes to make changes to its ownership structure, it should refer to Rules 7.3 to 7.8 of the [Rule Book](#) to see whether the IoMFSA's prior consent needs to be sought, or whether the changes should be notified to the IoMFSA. Any such changes can alter the IoMFSA's assessment of the licenceholder as a fit and proper person. The licenceholder and any controller should also consider which Fitness and Propriety Assessment Forms must be submitted (see Appendix 6 of the Regulatory Guidance – Fitness and Propriety).

- 2.12.2 **Options** – On an ongoing basis, a licenceholder must notify the IoMFSA of any proposed pledge of, offer of options over or options granted in respect of its shares²⁵.

2.13 Commencement and continuation of business once a licence has been granted

- 2.13.1 The IoMFSA expects licenceholders to be actively available for business. New licenceholders are expected to commence business in a timely fashion and Rule 1.2 of the Rule Book requires them to notify the IoMFSA if they have not commenced business within 4 months of a licence being granted.
- 2.13.2 The IoMFSA may suspend or withdraw licence permissions for regulated activities which a licenceholder has not commenced, which it is no longer actively conducting, or for which it no longer has the necessary staff competencies.

²⁵ Rule 7.5 to 7.8 of the Rule Book

Part III – Persons Responsible for Management and Control

3.1 Directors, controllers and key persons

- 3.1.1 All persons with responsibility for management and control of the business, and key persons holding Controlled Functions, must satisfy the IoMFSA that they are fit and proper persons. Please see the Regulatory Guidance – Fitness and Propriety for further detail. Where the Controlled Function is a notified and accepted one a licenceholder should consider avoiding appointing an individual to such function unless it has received the written acceptance of the Authority to the appointment to that Controlled Function. If an individual does take up a notified and accepted Controlled Function without the Authority's prior acceptance of the regulated entity's intention to appoint that individual, it is important to note that this will not prevent the Authority objecting to the appointment should that be necessary.
- 3.1.2 In considering a person's fitness and propriety (as well as the matters set out in Part 1 and the Regulatory Guidance – Fitness and Propriety) regard will also be had to:
- whether a person's holding of a particular role or interest would expose the applicant to undue risk;
 - whether a person's holding of a particular role or interest would otherwise hinder effective supervision; and
- whether the interests of customers or potential customers of the applicant are, or are likely to be prejudiced, by a person's holding of a particular role or interest.
- 3.1.3 The directors, controllers and other persons in Controlled Functions must be and remain fit and proper persons. In respect of management and control, 'directors' includes anyone on whose instructions one or more directors are accustomed to act. An Isle of Man incorporated applicant must have 2 or more directors: all directors must be natural persons.
- 3.1.4 Where one or more nominees hold shares in an applicant, the relevant nominee agreement evidencing the identity of the shares' beneficial owners must be disclosed to the IoMFSA. The IoMFSA will apply the fit and proper test to both the nominee shareholders and the beneficial owners of the shares.
- 3.1.5 Persons must submit the relevant Fitness and Propriety Assessment Forms to enable the IoMFSA to consider a person's fitness and propriety. In addition, the IoMFSA may invite individuals to attend a personal interview to clarify any issues arising and/or to form an opinion regarding an individual's competence and/or integrity.
- 3.1.6 A licenceholder or licence applicant, as well as its directors, controllers and other persons holding Controlled Functions must notify the IoMFSA if their circumstances change or events arise that could affect the assessment of their fitness and propriety.

3.2 Separation of roles

3.2.1 To ensure that compliance control is separated from the day-to-day control of the business, unless the business is too small to make it practical to do so, the following roles should be undertaken by different individuals –

- managing director and company secretary;²⁶
- compliance officer and IoM resident officers (of a branch);²⁷ and
- compliance officer and operational roles.

3.2.2 The IoMFSA would not expect a non-executive director of a licenceholder to hold any other office within that licenceholder.

3.2.3 Where a business employs people with a close relationship²⁸ as directors or key persons it should consider any practical issues and conflicts of interest which may arise and take steps to appropriately manage and mitigate any consequential risks.

3.3 Responsibilities

3.3.1 Directors are expected to understand their statutory and common law duties and responsibilities and their responsibilities for the day-to-day supervision of the licenceholder's activities. For IoM incorporated entities, two of the directors must be resident in the IoM.²⁹

The IoMFSA expects the Board of each licenceholder to comprise individuals that have (collectively) a skill set, experience and track record that is appropriate to the regulated activities undertaken.

