



FINANCIAL SERVICES (MISCELLANEOUS PROVISIONS) BILL 2025

DRAFT FOR CONSULTATION 27/06/2025

(APPENDIX C)

**FINANCIAL SERVICES (MISCELLANEOUS
PROVISIONS) BILL 2025**

Explanatory Memorandum

1. This Bill is promoted by
2. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.

To be completed once the Bill is settled, in preparation for introduction.

DRAFT



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FINANCIAL SERVICES (MISCELLANEOUS PROVISIONS) BILL 2025

A BILL to amend the Financial Service Act 2008, the Collective Investment Schemes Act 2008, the Insurance Act 2008, the Designated Businesses (Registration and Oversight) Act 2015, the Companies Act 1931 and the Bank (Recovery and Resolution) Act 2020; to repeal the Fiduciary Services Act 2005; and for connected purposes.

BE IT ENACTED by the King's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Financial Services (Miscellaneous Provisions) Act 2023.

2 Commencement

- (1) This Act (apart from this section and section 1) comes into operation on such day or days as the Authority, by order, appoints.
- (2) An order under subsection (1) may include such consequential, incidental, supplemental, transitional, transitory or savings provisions as the Council of Ministers considers necessary or expedient in connection with the coming into operation of any provision of this Act.

PART 2 – AMENDMENTS TO FINANCIAL SERVICES ACT 2008

3 Financial Services Act 2008 amended

- (1) The Financial Services Act 2008 is amended in accordance with this Part.
- (2) Except as otherwise specified, a reference to a section in this Part is a reference to the corresponding section in the Financial Services Act 2008.

4 General amendment

For “sub-paragraph” wherever it appears substitute “subparagraph”.

5 Section 4 amended

In section 4 (the general prohibition) –

- (a) in subsection (1), for paragraphs (a) and (b) substitute –
 - (a)** in respect of which no licence is in force;
 - (b)** if such a licence is in force, other than in accordance with the conditions, if any, of the licence; or
 - (c)** at any time when the licence is suspended. **(2)**;
- (b) in subsection (3)(a), after “title” insert **(a)**, contents **(2)**.

6 Section 9 amended

In section 9 (revocation or suspension of a licence), after subsection (1) insert –

- (1A)** The Authority may, in particular, revoke or suspend a licence to carry on a regulated activity if it is no longer satisfied that the licenceholder is a fit and proper person to carry on a class of regulated activity in respect of which the licence was granted. **(2)**.

7 Section 10 amended

In section 10 (persons unfit to be directors, controllers or key persons), for subsection (1) substitute –

- (1)** If a licenceholder does not satisfy the Authority that a person is a fit and proper person –
 - (a)** to be appointed as a director or key person; or
 - (b)** to become a controller,of that licenceholder (whether or not that person is or has previously been considered as such a fit and proper person), the Authority may direct that such person shall not, without the written consent of the Authority, be appointed as such a director or key person or become such a controller. **(2)**.

8 Section 11 amended

In section 11 (warning notices) –

- (a) after subsection (1) insert –
 - (1A)** Where it considers it appropriate to do so, the Authority may give a written warning notice under this section to an individual who is or has been employed by a permitted person, or who otherwise carries out or has carried out work for or on behalf of a permitted person. **(2)**;
- (b) in subsections (2), (3)(a), (3)(b), (3)(c) and (4) for “relevant” substitute **(a)** notified **(2)**;

- (c) for subsection (7)(b) substitute –
- ❏ (b) a person who has received an employment application from a notified person who, if successful in the application, would be required to be –
 - (i) a director, key person or controller of a permitted person;
 - (ii) an actuary to an insurer or a director, company secretary, chief executive, controller, manager or principal control officer of a person to whom Part 7 of the *Insurance Act 2008* applies; or
 - (iii) an employee of a permitted person or a person to whom Part 7 (connected persons) of the *Insurance Act 2008* applies; or ❏;
- (d) for subsection (8) substitute –
- ❏ (8) In subsection (7) –

“**notified person**” means a person to whom a notice under subsection (1) or (1A) has been given that is still effective in accordance with subsection (6);

“**officer**” means an officer of a company for the purposes of the *Company Officers (Disqualification) Act 2009* (see section 1(2) of that Act);
- (e) in paragraph (b)(ii), “actuary to an insurer”, “director”, “chief executive”, “controller”, “principal control officer” and “manager” have the meanings given in the *Insurance Act 2008*. ❏.

9 Section 12 amended

In section 12 (guidance) –

- (a) in subsection (1), after “give guidance” insert ❏ (including guidance which constitutes guidance or standards for the purposes of section 18(3) (the Rule Book) ❏;
- (b) after subsection (2) insert –
 - ❏ (3) A failure to comply with guidance issued under this section or under section 6(3) does not of itself –
 - (a) render a person liable in any civil or criminal proceedings; or
 - (b) establish a failure to comply with a relevant requirement of or under this Act.
- (4) In determining whether a person has complied with a requirement of or under this Act or otherwise, guidance issued under this section or under section 6(3) –
 - (a) is admissible in evidence in civil and criminal proceedings; and

- (b) may be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.
- (5) A copy of any guidance issued under this section or under section 6(3), or any extract from it, certified in writing on behalf of the Authority to be an accurate copy of the guidance, is admissible in evidence in all legal proceedings as if it were the original and as evidence of any fact stated in it of which direct oral evidence would be admissible. **22.**

10 Section 13 amended

In section 13 (public statements), for subsection (4) substitute –

- 23** (4) The Authority may issue a public statement if it considers it to be desirable in the public interest to do so, concerning –
 - (a) any matter relating to a regulated activity or persons carrying on a regulated activity in general or any class of a regulated activity or person carrying on a regulated activity; or
 - (b) any other matter or persons relating to any of its functions under any enactment. **24.**

11 Section 16 substituted

For section 16 (civil penalties) substitute –

25 16 Civil penalties

- (1) If the Authority is satisfied that a person specified in regulations under subsection (7) –
 - (a) has contravened, or caused the contravention of, any provision of this Act;
 - (b) has contravened, or caused the contravention of, any prohibition or requirement imposed under this Act; or
 - (c) in purported compliance with any such requirement, has furnished the Authority with false, inaccurate or misleading information,
 it may require the person to pay a financial penalty in respect of the contravention.
- (2) The Authority must give written notice to the person concerned of any decision under subsection (1), together with a statement of the reasons for the decision.
- (3) If the person does not appeal the decision of the Authority, the financial penalty must be paid within such period as may be specified in regulations under subsection (7).

- (4) If the person appeals the decision of the Authority and on the determination of the appeal any amount of the financial penalty remains payable, that financial penalty must be paid within 14 days of the determination of the appeal.
- (5) The Authority may not in respect of any such contravention —
 - (a) both require a person to pay a financial penalty under this section and revoke a licence issued under section 7; or
 - (b) require a person to pay a financial penalty under this section if criminal proceedings have been commenced in respect of the contravention.
- (6) Despite subsection (5), the Authority may revoke a licence of a person under section 9 if the person has failed to pay a financial penalty within the time limit imposed on the person for that financial penalty to be paid.
- (7) The Authority must make regulations —
 - (a) specifying the persons it may require to pay a financial penalty under subsection (1);
 - (b) specifying the maximum amount of financial penalty which the Authority may impose on a person under subsection (1);
 - (c) specifying the method of calculation of financial penalty it may impose in respect of a matter mentioned in subsection (1); and
 - (d) specifying any contravention under this Act in respect of which the power of the Authority to require payment of a financial penalty applies.
- (8) Any amount received as a financial penalty shall be paid into and form part of the General Revenue of the Island.
- (9) A financial penalty may be enforced as if it were a debt owed by the person on whom it was imposed to the Authority.

12 Section 23A inserted

After section 23 (appointment of reporting accountants, etc) insert —

23A Payments of persons appointed under section 21, 22 or 23

- (1) This section applies where —
 - (a) a person (“appointee”) has been appointed under section 21, 22 or 23; and
 - (b) the Authority or the appointee considers that the circumstances are such that the appointee may not recover its costs or expenses for its work conducted in pursuance of its appointment —

- (i) from the permitted person or from the liquidated assets of that person, in the case of an appointment under section 21;
 - (ii) from the person whose affairs are managed by the appointee, in the case of an appointment under section 22; or
 - (iii) from the permitted person or a person referred to in section 23(4), (5) or (6), in the case of an appointment under section 23 (despite the requirement in section 23(7)).
- (2) Where this section applies, the Authority may guarantee to pay the amount of the costs or expenses of the appointee, or such amount of the costs or expenses of the appointee, as the Authority considers to be reasonable in all the circumstances.
- (3) If the Authority pays the costs or expenses of the appointee under subsection (2), the Authority may direct the person in respect of whom the costs or expenses have accrued to reimburse the Authority immediately or by instalments. **22**.

13 Section 25 amended

In section 25 (compensation schemes) –

- (a) after subsection 25(2)(a), insert –
 - 22** (aa) permit a body referred to in paragraph (a) to delegate to such persons it considers appropriate a matter which the body administers, determines or regulates under regulations made under this section; **22**;
- (b) after subsection 25(2)(c), insert –
 - 22** (ca) require a person referred to in paragraphs (a) to (c) of subsection (1) to submit to the Treasury, a body referred to in paragraph (a) or person referred to in paragraph (aa) such information, or give access to such information, as the Treasury or that body or person may reasonably require for the purpose of administering the scheme;
 - (cb) provide for payments that must be paid by a person referred to in paragraphs (a) to (c) of subsection (1) to the Treasury or that body or person for the Treasury's provision of software and for administering the scheme generally. **22**;
- (c) after subsection (3) insert –
 - 22** (4) The information referred to in subsection (2)(ca) includes information about the accounts of the investors and depositors of a person referred to in paragraphs (a) to (c) of subsection (1) that may be provided to the Treasury, or a body referred to in

paragraph (a) or person referred to in paragraph (aa), before the commencement of the administration of the scheme. ²².

14 Section 26 amended

In section 26 (action for damages), after “prescribed” insert ²³ in an order by the Authority ²⁴.

15 Section 29A inserted

After section 29 (agreements made unenforceable by section 27 or 28), and before Part 7 (supplementary) insert –

²⁵ 29A Liability in respect of trusts

No contract, act (including omission) or proceeding of, or on behalf of, a trust or its trustees shall be called into question nor treated as illegal, invalid or unenforceable by reason only that a provider of corporate services or trust services undertook any regulated activity for or in respect of the trust or trustees in contravention of section 4 of this Act and no right of action shall arise in civil proceedings against the trust or trustees (other than the provider of corporate services or trust services) by reason only of that contravention. ²⁶.

16 Section 31A inserted

After section 31 (restrictions on disclosure of information) insert –

²⁷ 31A Freedom of Information Act 2015

Where the disclosure of information is prohibited by this Act, that information is absolutely exempt information for the purposes of section 27 of the *Freedom of Information Act 2015* (information the disclosure of which is restricted by law). ²⁸.

17 Section 32 amended

In section 32 (appeals to the Financial Services Tribunal), in the table in subsection (3), omit the row containing “The issue of a direction” and “Paragraph 2 of Schedule 2”.

18 Section 33 amended

In section 33 (statutory indemnity), in subsection (5) –

(a) in the definition of “designated body” –

(i) in paragraph (d), for “adjudicator” substitute ²⁹ ombudsman ³⁰;

- (ii) in paragraph (g), for “Financial Services Tribunal” substitute **the Tribunal**;
- (b) in the definition of “specified enactment”, after paragraph (b), insert –
 - the Bank (Recovery and Resolution) Act 2020;**

19 Section 35 amended

In section 35 (registers), for subsection (1) substitute –

- (1)** The Authority must keep a register of former licenceholders and current licenceholders.
- (1A)** A former licenceholder must remain on the register for 15 years after ceasing to be a licenceholder.

20 Section 40 amended

In section 40 (offences in connection with information), after subsection (2), insert –

- (2A)** A person who, without reasonable excuse, contravenes any direction under paragraph 2(3) of Schedule 2 is guilty of an offence.

21 Section 43 amended

For the text in section 43 (contravention of statutory provisions) substitute –

- (1)** If a licenceholder contravenes any statutory provision of or under this Act, the Authority may exercise any power under this Act to address the contravention as the Authority considers appropriate in the circumstances.
- (2)** If a licenceholder contravenes any statutory provision, other than one contained in or under this Act, the Authority may exercise any power under this Act to address the contravention as the Authority considers appropriate with the exception of powers to –
 - (a)** impose a financial penalty under section 16;
 - (b)** apply for an injunction or for restitution under section 20.

22 Section 45 amended

In section 45 (Tynwald procedure) –

- (a)** in subsection (1), for “regulations,” substitute **regulations or**;
- (b)** in subsection (2), for “16(5) or 44(2) or an order made under paragraph 2(10) of Schedule 5” substitute **16(7) or 44(2)**;
- (c)** in subsection (3), after “subsection (4)” insert **or (5)**;

- (d) after subsection (4) insert –
- ❏ (5) An order made under paragraph 2(10) of Schedule 5 shall not have effect unless it is approved by Tynwald. ❏.

23 Section 46 amended

In section 46 (fees) –

- (a) number the text commencing “The Authority may” as subsection (1);
- (b) after the renumbered subsection (1) insert –
- ❏ (2) The Authority may by order prescribe in connection with the discharge of any other of its functions under this Act such amount as the Authority considers is reasonable to cover the cost of discharging the function (including a reasonable proportion of the Authority’s administrative and overhead expenses). ❏.