3.3.2 Licenceholders incorporated outside the Isle of Man (i.e. branch operations) must have a minimum of 2 IoM resident officers who are competent professionals able to exercise real control over the business' day-to-day operations in the IoM. It is expected that the individuals will be employees of appropriate status or persons granted executive powers.

3.3.3 If a controller exercises influence over the day-to-day affairs of the applicant, the controller would also be expected to demonstrate competence in the same way as a director, IoM resident officer or key person.

²⁶ A company secretary's functions include advising the Board in relation to good corporate governance

²⁷ This ensures compliance control is separated from day-to-day control of the business

²⁸ Close relationships include spouses, partners and close family, and financial relationships

²⁹ Rule 8.24 of the Rule Book

3.3.4 In considering the structure of an applicant the IoMFSA will not only consider the applicant's legal structure but also the extent to which one individual may dominate the applicant through personal influence. Where the IoMFSA sees a risk of an individual having a dominant influence, it may take steps to counterbalance that influence, for example by the application of additional regulatory requirements in respect of the corporate governance of the applicant and through the allocation and definition of management and compliance responsibilities.

3.4 Locums

3.4.1 A licenceholder may need to appoint a locum either-

- if its business is to provide financial advice and its usual financial advisers are unavailable to carry on those roles; or
- if individuals in certain Controlled Functions for a CSP/TSP are unavailable to carry on those roles.

In each case, the licence applicant or licenceholder may need to appoint a locum to ensure that regulated activities can be provided without interruption³⁰. The IoMFSA's prior approval is required to appoint a locum.

3.4.2 If a licenceholder needs to appoint a locum financial adviser (Rule 8.15(c)), that locum may only provide financial advice of the range and type for which he is qualified and in the class(es) for which the licenceholder is licensed.

3.4.3 If a licenceholder needs to appoint a locum in circumstances other than those described in 3.4.2, for example to a fiduciary business (Rule 8.15(d)), in view of the level of competence required, the locum must be a licenceholder that is licensed to carry on activities of the same class the licenceholder appointing the locum.

³⁰ Rule 8.15 of the Rule Book

Part IV - Integrity

4.1 Integrity

- 4.1.1 To a large extent, an applicant's integrity is a reflection of the persons employed by or associated with the applicant. In assessing the integrity of an applicant or licenceholder and its directors, controllers and key persons, the IoMFSA will consider whether any of their past actions or conduct indicate a lack of integrity. The IoMFSA will consider all relevant circumstances, on a case-by-case basis. ***A list of matters the IoMFSA may have regard to is set out at Appendix 1 of the Regulatory Guidance – Fitness and Propriety.***
- 4.1.2 As part of the assessment of their fitness and propriety, the directors, controllers and key persons of an applicant are required to disclose any spent convictions to the IoMFSA³¹. The IoMFSA will consider, on a case-by-case basis, whether a spent or previous conviction is relevant to its current assessment of whether a person is fit and proper.
- 4.1.3 In cases where legal or disciplinary investigations or proceedings are in progress or pending it would not be appropriate for the IoMFSA to prejudge the outcome (either for or against the applicant, its directors, controllers or key persons); therefore, the IoMFSA may not be able to form a view of the fitness and propriety of the person until the matter has been concluded. In such cases the IoMFSA may consider it appropriate to defer making a decision on the licence application. Where this is the case, the IoMFSA will keep the matter under regular review and seek to ensure that a decision is made as soon as possible.
- 4.1.4 Persons responsible for the management and control of an applicant's business should ensure that, by their conduct and by providing appropriate supervision and training to others within the organisation, the applicant's business is conducted with integrity.
- 4.1.5 An applicant and all connected persons should co-operate in an open and honest manner with the IoMFSA and any other body which regulates them and should promptly inform the regulator(s) of anything relevant to the regulator's task. Failure to do so may be relevant to an assessment of a person's integrity.

This includes the failure to complete a form or supply information required from a licence applicant or licenceholder in an honest manner, or the omission of any relevant information. The provisions in section 40 of the FSA08 in respect of false statements should be noted.

³¹ The [Rehabilitation of Offenders Act \(Exceptions\) Order 2001](#) allows the IoMFSA to take account of convictions which would otherwise be treated as spent under the Rehabilitation of Offenders Act 2001

Part V – Competence

5.1 Competence

- 5.1.1 An applicant must be competent to undertake the relevant regulated activities including, where appropriate, having detailed knowledge of the structure, purpose and risks of products associated with the activity.
- 5.1.2 An applicant's competence is demonstrated by persons in the organisation holding relevant qualifications, having sufficient experience and being appropriately supervised and trained to competently fulfil their functions and regulatory responsibilities (see Rule 8.3 of the Rule Book). The IoMFSA must be able to identify, from the applicant's organisational structure, the persons whose competence in their particular role and responsibilities is jointly indicative of the overall competence of the applicant. The role of controllers and any influence over the business is also taken into account, bearing in mind that if a controller has influence over the business they are effectively acting as a director and will be subject to fitness and propriety assessment as such, and have to meet required competence levels.
- 5.1.3 Directors, key persons and, in the circumstances at 5.1.2 above, controllers, that do not hold relevant academic and/or professional qualifications, must demonstrate they have accumulated sufficient appropriate knowledge of the regulated activities through relevant work experience, normally over a period of at least five years. For some activities there is an expectation that persons will hold certain qualifications and competence cannot be demonstrated by experience alone.³²
- The IoMFSA will use its discretion in assessing competence and may direct that a person should successfully complete a course of study or achieve a relevant qualification within a specified period of time.
- 5.1.4 The IoMFSA's "[Training and Competence Framework](#)" provides guidance on the specific training and competence requirements and expectations for continuing professional development for particular regulated activities and roles/ functions within licenceholders. Licence applicants and licenceholders should refer to Rule 8.5 of the [Rule Book](#), especially for Class 2 activities.
- 5.1.5 The proposed classes of regulated activities, size and type of business and jurisdictions in which products and services will be offered are relevant when assessing an applicant's competence. An applicant must be able to demonstrate the existence of adequate risk management systems and controls for the risks associated to its activities and jurisdictions in which it operates.³³
- 5.1.6 Appropriate business resumption/ contingency arrangements evidence a business's competence to continue following unexpected events that may disrupt its operations. A

³² The specific considerations relevant to regulated activities falling within a particular class in respect of new business and track record, including the competence criteria, are set out in Appendix 2, Table B

³³ See Rule 8.3 or 9.11 for further detail

licenceholder must maintain business resumption/ contingency arrangements appropriate to the nature and size of its business.³⁴

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³⁴ Rule 8.14 or 9.23 of the Rule Book

Part VI - Financial Standing

6.1 Solvency

- 6.1.1 Solvency is more than meeting liabilities as they fall due; it includes maintaining sufficient financial resources to survive periods of market weakness and slack trading conditions. Control of the business' financial risks and proper care for customers' money and assets are also important considerations. The financial resources requirements for each class of regulated activity are set out in Part 2 (Financial Resources and Reporting) and Appendix 2 to the [Rule Book](#).
- 6.1.2 Taking account of contingent and prospective liabilities, an applicant must be, and be likely to remain, a going concern. Confirmation of this must be provided by the directors and should be supported by the applicant's auditor or reporting accountant within the auditor's declaration in the licence application form.
- If the applicant is part of a group the IoMFSa may require parent company and/ or consolidated group accounts to be submitted.
- 6.1.3 To establish the applicant's track record of financial stability and the ability to meet the going concern requirement, where the applicant is an existing company the IoMFSa will require a copy of the applicant's past 2 years' audited annual financial statements (if the accounts were not audited when prepared they should be accompanied by an auditor's opinion). If less than 2 years have elapsed since the applicant's incorporation, it will be required to submit its annual financial statements for the relevant number of years.
- 6.1.4 In addition, the business plan³⁵ submitted by the applicant must include considered and realistic financial projections for the next 2 years (3 years for deposit takers, payment service provider principals and e-money applicants) including clear explanation of the assumptions used. An applicant that is a new business start-up must demonstrate convincingly the financial viability of its proposals.
- The IoMFSa will require evidence that funds have been provided to meet the share capital requirement and financial resources requirement, for example evidence of funds being lodged to pay up share capital.
- 6.1.5 The IoMFSa will consider the solvency of the directors, controllers and key persons of a corporate licence applicant and also of Professional Officer applicants. Please see the Regulatory Guidance - Fitness and Propriety for further details.
- 6.1.6 The IoMFSa must be provided with copies of the audited annual financial statements of -
- (a) the applicant's/licenceholder's parent (whatever the parent's legal form); and
 - (b) if the applicant / licenceholder is incorporated in the IoM, for its trading subsidiaries.

³⁵ When preparing a Business Plan applicants should refer to the IoMFSa's [Business Plan Guidance](#)

In addition, the IoMFSA (where it requests this) must be provided with copies of the audited annual financial statements of any corporate body that is a controller of the applicant / licenceholder.