24 Section 48 amended

In section 48 (interpretation) –

- (a) in subsection (1) –
- (i) for the definition of “associate” substitute –
- ❏ “associate” means –
- (a) in relation to any individual –
- (i) the parent, spouse, civil partner, child, stepchild or sibling of the individual;
- (ii) any body corporate of which that individual is a director;
- (iii) a partner or employee of that individual;
- (b) in relation to a body corporate –
- (i) any director or employee of that body;
- (ii) any subsidiary of that body;
- (iii) any holding company of that body;
- (iv) any subsidiary of that holding company;
- (v) any director of any such holding company or subsidiary;
- (c) in relation to an individual or a body corporate, any person with whom the individual or body corporate has an agreement, arrangement or other obligation –
- (i) in respect of the acquisition, holding or disposal of shares or other interests in a body corporate; or

- (ii) to act together in exercising voting power with respect to such a body corporate; ~~22~~;
- (ii) in the definition of “controller”, after paragraph (d), insert –
 - ~~23~~ (e) a person who either alone or with any associate or associates is able to exercise a significant influence over the management of the licenceholder or of another body corporate of which the licenceholder is a subsidiary by virtue of –
 - (i) a holding of shares in; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power of,
 the licenceholder or other body corporate of which the licenceholder is a subsidiary; or
 - (f) a person who has the power to appoint directors to the board or other executive committees of the licenceholder or other body corporate of which the licenceholder is a subsidiary and to remove them; ~~24~~;
- (iii) for the definition of “permitted person” substitute –
 - ~~25~~ “permitted person” means –
 - (a) a current licenceholder;
 - (b) a former licenceholder; or
 - (c) a person who is exempt from any provision of this Act under section 44(2); ~~26~~;
 - (iv) at the end of the definition of “subsidiary”, for the full stop substitute a semi-colon and insert –
 - ~~27~~ “the Tribunal” means the Financial Services Tribunal constituted under section 32. ~~28~~;
 - (b) in subsection (3)(k), omit “in relation to a permitted person”;
 - (c) in subsection (4), for “16(3)” substitute ~~29~~ 16(5) ~~30~~.

25 Schedule 1 amended

In Schedule 1 (the Isle of Man Financial Services Authority),–

- (a) in paragraph 2 –
 - (i) at the end of subparagraph (2)(zf), for the full-stop substitute a semi-colon;
 - (b) after subparagraph (2)(zf), insert –
 - ~~31~~ (zg) the *Bank (Recovery and Resolution) Act 2020*. ~~32~~;
- (b) in paragraph 3(e) and (f), for “island” substitute ~~33~~ Island ~~34~~.

26 Schedule 1A amended

In Schedule 1A (transfer of business including deposit-taking), in paragraph 6 (sanction of the court for relevant transfer schemes) –

- (a) in subparagraph (1), for “This paragraph sets” substitute “Subparagraphs (2) and (3) set”;
- (b) after subparagraph (3) insert –
 - (4) Where the High Court makes an order under this Schedule sanctioning a scheme, the High Court may order –
 - (a) the transfer to the transferee of the whole or a part of the business and of the property or liabilities of the transferor (including any part of the business that is not the business of deposit taking);
 - (b) the allotting or appropriation by the transferee of any shares, debentures, policies, deposits or other like interests in the transferee which under the scheme are to be allotted or appropriated by the transferee to or for any person;
 - (c) the continuation by or against the transferee of any legal proceedings pending by or against the transferor;
 - (d) the dissolution, without winding up, of the transferor; and
 - (e) such incidental, consequential and supplementary matters as are necessary to secure that the transfer of the scheme shall be fully and effectively carried out.

27 Schedule 2 amended

In Schedule 2 (inspection and investigation) –

- (a) in paragraph 1 (inspection and investigation) –
 - (i) for subparagraph (1) substitute –
 - (1) The Authority may inspect the books, accounts and documents, and investigate the transactions of any person, provided that the inspection or investigation is in performance of any of the Authority’s functions specified in paragraph 2(1) (functions) of Schedule 1, whether or not the Authority suspects that the person has contravened, or caused the contravention of, a requirement under this or any other enactment.
 - (1A) The powers of inspection and investigation described in subparagraph (1) may be exercised instead of or in conjunction with any other powers of the Authority described under this Act or any other enactment.
 - (ii) for subparagraph (6) substitute –
 - (6) The powers provided by this paragraph may be exercised in relation to a person who was formerly engaged in an activity falling

- within the functions of the Authority specified in paragraph 2(1) of Schedule 1, but only in respect of or in connection with a transaction, matter or circumstances that occurred or existed when that person was so engaged. ²².
- (iii) in subparagraph (7) for the words beginning with “The powers” and ending with “suspect of –” substitute ²³Without limiting the exercise of the powers under this paragraph, those powers may be exercised in relation to a person whom the Authority reasonably suspects of –²⁴;
 - (iv) omit subparagraphs (9) and (10);
 - (b) in paragraph 2 (requests for information) –
 - (i) in subparagraph (1), after “Act” insert ²⁵or any other enactment²⁶;
 - (ii) in subparagraph (2) –
 - (A) after “may request” insert ²⁷in relation to a person to whom subparagraph (1) refers²⁸;
 - (B) in subparagraph (2)(a) for “a permitted person” substitute ²⁹that person³⁰;
 - (C) in subparagraph (2)(b) omit “permitted” wherever it appears;
 - (D) at the end of subparagraph (2), after “under this Act” insert ³¹or any other enactment³²;
 - (iii) in subparagraph (3), for “a permitted person, former permitted person, recognised auditor or former recognised auditor” substitute ³³a person to whom subparagraph (1) refers³⁴;
 - (iv) in subparagraph (6), for “The powers” substitute ³⁵For the avoidance of doubt, the powers³⁶;
 - (c) in paragraph 3 (power of Authority to require information), for subparagraphs (1) and (2) substitute –
 - ³⁷(1) If, on an application made by the Authority, a justice of the peace is satisfied that there is good reason to do so for the purposes of investigating the affairs, or any aspect of the affairs, of any person, in so far as those affairs are relevant to the Authority’s functions under this or any other enactment, the justice may by written instrument authorise the Authority to exercise the powers under this paragraph which are otherwise not enforceable.
 - (2) The Authority may by notice in writing, accompanied by a copy of the instrument issued by the justice of the peace under subparagraph (1) require the person whose affairs are to be investigated or any other person whom it has reason to believe has relevant information –

- (a) to attend before the Authority at a specified time and place; or
- (b) to answer questions or otherwise furnish information with respect to any matter relevant to the investigation; or
- (c) to attend before the Authority at a specified time and place and answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

28 Schedule 4 amended

In Schedule 4 (mediation and adjudication) –

- (a) in paragraph 2 (cases where mediation not available or may not proceed) –
 - (i) in subparagraph (1)(a), after “material inconvenience”, insert “as a result of the actions of the supplier or payment service provider to which the complaint relates”;
 - (ii) in subparagraph (1)(c), (1)(h) and (1)(k), after “supplier” insert “or payment service provider”;
 - (iii) in subparagraph (1)(g), after “supplier’s” insert “or payment service provider’s”;
 - (iv) in subparagraph (1)(l), for “adjudicator” substitute “ombudsman”;
 - (v) for subparagraph (2) substitute –

(2) The OFT must decline or cease to act under paragraph 1(3) or 1A(3) where it appears to it that the dispute was referred to it –

- (a) more than 6 months after the date on which the supplier or payment service provider sent the complainant its final response; or
- (b) more than 3 years after the act or omission giving rise to it came, or ought reasonably have come, to the knowledge of the complainant,

and in any case, more than 6 years after that act or omission.

(2A) Despite subparagraph (2), the OFT may act or continue to act under paragraph 1(3) or 1A(3) if –

- (a) in its view, a failure to comply with the time limits in subparagraph (2) was as a result of exceptional circumstances; or
- (b) the supplier did not send a valid response.