6.2 Professional indemnity insurance cover

- 6.2.1 A licenceholder's business must be able to withstand the normal business risks associated with market conditions. A prudently run business should also be able to withstand extraordinary risks. Applicants/licenceholders must mitigate the business's exposure to extraordinary risk by taking out adequate professional indemnity insurance ('PII').
- 6.2.2 The [Rule Book](#) stipulates specific requirements in relation to insurance cover, however in addition there is an overarching requirement for the cover to be appropriate to the nature and size of the business operation.³⁶

6.3 Ongoing requirements

- 6.3.1 There is an on-going requirement under the Financial Resources and Reporting Part (Part 2) of the Rule Book for a licenceholder (other than a Professional Officer) to submit audited annual financial statements. The requirement for licenceholders to be audited applies irrespective of whether they are obliged to be audited under the relevant Companies Act.
- 6.3.2 In addition, the IoMFSA must be provided with copies of the audited annual financial statements for -
- (a) the licenceholder's parent³⁷ (whatever the parent's legal form); and
 - (b) if the licenceholder is incorporated in the IoM, for trading subsidiaries of the licenceholder³⁸.

6.4 Separation of client money and assets

- 6.4.1 With the exception of Class 1 deposit taking, it is a fundamental principle that licenceholder money and assets must be separated from client money, trust money and client assets³⁹. Not all licenceholders will be permitted to hold client money, trust money or client assets.

³⁶ Rule 8.57 or 9.24 of the Rule Book

³⁷ Rule 2.10 of the Rule Book

³⁸ Rule 2.13 of the Rule Book

³⁹ Please refer to the Part 3 Client Money and Trust Money and Part 4 Client Assets sections of the [Rule Book](#). Note that Class 8 'relevant funds' must also be separated – see Rules 3.35 to 3.42

Appendix 1 - Key to Class 3 licensing requirements in tables A and B of Appendix 2

The tables in Appendix 2 apply to CIS in accordance with this Key. To use this Key:

1. Select the class or classes of CIS regulated activity being applied for;
2. Identify the types of CIS to which services will be provided and select the 'highest letter' (A being the highest letter and E the lowest letter);
3. Use this letter to identify the licensing requirements in tables A and B.

Regulated Activities for Collective Investment Schemes	Type of Collective Investment Scheme				
	Authorised Schemes	Full International Schemes ⁴⁰	Other classes of International Scheme ⁴¹	Non IoM Schemes	Exempt/ Exempt-Type Schemes ⁴²
Class 3(1) - Manager	C	C	C	C	
Class 3(2) - Administrator			C	C	
Class 3(3) Trustee	A	A	C	C	
Class 3(4) - Fiduciary custodian	A	A	C	C	
Class 3(5) - Custodian			C	C	
Class 3(6) - Asset manager	C	C	C	C	
Class 3(7) - Investment adviser	C	C	C	C	
Class 3(8) - Promoter (where regulated promoter required)			D	D	
Class 3(9) - Management or administration services to Class 3(1) and (2) licenceholders	B	B	C	C	
Class 3(9) - Management or administration services to Class 3(6) and (7) licenceholders	C	C	C	C	
Class 3(10) – Administration services to the manager or administrator of a scheme where that manager or administrator is located outside the Island			C	C	E
Class 3(11) – Manager, administrator, trustee, fiduciary custodian or custodian to a CIS which is an exempt scheme or exempt type scheme					E
Class 3(12) – Administration services to a person exempt from licensing ⁴³ in relation to an exempt scheme or an exempt type scheme					E
Class 3(13) - Providing certain services ⁴⁴ in relation to individually recognised scheme				F	

⁴⁰ Includes Regulated Funds and Full International Schemes

⁴¹ Includes Specialist Funds, Qualifying Funds, Experienced Investor Funds and Professional Investor Funds

⁴² [Exempt schemes and Limited Partnerships](#)

⁴³ Under s4 of the FSA08 by virtue of paragraph 3.2 of the Financial Services (Exemptions) Regulations