(2B) For the purposes of subparagraph (2A), “exceptional circumstances” means –

- (a) serious illness or death of the complainant;
- (b) serious illness or death of the parent, spouse, civil partner, child, stepchild or sibling of the complainant; or
- (c) the complainant did not receive the final response of the supplier or payment service provider; or
- (d) any other event prescribed by the OFT in an order. **22**;
- (b) in subparagraph (4), after “suppliers of financial services of any class or description” insert **23** or payment service providers **24**;
- (c) in paragraph 3 (referral to adjudication) –
 - (i) in the heading, for “adjudication” substitute **25** Ombudsman **26**;
 - (ii) in subparagraph (1), for “adjudicator” substitute **27** ombudsman **28**;
 - (iii) for subparagraph (2) substitute –
- 29** (2) The senior ombudsman or deputy senior ombudsman (see paragraphs 4(1), (2A) and (2B)) must nominate the panel member who is to conduct the adjudication in any case. **30**;
- (iv) in subparagraph (3) for “adjudicator”, in both places where it appears, substitute **31** ombudsman **32**;
- (d) in paragraph 4 (adjudicators) –
 - (i) in the heading for “Adjudicators” substitute **33** Ombudsmen **34**;
 - (ii) for “adjudicator”, in every place where it appears, substitute **35** ombudsman **36**;
 - (iii) for “adjudicators”, in every place where it appears, substitute **37** ombudsmen **38**;
 - (iv) after subparagraph (2), insert –
- 39** (2A) The Appointments Commission may, when appointing and maintaining a panel of persons under subparagraph (1), designate one of those persons (other than the senior ombudsman) as the deputy senior ombudsman.
- (2B) The deputy senior ombudsman may carry out any of the functions of the senior ombudsman, and for this purpose a reference in paragraph 7 to the senior ombudsman includes the deputy senior ombudsman.
- (2C) In any case where neither the senior ombudsman nor the deputy senior ombudsman is able to carry out the functions of the senior ombudsman, either the senior ombudsman or the deputy senior ombudsman may nominate another ombudsman whom the senior ombudsman or deputy senior ombudsman, as the case may be, is

- satisfied is appropriately qualified, to perform the functions of the senior ombudsman. **22**;
- (e) after paragraph (4) insert –

23 *Resignation etc. of ombudsmen*

- 4A (1) This paragraph applies to persons appointed under paragraph 4.
- (2) Persons to whom this paragraph applies may resign from the panel by notice in writing to the Appointments Commission.
- (3) If the Commission is satisfied that a person to whom this paragraph applies –
- (a) has been absent from the Island for a period longer than 6 consecutive months;
 - (b) has become bankrupt or made an arrangement with his creditors;
 - (c) is incapacitated by physical or mental illness; or
 - (d) is otherwise unable or unfit to discharge his or her functions as a member of a tribunal,
- it may by an instrument in writing remove the person from office.
- (4) The procedures adopted in connection with the determination of any matter for the purposes of section 5(3) (resignation etc of members of tribunals) of the Tribunals Act 2006 for the purposes of determining any matter for the purposes of section 5 of that Act shall apply for the purpose of determining any matter for the purposes of subparagraph (3) as if persons to whom this paragraph applies were persons to whom section 5 of that Act applied.
- (f) in paragraph 5 (adjudication) –
- (i) for “adjudicator”, in every place where it appears, substitute **24** ombudsman **25**;
 - (ii) after subparagraph (2)(a) insert –
 - 26** (aa) requiring information about the total value of the loss or damage alleged to have been suffered by the claimant; **27**;
 - (iii) in subparagraph (2)(c), for “complainant and the supplier” substitute **28** complainant, supplier or payment service provider **29**;
- (f) in paragraph 6 (determination and award by adjudicator) –
- (i) for “adjudicator” in the heading and in every place where it appears in paragraph 6, substitute **30** ombudsman **31**;
 - (ii) after “supplier” in every place where it appears insert **32** or payment service provider **33**;
 - (iii) in subparagraph (2A) –
 - (A) omit “and” at the end of subparagraph (a);

- (B) for subparagraph (b) substitute –
- (b) in respect of an act or omission occurring on or after 1 April 2012 but before the coming into operation of Part 2 of the *Financial Services (Miscellaneous Provisions) Act 2023*, £150,000;
 - (c) in respect of an act or omission occurring on or after the coming into operation of Part 2 of the *Financial Services (Miscellaneous Provisions) Act 2023*, £250,000.
 - (g) in paragraph 7 (review by senior adjudicator) –
 - (i) in the heading, and in paragraph 7 in every place where it appears, for “adjudicator”, substitute ombudsman;
 - (ii) after “supplier” in every place where it appears, insert or payment service provider;
 - (h) in paragraph 8 (cases where adjudication not available or may not proceed) –
 - (i) for “adjudicator”, in every place where it appears, substitute ombudsman;
 - (ii) in subparagraph (4), for “where it appears to the adjudicator that any of the conditions specified in paragraph 2(1) is satisfied” substitute where it appears to the ombudsman that any of the conditions specified in paragraph 2(1) is satisfied or that the total amount of loss or damage to the claimant exceeds the applicable amount;
 - (h) in paragraph 9 (investigation and adjudication: supplemental powers) –
 - (i) for “adjudicator”, in every place where it appears, substitute ombudsman;
 - (ii) in subparagraph (1)(a), after “supplier” insert or payment service provider;
 - (iii) in subparagraph (1)(c), for “adjudicator’s” substitute ombudsman’s;
 - (i) in paragraph (10) (supplementary), after subparagraph (1) insert –
 - (1A) If an award of any amount has been made by an ombudsman in respect of loss or damage arising from a financial services dispute or a payment services dispute the claimant shall not be entitled to commence or continue proceedings in a court in relation to the same dispute or a dispute that is in any way connected to that dispute.

29 Schedule 5 amended

In Schedule 5 (disclosure of information) –

- (a) in paragraph 1 (restrictions on disclosure of information), in subparagraph (3)(d), for “adjudicator” substitute **ombudsman**;
- (b) in paragraph 2 (exceptions from restrictions on disclosure) –
 - (i) in subparagraph (1)(h), for “discharge functions under enactments relating to income tax” substitute **discharge its functions under any enactment**;
 - (ii) in subparagraph (1)(n), for “adjudicator to discharge their respective functions under Schedule 4” substitute **ombudsman to discharge their respective functions under any enactment**;
 - (iii) omit subparagraphs (1)(na), (1A) and (1B);
 - (iv) in subparagraph (1)(r), after “enabling” insert **or assisting** and omit “or” as it appears after the semi-colon;
 - (v) in subparagraph (1)(s), for “to Collector” substitute **the Collector** and omit “or”;
 - (vi) in the subparagraph (1)(t), for “enabling the Financial Service Tribunal to carry out its functions (regardless of the enactment under which the function is conferred).” substitute **enabling or assisting the Tribunal to carry out its functions (regardless of the enactment under which the function is conferred)**;
 - (vii) after subparagraph (1)(t), insert –
 - (u)** for the purposes of enabling or assisting the Tribunal to carry out its functions (regardless of the enactment under which the function is conferred);
 - (v)** for the purpose of enabling or assisting the Cabinet Office to carry out any of its functions; or
 - (w)** for the purpose of enabling or assisting the Financial Intelligence Unit to carry out any of its functions.
 - (viii) for subparagraphs (2) and (3), substitute –
 - (2)** The Treasury may by order amend paragraph 2(1) to add or remove an entry relating to a public or other authority in the island.
 - (3)** An order under subparagraph (2) –
 - (a) must specify the functions of that public or other authority in respect of which disclosure of information is not precluded;
 - (b) may impose conditions subject to which the disclosure of information is permitted by that subparagraph; and
 - (c) may otherwise restrict the circumstances in which that subparagraph permits disclosure.