⁴⁴ As set out in Schedule 4 paragraph(2)(8) to the CISA08

Appendix 2 - Table A - Ownership and management structures

Table A		Permitted structures	Ownership by trust or Isle of Man foundation (subject to para. 2.6)	Can be a managed business
Class 1(1)	Deposit taker (retail/unrestricted clients)	<p>A subsidiary company, that is part of an established deposit taking group (in another jurisdiction), or branch⁴⁵ of a deposit taker licensed in another jurisdiction. The jurisdiction must apply regulatory standards equivalent to those applied to deposit taking institutions in the IoM and the lead regulator must be prepared to exercise consolidated⁴⁶ supervision and issue a 'statement of no objection' in respect of the new operation.</p> <p>For any subsidiary that wishes to accept retail deposits, the group of which it is a part should also have experience in that market.</p> <p>Overseas banks that wish to establish a presence through a branch and accept retail deposits must:</p> <ul style="list-style-type: none"> • have a credit rating (or be part of a group with such a rating) of at least investment grade; and • normally have at least a 5 year track record. <p>In such cases the IoMFSA will also take into account the standing of the deposit taker / bank / group in its home jurisdiction including matters such as its systemic importance.</p>	Not permitted	Yes. The manager must be the holder of a class 1(1) deposit taking licence; and the lead regulator of the manager must apply regulatory standards equivalent to those applied to deposit taking institutions in the IoM; and the lead regulator must have specified in a 'statement of no objection' that it has no objection to the establishment of the managed business in the Island.
Class 1(2)	Deposit taker (restricted depositors)	<p>EITHER the same structure as for Class 1(1) above;</p> <p>OR a company that is part of a substantial, established group that does not necessarily include a deposit taker.</p> <p>In either case, the ownership structure must be transparent</p>	Not normally permitted	Yes. The manager must be the holder of a class 1(1) deposit taking licence; and the lead regulator of the manager must apply regulatory standards equivalent to those applied to deposit takers in the IoM; and the lead regulator

⁴⁵ In the case of a branch, subject to its meeting the IoMFSA's 'fit and proper' requirements, the licence would be issued to the legal entity in respect of its activities in or from the Isle of Man

⁴⁶ See 2.3.1

Table A		Permitted structures	Ownership by trust or Isle of Man foundation (subject to para. 2.6)	Can be a managed business
		and the key persons of the licenceholder must have relevant experience in that market.		must have specified in a 'statement of no objection' that it has no objection to the establishment of the managed business in the Island.
Class 1(3)	Deposit taker's Representative Office	Office (branch ⁴⁷) of a deposit taker / bank licensed in another jurisdiction. The licenceholder will be required to appoint an employee who is a Main Representative, who must have relevant experience in that market.	Not permitted	No
Class 2	Financial adviser Investment adviser to retirement benefits schemes	Company or branch ⁴² of a company licensed in another jurisdiction to conduct relevant class of investment business.	May be permitted	No
Class 2	Discretionary portfolio manager Custodian Any other investment business	Company or branch ⁴² of a company licensed in another jurisdiction to conduct relevant class of investment business. Generally required to be part of larger group.	May be permitted	May be permitted in respect of certain activities only.
Class 2	Stockbrokers	Company Branch ⁴² of a stockbroker authorised by the UK Financial Conduct Authority. Branch of a company licensed in another jurisdiction to conduct relevant class of investment business. Generally required to be part of larger group.	May be permitted	No
Class 3	Collective investment schemes licensing type A	Subsidiary company or branch ⁴² of a deposit taker licensed in another jurisdiction.	Not generally permitted	Yes, provided it is part of a deposit taking group whose lead regulator applies regulatory standards equivalent to those applied to deposit taking institutions in the IoM; and

⁴⁷ In the case of a branch, subject to its meeting the IoMFSAs "fit and proper" requirements, the licence would be issued to the legal entity in respect of its activities in or from the Isle of Man

Table A		Permitted structures	Ownership by trust or Isle of Man foundation (subject to para. 2.6)	Can be a managed business
				the lead regulator has no objection to the establishment of the managed business in the Island.
Class 3	Collective investment schemes licensing type B	Company or branch ⁴² of company licensed in another jurisdiction to conduct relevant regulated activities. Expectation is that this will be part of larger group.	May be permitted	No
Class 3	Collective investment schemes licensing type C	Company or branch ⁴² of company licensed in another jurisdiction to conduct relevant regulated activities. Generally required to be part of larger group.	May be permitted	May be permitted in respect of certain activities only.
Class 3	Collective investment schemes licensing type D	Company or branch ⁴² of company licensed in another jurisdiction to conduct relevant regulated activities in an acceptable jurisdiction.	May be permitted	No
Class 3	Collective investment schemes licensing type E	Company or branch ⁴² of CSP licensed in another jurisdiction.	May be permitted	Yes
Class 3	Collective investment schemes licensing type F	Company or branch ⁴² of an entity in another jurisdiction.	May be permitted	Yes
Class 4	Corporate services	Company or branch ⁴² of CSP licensed in another jurisdiction.	May be permitted	Yes
Class 4 and 5	Professional Officer	Can only be an individual	Not applicable	Not applicable
Class 5	Trust corporation	Company	May be permitted	No
Class 5	Trust services	Company or branch ⁴² of TSP licensed in another jurisdiction.	May be permitted	Yes
Class 6	Crowdfunding platforms	Company	May be permitted	No
Class 7	Management and administration of a licenceholder	As per the type of business to which services are provided.	As per the type of business to which services are provided	No