- (c) after paragraph 2 insert –

33 *Contractual duties of confidentiality*

3 (1) Any provision in an agreement (whether a worker’s contract or not) between a worker and a person carrying on a regulated activity is void in so far as it purports to preclude a worker from making a disclosure to the Authority which is relevant to its functions under any enactment.

(2) “Worker” has the meaning given in Part IV (protected disclosures) of the *Employment Act 2006* and includes any person engaged in any work in relation to a regulated activity. **32**.

PART 3 – AMENDMENTS TO COLLECTIVE INVESTMENT SCHEMES ACT 2008

30 Collective Investment Schemes Act 2008 amended

- (1) The Collective Investment Schemes Act 2008 is amended in accordance with this Part.
- (2) Except as otherwise specified, a reference to a section in this Part is a reference to the corresponding section in the Collective Investment Schemes Act 2008.

31 General amendment

For “sub-paragraph” wherever it appears substitute **33** subparagraph **32**.

32 Section 1 amended

In section 1 (meaning of collective investment scheme), after subsection (5) insert –

- 33** (6) Where an open-ended investment company enters into liquidation, it remains a collective investment scheme despite it no longer being open-ended in nature. **32**.

33 Section 11A amended

In section 11A (persons unfit to be members of governing body), for subsection (1) substitute –

- 33** (1) If the persons constituting the governing body of a scheme do not satisfy the Authority that a person is a fit and proper person to be a member of the governing body of a scheme (whether or not that person is or has previously been considered as such a fit and proper person), the Authority may direct that such person must not,

without the written consent of the Authority, be appointed as such a member. ~~22~~.

34 Section 11F amended

In section 11F (warning notices) —

- (a) in subsection (2), for “relevant person’s” substitute ~~23~~ notified person’s ~~24~~
- (b) in subsections (3)(a), (3)(b), (3)(c) and (4), for “relevant person” substitute ~~25~~ notified person ~~26~~;
- (c) for subsection (7)(b), substitute —
 - ~~27~~ (b) a person who has received an employment application from a notified person who, if successful in the application, would be required to be —
 - (i) a director, key person or controller of the holder of a licence issued under section 7 of the *Financial Services Act 2008*; or
 - (ii) an actuary to an insurer, or a director, company secretary, chief executive, controller, manager or principal control officer of a person to whom Part 7 of the *Insurance Act 2008* applies; ~~28~~;
- (d) at the end of subsection (7)(d) for the comma substitute a full stop;
- (e) omit the words “provided that the warning notice is effective in accordance with subsection (6)” that appear immediately after subsection (7)(d);
- (f) for subsection (8) substitute —
 - ~~29~~ (8) In subsection (7) —
 - “notified person” means a person to whom a notice under subsection (1) has been given that is still effective under subsection (6);
 - “officer” means an officer of a company for the purposes of the *Company Officers (Disqualification) Act 2009* (see section 1(2) of that Act);
 - “director”, “key person” and “controller” referred to in paragraph (b)(i) have the meanings given in the *Financial Services Act 2008*; and
 - “actuary to an insurer”, “director”, “chief executive”, “controller”, “principal control officer” and “manager” referred to in paragraph (b)(ii) have the meanings given in the *Insurance Act 2008*. ~~30~~.

35 Section 13 amended

In section 13 (appointments), in subsection (6)(c), for ~~31~~ an open-ended investment company” substitute ~~32~~ a company ~~33~~.

36 Section 15A and 15B inserted

After section 15 (applications to court) insert –

15A Winding up of incorporated schemes

Where the Authority applies to court, under the provisions of this Act for an order to wind up a scheme that is a company –

- (a) the application is to be treated as if it were an application by the Authority under section 164(1)(d) (provisions as to applications for winding up) of the *Companies Act 1931*; and
- (b) if it appears to the Authority that any of the circumstances in section 11 exist in relation to the scheme, for the purposes of 164(1)(d) (provisions as to applications for winding up) of the *Companies Act 1931*, the Authority shall be treated as being satisfied that it is expedient in the public interest that the company should be wound up.

15B Payment of person appointed under section 13 or 15(1)(b)(ii)

- (1) This section applies where –
 - (a) a person (“appointee”) has been appointed under section 13 or 15(1)(b)(ii); and
 - (b) the Authority or the appointee considers that the circumstances are such that the appointee may not recover its costs or expenses for its work conducted in pursuance of its appointment from the scheme.
- (2) Where this section applies, the Authority may guarantee to pay the amount of the costs or expenses of the appointee, or such amount of the costs or expenses of the appointee as the Authority considers to be reasonable in all the circumstances.
- (3) If the Authority pays the costs or expenses of the appointee under subsection (2), the Authority may direct the scheme in respect of which the costs or expenses have accrued to reimburse the Authority immediately or by instalments.

37 Section 16A inserted

After section 16 (investigations), insert –

16A Contravention of statutory provisions

Except as otherwise provided for in this Act, if a person contravenes any statutory provision of or under this Act or the *Financial Services Act 2008*, the Authority may exercise any power under this Act or the *Financial*

Services Act 2008 to address the contravention as the Authority considers appropriate in the circumstances. **22**.

38 Section 19A substituted

For section 19A (civil penalties) substitute –

22 19A Civil penalties

- (1) If the Authority is satisfied that a person specified in regulations under subsection (6) –
 - (a) has contravened, or caused the contravention of, any provision of this Act;
 - (b) has contravened, or caused the contravention of, any prohibition or requirement imposed under this Act; or
 - (c) in purported compliance with any such requirement, has furnished the Authority with false, inaccurate or misleading information,it may require the person to pay a financial penalty in respect of the contravention.
- (2) The Authority must give written notice to the person concerned of any decision under subsection (1), together with a statement of the reasons for the decision.
- (3) If the person does not appeal the decision of the Authority, the financial penalty must be paid within such period as may be specified in regulations under subsection (7).
- (4) If the person appeals the decision of the Authority and on the determination of the appeal any amount of the financial penalty remains payable, that financial penalty must be paid within 14 days of the determination of the appeal.
- (5) The Authority may not in respect of any such contravention –
 - (a) both require a person to pay a financial penalty under this section and revoke a licence issued under section 7 of the *Financial Services Act 2008* to carry on a regulated activity; or
 - (b) require a person to pay a financial penalty under this section if criminal proceedings have been commenced in respect of the contravention.
- (6) Despite subsection (5), the Authority may revoke an authorisation order or a recognition order under paragraph 4 of Schedule 1 if the person has failed to pay a financial penalty within the time limit imposed on the person for that financial penalty to be paid.
- (7) The Authority must make regulations –

- (a) specifying the persons it may require to pay a financial penalty under subsection (1);
 - (b) specifying the maximum amount of financial penalty which the Authority may impose on a person under subsection (1);
 - (c) specifying the amount or method of calculation of financial penalty it may impose in respect of a matter mentioned in subsection (1); and
 - (d) specifying any contravention under this Act in respect of which the power of the Authority to require payment of a financial penalty applies.
- (8) Any amount received as a financial penalty shall be paid into and form part of the General Revenue of the Island.
- (9) A financial penalty may be enforced as if it were a debt owed by the person on whom it was imposed to the Authority. ~~22~~

39 Section 20 amended

In section 20 (guidance) –

after subsection (2) insert –

- ~~22~~(3) A failure to comply with guidance issued under this section does not of itself –
- (a) render a person liable in any civil or criminal proceedings; or
 - (b) establish a failure to comply with a relevant requirement of or under this Act.
- (4) In determining whether a person has complied with a requirement of or under this Act or otherwise, guidance issued under this section –
- (a) is admissible in evidence in civil and criminal proceedings; and
 - (b) may be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.
- (5) A copy of any guidance issued under this section, or any extract from it, certified in writing on behalf of the Authority to be an accurate copy of the guidance, is admissible in evidence in all legal proceedings as if it were the original and as evidence of any fact stated in it of which direct oral evidence would be admissible. ~~22~~

40 Section 22 amended

In section 22 (public registers) –

- (a) in subsection (1)

- (i) omit “at its principal office”;
- (ii) after “prescribed” insert **“by regulations under section 24”**;
- (b) for subsection (2), substitute —
“(2) The registers to be kept under this section must be available for public inspection at such times, in such manner and by such means as may be prescribed by regulations made under section 24.”