<i>Table A</i>		Permitted structures	Ownership by trust or Isle of Man foundation (subject to para. 2.6)	Can be a managed business
Class 8	Money transmission services (other than e-money (Class 8(4)) or payment services directly (Class 8(2)(a))	Company or branch ⁴² of company in another jurisdiction which is regulated where relevant.	May be permitted	No
Class 8	Money transmission services (e-money or payment services directly)	Company	May be permitted	No

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Appendix 2 - Table B - Track record

Table B		Track Record/New Business Start-up
Class 1(1)	Deposit taker (retail/unrestricted clients)	<p>A new, start-up deposit taker, which is not part of an established group of companies with an existing deposit taking business within that group, is not permitted because of the inherent risks to depositors.</p> <p>Applications in respect of branches of overseas deposit takers are normally expected to have at least a 5 year track record.</p> <p>The track record of applications in respect of locally incorporated subsidiaries of deposit takers will be considered on a case by case basis. For any subsidiary that wishes to accept retail deposits, the group of which it is a part should also have experience in that market.</p>
Class1(2)	Deposit taker (restricted depositors)	<p>A new, start-up deposit taker should be part of a substantial, established group of companies, but that group need not have an existing deposit taking business within it. However, the entity must employ key persons that have relevant experience in that market.</p> <p>Applications in respect of branches of overseas deposit-takers are normally expected to have at least a 3 year track record.</p>
Class 1(3)	Deposit taker's Representative Office	The foreign deposit taker / bank itself should normally have at least a 3 year track record.
Class 2	Financial adviser Investment adviser to retirement benefits schemes	<p>New start-up firms permitted.</p> <p>It is expected that any individual who advises customers about investment products will hold a relevant qualification⁴⁸ and have a proven track record (a minimum of 3 years' experience). Such advisers will hold the Controlled Function R21A.</p>
Class 2	Discretionary portfolio manager	<p>New start-up businesses may be permitted.</p> <p>Portfolio managers should preferably be part of a group that can demonstrate a proven track record in a business similar to the business the applicant proposes to conduct in the IoM. Applicants should normally be institutions of proven quality and it is expected that persons who will act as the applicant's portfolio managers, directors, IOM resident officers and compliance officer will have a proven track record (relevant qualifications and experience⁴³).</p> <p>A portfolio manager will be expected to hold a relevant qualification⁴³. Back office and administration staff would be expected to have relevant experience. Whilst there is no specific qualification requirement for those overseeing back office and administration staff, relevant experience is expected and relevant qualifications can be appropriate.</p>
Class 2	Custodian Any other investment business	<p>The IoMFSA welcomes applicants which are part of a substantial group that can demonstrate a proven track record in an investment business similar to that which the applicant proposes to conduct in the IoM (usually a minimum of 5 years in a jurisdiction with equivalent regulatory standards or which is otherwise considered acceptable).</p> <p>If the applicant is a new start-up business, the IoMFSA will consider the application on its merits, taking into account all factors which it considers relevant, including the applicant's business plan, the track record and experience⁴³ of its key persons. The same considerations will apply in</p>