41 Section 23 amended

In section 23 (financial provisions), after subsection (1) insert —

- “(1A) The Authority may by order prescribe in connection with the discharge of any of its functions under this Act such amount as the Authority considers is reasonable to cover the cost of discharging the function (including a reasonable proportion of the Authority’s administrative and overhead expenses).”**

42 Section 26 amended

In section 26 (interpretation), in subsection (1) —

- (a) for the definition of “associate” substitute —
“‘associate’ means —
 - (a) in relation to any individual —
 - (i) the parent, spouse, civil partner, child, stepchild or sibling of the individual;
 - (ii) any body corporate of which that individual is a director;
 - (iii) a partner or employee of that individual;
 - (b) in relation to a body corporate —
 - (i) any director or employee of that body;
 - (ii) any subsidiary of that body;
 - (iii) any holding company of that body;
 - (iv) any subsidiary of that holding company;
 - (v) any director of any such holding company or subsidiary;
 - (c) in relation to an individual or a body corporate, any person with whom the individual or body corporate has an agreement, arrangement or other obligation —
 - (i) in respect of the acquisition, holding or disposal of shares or other interests in a body corporate; or

- (ii) to act together in exercising voting power with respect to such a body corporate; ~~22~~;
- (b) in the definition of “controller” –
 - (i) after “in relation to a person” insert ~~23~~ (“P”) ~~22~~;
 - (ii) in paragraphs (a) and (b), for “the person” substitute ~~23~~ P ~~22~~;
 - (iii) for paragraphs (c) and (d) substitute –
 - ~~23~~ (c) a person in accordance with whose directions or instructions one or more of the directors of a body corporate of which P is a subsidiary are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
 - (d) a person who either alone or with any associate or associates is entitled to exercise or control the exercise of 15 per cent or more of the voting power at any general meeting of P or of another body corporate of which it is a subsidiary;
 - (e) a person who either alone or with any associate or associates is able to exercise a significant influence over the management of P or of another body corporate of which P is a subsidiary by virtue of –
 - (i) a holding of shares in P; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power of P; or
 - (f) a person who has the power to appoint directors to the board or other executive committees of P and to remove them; ~~22~~;
- (c) for the definition of “director” substitute –
 - ~~23~~ “director” includes –
 - (a) any person occupying the position of director by whatever name called;
 - (b) any person in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
 - (c) in relation to a limited liability company constituted under the *Limited Liability Companies Act 1996*, a member, the company’s manager and the registered agent;
 - (d) in respect of any other body corporate such persons as occupy a position equivalent to that of director; and

- (e) in relation to a foundation within the meaning of the *Foundations Act 2011*, a member of the council of the foundation; ²²;
- (d) in the definition of “documents constituting the scheme”, in paragraph (b), for “an open-ended investment company” substitute ²³a company which is a scheme ²²;
- (e) in the definition of “governing body”, in paragraph (b), for “an open-ended investment company” substitute ²³a company ²²;
- (f) in the definition of “units”, in paragraph (b) for “an open-ended investment company” substitute ²³a company ²².

43 Schedule 2 amended

In Schedule 2 (international schemes) –

- (a) in paragraph 2 (full international schemes) –
 - (i) in subparagraph (1)(b), after “schemes” insert ²⁴ (but see subparagraph (1A)) ²²;
 - (ii) after subparagraph (1) insert –

²⁴(1A) Despite subparagraph (1)(b), once a scheme is established as a full international scheme under this paragraph a failure to comply with a provision of regulations relating to full international schemes does not of itself –

- (a) affect the existence of the scheme as a full international scheme;
 - (b) exempt the scheme from a requirement to comply with such regulations; or
 - (c) prevent the Authority from enforcing such regulations with respect to the scheme. ²²;
- (b) in paragraph 4 (other classes of international scheme) –
 - (i) in subparagraph (2)(b), after “class” insert ²⁴ (but see subparagraph (2A)) ²²;
 - (ii) after subparagraph (2) insert –

²⁴(2A) Despite subparagraph (2)(b), once a scheme is established as an international scheme under this paragraph a failure to comply with a provision of regulations relating to such an international scheme does not of itself –

- (a) affect the existence of the scheme as an international scheme;
 - (b) exempt the scheme from a requirement to comply with such regulations; or
 - (c) prevent the Authority from enforcing such regulations with respect to the scheme. ²².

PART 4 – AMENDMENTS TO INSURANCE ACT 2008**44 Insurance Act 2008 amended**

- (1) The Insurance Act 2008 is amended in accordance with this Part.
- (2) Except as otherwise specified, a reference to a section in this Part is a reference to the corresponding section in the Insurance Act 2008.

45 General amendment

For “sub-paragraph” wherever it appears substitute **subparagraph**.

46 Section 5 amended

In section 5 (authorised insurers), after subsection (2), insert –

- (3)** Without prejudice to the generality of subsection (1), for the purposes of this Act a person is treated as holding itself out as carrying on, in or from the Island, insurance business if that person (whether inside or outside the Island) –
 - (a) by means of any words in the name, title, content or address of a web site or page; or
 - (b) by means of any words in an email name or address or in the name, title or subject matter of an email; or
 - (c) by means of any words in a domain name, expressly or by implication indicates that that person, or another, carries on insurance business in, from or in connection with the Island, either on their own or another’s behalf or as an intermediary for another.

47 Section 7 amended

In section 7 (circumstances in which authorisation will not be granted) –

- (a) number the text beginning with “The Authority shall not” as subsection (1);
- (b) in subsection (1)(a)(iii) (as renumbered) omit “in the case of an applicant to carry on long-term insurance business,”;
- (c) after subsection (1) (as re-numbered) insert –
 - (2)** In assessing whether an applicant is a fit and proper person under subsection (1), the Authority will have regard to the information before it, including as to –
 - (a) the integrity, competence, financial standing, structure and organisation of the applicant;
 - (b) the integrity, competence and financial standing of –

- (i) the controller, directors and any chief executive of the applicant; and
 - (ii) in the case of an applicant to carry on long-term insurance business, any actuary to the applicant proposed in satisfaction of the requirements of section 18;
 - (c) the description of the business the applicant proposes to carry on; and
 - (d) any other persons employed or to be employed by the applicant, or associated with the applicant for the purposes of its business.
- (3) The Authority may publish guidance setting out the criteria that it will normally apply in assessing whether it is satisfied as required by subsection (1).
- (4) The guidance must be published in such form and in such manner as the Authority may decide.
- (5) Subsections (2) and (3) do not affect the generality of subsection (1). ²²

48 Section 10 amended

In section 10 (withdrawal of authorisation in respect of new business), after subsection (1) insert –

- ²³(1A) The Authority may, in particular, withdraw an authorisation if it is no longer satisfied that the authorised insurer is a fit and proper person to carry on insurance business. ²⁴

49 Section 14 amended

In section 14 (accounts), after subsection (5), insert –

- ²⁵(6) Despite subsection (3), regulations may provide for –
- (a) a different period after the date of the meeting at which the accounts were approved by the board of directors within which audited annual accounts must be produced to the Authority;
 - (b) a different period after the close of the year to which they relate within which such accounts must be produced to the Authority in any event,
- for authorised insurers conducting such class or classes of insurance business as may be specified in the regulations. ²⁶

50 Section 18 amended

In section 18 (actuary) –

- (a) for subsection (4) substitute –

“(4) If an insurer carrying on long-term business does not satisfy the Authority that the person is a fit and proper person to be appointed as actuary under subsection (1) (whether or not that person is or has previously been considered as such a fit and proper person), the Authority may direct that such person must not, without the written consent of the Authority, be appointed as actuary.”;

- (b) in subsection (13), for “prescribed” substitute “determined by the Authority”.

51 Section 21C amended

In section 21C (group supervisor), in subsection (4), for “does not involve liability to third parties” substitute “is of a type or category (including class or classes) of insurance business specified in regulations for that purpose”.

52 Section 21I amended

In section 21I (appointment of group actuary) –

- (a) for subsection (3) substitute –

“(3) If a designated insurer does not satisfy the Authority that a person is a fit and proper person to be appointed as actuary under subsection (1) (whether or not that person is or has previously been considered as such a fit and proper person), the Authority may direct that such person must not, without the written consent of the Authority, be appointed as actuary.”;

- (b) in subsection (11), for “prescribed” substitute “determined by the Authority”.

53 Section 23 amended

In section 23 (insurance managers), in subsection (1), for “in the course of a business carried on in or from the Island, act as or hold itself” substitute “by way of business carried on in or from the Island, act as or hold itself out”.

54 Section 24 amended

In section 24(1) (insurance intermediaries), in subsection (1), for “in the course of a” substitute “by way of”.

55 Section 25 amended

In section 25 (registration under this Part) –

- (a) after subsection (3) insert –
 - (3A) In assessing whether an applicant is a fit and proper person under subsection (3), the Authority will have regard to the information before it, including as to –
 - (a) the integrity, competence, financial standing, structure and organisation of the applicant; and
 - (b) the integrity, competence and financial standing of the controller, directors and any chief executive of the applicant.
 - (3B) The Authority may publish guidance setting out the criteria that it will normally apply in assessing whether it is satisfied as required by subsection (3A).
 - (3C) The guidance must be published in such form and in such manner as the Authority may decide.
 - (3D) Subsections (3A) and (3B) do not affect the generality of subsection (3). ■
- (b) in subsection (5) –
 - (i) after “any time” insert ■ (whether before or after registration) ■;
 - (ii) in paragraph (a), for “continued registration of a registered” substitute ■ registration of an ■.

56 Section 26 amended

In section 26 (cancellation or restriction), after subsection (1) insert –

- (1A) The Authority may, in particular, cancel the registration if it is no longer satisfied that the registered insurance manager or a registered insurance intermediary is a fit and proper person to be a registered insurance manager or a registered insurance intermediary, as the case may be. ■.

57 Section 27A amended

In section 27A (accounts), after subsection (5), insert –

- (6) Despite subsection (3), regulations may provide for –
 - (a) a different period after the date of the meeting at which the accounts were approved by the board of directors within which audited annual accounts must be produced to the Authority;
 - (b) a different period after the close of the year to which they relate within which such accounts must be produced to the Authority in any event,

for such type or category of insurance manager or insurance intermediary as may be specified in the regulations. **22**.

58 Section 28 amended

In section 28 (persons to whom this Part applies), in subsection (1), after ““a person to whom this Part applies”” insert **23** or “A” **24**.

59 Section 29 amended

In section 29 (connected persons) –

- (a) for subsections (1), (2) and (3) substitute –
 - 25**(1) A shall not appoint a person as director, company secretary, chief executive, auditor, key person or manager of A unless not less than 28 days before the proposed appointment, or such other period as the Authority may agree in writing, a written notice containing such particulars as may be determined by the Authority, is served on the Authority by A.
- (1A) Despite subsection (1) –
 - (a) if an appointment mentioned in that subsection is to an office or position which is notifiable only, A must notify the Authority within such time following the date of the appointment as is specified in guidance published by the Authority;
 - (b) A may make an appointment mentioned in subsection (1) before giving written notice to the Authority if the appointment of a person is required due to exceptional circumstances.
- (1B) If A makes an appointment under subsection 1A(b), A must notify the Authority of the appointment within 5 days of the appointment and provide such other information about the appointment and the exceptional circumstances that gave rise to the appointment as the Authority may reasonably require.
- (2) No person shall become controller of, or insurance manager of, A unless not less than 28 days, or such other period as the Authority may agree in writing, before becoming that controller or insurance manager a written notice containing such particulars as may be determined by the Authority is served on the Authority by that controller or insurance manager, as the case may be.
- (2A) Despite subsection (2) –
 - (a) if a person becoming controller or insurance manager of A is a matter that is notifiable only, A must notify the Authority within such time following the date of the person

- becoming controller or insurance manager of A as is specified in guidance published by the Authority;
- (b) a person may become controller or insurance manager of A before the giving of written notice by A to the Authority if it is necessary to become such a controller or insurance manager due to exceptional circumstances.
- (3) If a person becomes controller or insurance manager of A due to exceptional circumstances, A must notify the Authority of that fact within 5 days of the person becoming controller or insurance manager, as the case may be, and provide such other information and the exceptional circumstances that gave rise to the controller or insurance manager taking up that role in relation to A as the Authority may reasonably require.
- (3A) If A does not satisfy the Authority that a person is a fit and proper person (whether or not the person is or has previously been considered as such a fit and proper person) –
- (a) to be appointed to an office or position mentioned in subsection (1); or
- (b) to become a controller or insurance manager,
- the Authority may direct that such person must not, without the written consent of the Authority, be appointed to such office or position, or become such a controller or insurance manager.
- (3B) If it appears to the Authority that any –
- (a) person appointed to an office or position mentioned in subsection (1); or
- (b) controller or insurance manager,
- of A is not a fit and proper person to continue as such, the Authority may direct that such person must not, without the written consent of the Authority, continue in such an office or position or continue such a controller or insurance manager. ²²
- (b) in subsection (6), for “(2) or (3)” substitute ²³(3A) or (3B) ²⁴;
- (c) in subsection (7) for “(2)(a) or (3)(a)” substitute ²⁵(3A) or (3B) ²⁶;
- (d) in subsection (8), for “a person to whom this Part applies” substitute ²⁷A ²⁸.
- (e) for subsection (9) substitute –
- ²⁹(9) In this section and section 29E –
- “manager” means (except in relation to references to an insurance manager) a person working for or on behalf of the insurer concerned who –
- (a) under the immediate authority of a director or its chief executive –

- (i) exercises managerial functions; or
 - (ii) is responsible for maintaining the accounts or other records of the insurer; or
 - (b) appears to the Authority to have significant powers or responsibilities with respect to any insurance business undertaken or intended to be undertaken by A.
- (9A) In this section, “notified only appointment” means an appointment to any of the offices or positions specified by the Authority as notified only in guidance published by the Authority. ²².