⁴⁸ See Training and Competence Framework

Table B

Track Record/New Business Start-up

		<p>respect of a licenceholder's proposed change in controller. The IoMFSA may impose conditions on any licence granted until the applicant's business has established a satisfactory track record.</p> <p>Applicants must have staff with relevant experience⁴³ who are able to demonstrate that they have adequate skills and knowledge for their particular role and responsibilities. Relevant staff must demonstrate that they have adequate knowledge of the nature of the financial instruments and products with which they deal and of the nature and organisational structure of the markets on which those instruments and products are traded. This includes being aware of the nature of the risks involved.</p>
Class 2	Stockbrokers	<p>The IoMFSA would normally expect stockbrokers to be part of a group that can demonstrate a proven track record in stockbroking. A 'proven track record' is deemed to be at least 5 years in a jurisdiction with regulatory standards deemed to be appropriate by the IoMFSA.</p> <p>A stockbroker will be expected to hold a relevant qualification⁴³.</p>
Class 3	Collective investment schemes licensing type A	<p>A subsidiary or a branch of a deposit taker licensed in another jurisdiction that applies regulatory standards equivalent to those applied to deposit taking institutions in the IoM.</p> <p>A new start-up deposit taker would not be permitted.</p>
Class 3	Collective investment schemes licensing type B and C	<p>The IoMFSA welcomes applicants which are part of a substantial group that can demonstrate a proven track record in an investment business similar to that which the applicant proposes to conduct in the IoM (usually a minimum of 5 years in a jurisdiction with equivalent regulatory standards to the IoM's or which is otherwise considered acceptable).</p> <p>If the applicant is a new start-up business, the IoMFSA will consider the application on its merits, taking into account all factors which it considers to be relevant, including the applicant's business plan, the track record and experience⁴³ of its key persons and the types of funds it proposes to manage or administer, including the investors towards whom the marketing will be aimed and the level of minimum subscriptions. The same considerations will apply in respect of a licenceholder's proposed change in controller. The IoMFSA may impose conditions on any licence granted until the applicant's business has established a satisfactory track record.</p> <p>All applicants must have staff with relevant experience, who can demonstrate that they have adequate skills and knowledge for their particular role and responsibilities⁴³. Relevant staff must demonstrate that they have adequate knowledge of the nature of the financial instruments and products with which they deal and of the nature and organisational structure of the markets on which those instruments and products are traded. This includes being aware of the nature of the risks involved.</p> <p>*If a Class 3(1) or Class 3(2) licenceholder is a managed business the IoMFSA does not expect it to employ its own staff. The IoMFSA would, however, look at the functions and services provided by the group (if applicable) and by the Class 3(9) licenceholder to the entity as well as the competence of its directors and controllers. Please also refer to Appendix 3 which considers managed business further.</p>
Class 3	Collective investment schemes licensing type D	<p>New start-up firms permitted.</p> <p>Applicants should also have a proven track record (a minimum of 3 years' experience).</p>

Table B

Track Record/New Business Start-up

Class 3	Collective investment schemes licensing type E	New start-up firms permitted provided the persons establishing the business have a proven track record (3 to 5 years relevant senior level experience and, preferably, also holding relevant qualifications ⁴³).
Class 3	Collective investment schemes licensing type F	New start-up firms permitted.
Class 4	Corporate services	New start-up firms permitted provided the persons establishing the business have a proven track record (3 to 5 years relevant senior level experience and, preferably, also holding relevant qualifications ⁴³).
Class 4 and 5	Professional Officer	The individual should have an appropriate level of experience (at least 5 years at senior level) and, preferably a relevant qualification ⁴³ .
Class 5	Trust services	New start-up firms permitted provided the persons wishing to establish the business have a proven track record (holding relevant qualifications and/or 3 to 5 years relevant experience at a senior level).
Class 5(4)	Trust corporation	New/start-up firms may be permitted where the persons wishing to establish the business have a proven track record of previous experience in a trust corporation for a minimum of 3 years. A trust corporation should be a company of substance: it is expected that any application would include a minimum of three individuals meeting the expectations set out within the IoMFSAs Training and Competence Framework.
Class 6	Crowdfunding platforms	New start-up firms permitted. Applicants should demonstrate a suitable track record.
Class 7	Management and administration of a licenceholder	As per the type of business to which services are provided.
Class 8	Money transmission services	New start-up firms permitted. Applicants should demonstrate a suitable track record.

Appendix 3 - Managed business

- 1 The IoMFSA will not licence a business that is a mere shell without real presence. It can however grant a licence to an applicant which on its own does not fully meet the real presence test but where the applicant's business will instead be managed in the IoM by a Class 7 or Class 3(9) licenceholder (the 'manager'), who would manage or administer the 'managed entity'. **See Appendix 2, Table A for details of which classes of regulated activity can be managed.**
- 2 When assessing whether a managed entity is fit and proper, the IoMFSA will apply its usual licensing policy to the managed business and in addition, will pay special attention to the arrangements under which the proposed manager will carry out its management functions. These arrangements will need to be set out in a formal agreement between the two parties and the IoMFSA will wish to consider the terms of such an agreement in connection with the application.
- 3 When considering a proposal involving a managed entity, the IoMFSA will need to be satisfied that it (the IoMFSA) can exercise sufficient regulatory control over the managed entity. The IoMFSA will look at the functions and services provided by the managed entity's group (if applicable) and by the manager to the managed entity as well as the competence of the managed entity's directors and controllers.
- 4 The IoMFSA will expect the managed entity's Board to have a skill set, experience and track record appropriate to the regulated activity undertaken. Since directors of the managed entity can include directors of the manager providing management or administrative services to them, the IoMFSA will expect that appropriate arrangements are in place with regard to:
 - management of conflicts of interest between the managed entity, the manager, the role of directors acting for both entities and any fund(s), money or assets being managed;
 - reporting by the manager to the managed entity about services provided;
 - maintenance of adequate corporate governance and risk management arrangements by the managed entity; and
 - monitoring/oversight by the managed entity of the services provided by the manager.

The IoMFSA may require an independent non-executive director to be appointed to the Board of a managed entity.
- 5 Although the managed entity will rely on the proper exercise of the functions by the manager, the managed operation will ultimately remain accountable to the IoMFSA for the regulated activities it undertakes. Whilst the manager may provide the staff and premises for the managed entity, major operational decisions must be made by the directors of the managed entity. Any regulated activity **not** delegated to the manager/administrator of the managed entity should be undertaken in or from the IoM.
- 6 All records relating to the managed entity must be retained in the IoM. This includes minutes of directors' and shareholders' meetings (see 2.7.5 above).

7 An applicant that wishes to provide management or administration services to another licenceholder

(a) must:

- be authorised to carry on Class 7 or Class 3(9) regulated activities (as appropriate);
- have a track record in the relevant regulated activity; and
- demonstrate its competence and experience to act as manager of the managed entity (including adequate systems, controls and resources, and where appropriate segregation from its main business); and

(b) would normally be authorised to carry on regulated activities falling within the relevant class. (In rare circumstances, where the manager can clearly demonstrate competence of staff and systems, it may be allowed to provide Class 7/ 3(9) services to a managed entity even though the respective permissions are not an exact match).

8 Not all management and administration services provided to licenceholders amount to managed arrangements (e.g. outsourcing arrangements). The IoMFSA is primarily seeking to regulate management or administration of licenceholders under Class 7 and Class 3(9).

The IoMFSA takes into account the following indicators when deciding whether ‘management’ or ‘administration’ of a licenceholder is taking place:

- the whole, or substantially the whole, of the regulated activity of the licenceholder is operated or arranged by the manager/administrator;
- all or nearly all of the staff who carry out the services are supplied, directly or indirectly, by the manager/administrator (possibly with one or two staff retained by the managed entity for sales purposes or as a quality check);
- all or nearly all of the staff who carry out the services (if not supplied by the manager/administrator) are under the management or direction of the manager/administrator;
- at least half of the managed entity’s Board is made up of persons nominated or provided by the manager.

In practice, licenceholder to licenceholder agreements for ‘management’ will typically include elements of ‘administration’ in which case the Class 7 or Class 3(9) licence will refer to ‘management and administration’.

9 **Group arrangements**

Licenceholders will not normally be regarded as managed or administered where the licenceholder being managed and the provider of management or administration services are in the same group. However, in some circumstances one group company may be providing management or administration services to another group company.

There are many situations where two group companies have common staff or where there is one employment company to which all staff are contracted. Generally, these situations would not be regarded as ‘management’ or ‘administration’.

The IoMFA will look at the totality of the arrangements when deciding whether 'management' or 'administration' of another group company is taking place. Some factors to consider include:

- the group is headquartered outside the Island; or
- the licenceholder being managed or administered is a branch or subsidiary of a group company, which has its main operations outside the Island and conducts similar regulated activities outside the Island.

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Appendix 4 - The licensing structure under the Financial Services Act 2008

			Do the IoMFSA's powers under the FSA08 apply?	Does the Rule Book apply?	Does the AML/CFT Code apply?
1. Is the activity done by way of business? If yes go to 2.	No	Not a regulated activity	No	No	Depends on activity
2. Is the activity listed in the RAO? If yes go to 3.	No	Not a regulated activity	No	No	Depends on activity
3. Is the activity excluded in the RAO? If no go to 4.	Yes	Not a regulated activity	No	No	Yes ⁴⁹
4. Is the activity exempted in the Exemption Regulations? If no go to 5.	Yes	A regulated activity but exempted from holding a licence (is a "permitted person" S35(1) FSA08)	Yes	No ⁵⁰	Yes
5. Is the person currently undertaking the regulated activity? If no go to 6.	Yes	Should be a licenceholder ⁵¹ (a "permitted person" S35(1) FSA08)	Yes	Yes	Yes
6. Has the person ceased to hold a licence to undertake the regulated activity?	Yes	Former licenceholder ⁴⁷ (a "permitted person" S35(1) FSA08)	Yes	No	Yes ⁵²

This outline is for illustrative purposes only and is not a substitute for examining the legislation. It does not constitute legal advice as to the meaning of the legislation.

⁴⁹ Schedule 4 to the [Proceeds of Crime Act 2008](#) sets aside exclusions from licensing however the [AML/CFT Code](#) still applies if business in the regulated sector is being undertaken

⁵⁰ Unless done by a licenceholder or required as part of the exemption

⁵¹ If a person undertakes a regulated activity without an exemption or a licence they are committing an offence under the FSA08

⁵² For example retention of records