60 Section 29A amended

In section 29A (prohibitions) –

- (a) in subsections (1), (3) and (4), for “person to whom this Part applies” substitute ²³ A ²²;
- (b) in subsection (4), for “that person” substitute ²³ “A” ²².

61 Section 29E amended

In section 29E (warning notices) –

- (a) in subsection (1), for “principal control officer (“the notified person”) of a person to whom this Part applies” substitute ²³ key person (“the notified person”) of A. ²²;
- (b) after subsection (1) insert –
 - ²³ (1A) Where it considers it appropriate to do so, the Authority may give a written warning notice under this section to an individual who is or has been employed by or otherwise carries out work for or on behalf of a A. ²²;
- (c) in subsections (2), (3)(a), (3)(b), (3)(c), (4), (7)(a) and (7)(c) for “relevant” substitute ²³ notified ²²;
- (d) for subsection (7)(b) substitute –
 - ²³ (b) a person who has received an employment application from a notified person who, if successful in the application, would be required to be –
 - (i) a director, key person or controller of a permitted person;
 - (ii) an actuary to an insurer or a director, company secretary, chief executive, controller, manager or principal control officer of A; or
 - (iii) an employee of a person mentioned in subparagraph (i) or (ii); or ²²;
- (e) for subsection (8) substitute –

(8) In subsection (7) –

“notified person” means a person to whom a notice under subsection (1) or (1A) has been given that is still effective in accordance with subsection (6);

“officer” means an officer of a company for the purposes of the *Company Officers (Disqualification) Act 2009* (see section 1(2) of that Act);

“controller”, “director”, “key person” and “permitted person” referred to in paragraph (b)(i) have the meanings given in the *Financial Services Act 2008*.

62 Section 30 amended

In section 30 (notice of cessation) –

- (a) for “principal control officer” substitute “key person”;
- (b) for “person to whom this Part applies” in both places where it occurs substitute “A”.

63 Section 34 amended

In section 34 (publication of information and advice) –

- (a) in subsection (1), after “giving of advice” insert “or guidance (which does not constitute “Guidance Notes” for the purposes of section 51 (guidance notes))”;

- (b) after subsection (2) insert –

(2A) A failure to comply with guidance issued under this section does not of itself –

- (a) render a person liable in any civil or criminal proceedings; or
- (b) establish a failure to comply with a relevant requirement of or under this Act.

- (2B) In determining whether a person has complied with a requirement of or under this Act or otherwise, guidance issued under this section –

- (a) is admissible in evidence in civil and criminal proceedings; and
- (b) may be taken into account by a court or tribunal in any case in which it appears to the court or tribunal to be relevant.

- (2C) A copy of any guidance issued under this section, or any extract from it, certified in writing on behalf of the Authority to be an accurate copy of the guidance, is admissible in evidence in all legal proceedings as if it were the original and as evidence of any fact stated in it of which direct oral evidence would be admissible.

64 Section 37 substituted

For section 37 (civil penalties) substitute –

37 Civil penalties

- (1) If the Authority is satisfied that a person specified in regulations under subsection (7) –
 - (a) has contravened, or caused the contravention of, any provision of this Act;
 - (b) has contravened, or caused the contravention of, any prohibition or requirement imposed under this Act; or
 - (c) in purported compliance with any such requirement, has furnished the Authority with false, inaccurate or misleading information,it may require the person to pay a financial penalty in respect of the contravention.
- (2) The Authority must give written notice to the person concerned of any decision under subsection (1), together with a statement of the reasons for the decision.
- (3) If the person does not appeal the decision of the Authority, the financial penalty must be paid within such period as may be specified in regulations under subsection (7).
- (4) If the person appeals the decision of the Authority and on the determination of the appeal any amount of the financial penalty remains payable, that financial penalty must be paid within 14 days of the determination of the appeal.
- (5) The Authority may not in respect of any such contravention –
 - (a) both require a person to pay a financial penalty under this section and withdraw an authorisation or permit under section 10, or cancel the registration under section 26; or
 - (b) require a person to pay a financial penalty under this section if criminal proceedings have been commenced in respect of the contravention.
- (6) Despite subsection (5), the Authority may withdraw an authorisation under section 10, or cancel a registration under section 26, if the insurer, registered insurance manager or registered insurance intermediary has failed to pay a financial penalty within the time limit imposed on the person for that financial penalty to be paid.
- (7) The Authority must make regulations –
 - (a) specifying the persons it may require to pay a financial penalty under subsection (1);

- (b) specifying the maximum amount of financial penalty which the Authority may impose on a person under subsection (1);
 - (c) specifying the amount or method of calculation of financial penalty it may impose in respect of a matter mentioned in subsection (1); and
 - (d) specifying any contravention under this Act in respect of which the power of the Authority to require payment of a financial penalty applies.
- (8) Any amount received as a financial penalty shall be paid into and form part of the General Revenue of the Island.
- (9) A financial penalty may be enforced as if it were a debt owed by the person on whom it was imposed to the Authority. 22.

65 Section 41 amended

In section 41 (application of sections 39 and 40), for “shall only apply” substitute “shall not apply”.

66 Section 41A and 41B inserted

After section 41 (application of sections 39 and 40), insert –

41A Payment of persons appointed under section 39A or 39B

- (1) This section applies where –
- (a) a person (“appointee”) has been appointed under section 39A or 39B; and
 - (b) the Authority or the appointee considers that the circumstances are such that the appointee may not recover its costs or expenses for its work conducted in pursuance of its appointment –
 - (i) from the insurer, insurance manager or insurance intermediary, or from the liquidated assets of that person, in the case of an appointment under section 39A; or
 - (ii) from the person whose affairs are managed by the appointee, in the case of an appointment under section 39B.
- (2) Where this section applies, the Authority may guarantee to pay the amount of the costs or expenses of the appointee, or such amount of the costs or expenses of the appointee, as the Authority considers to be reasonable in all the circumstances.
- (3) If the Authority pays the costs or expenses of the appointee under subsection (2), the Authority may direct the person in respect of

whom the costs or expenses have accrued to reimburse the Authority immediately or by instalments.

41B Contravention of statutory provisions

Except as otherwise provided for in this Act, if a person contravenes any statutory provision of or under this Act, the Authority may exercise any power under this Act to address the contravention as the Authority considers appropriate in the circumstances. ²²

67 Section 45 amended

In section 45 (appeals to the Financial Service Tribunal), for subsection (3) substitute –

- ²³(3) A person aggrieved may appeal, in accordance with rules made under section 8 of the *Tribunals Act 2006*, to the Financial Services Tribunal against any decision of the Authority specified in column 1 of the table below which is made under the provision specified in column 2 of that table –

Column 1	Column 2
The granting of an authorisation or permit subject to conditions	Section 8(a) (and section 22(2), in relation to a permit)
The refusal to grant an authorisation or permit	Section 8(b) (and section 22(2), in relation to a permit)
The making of an authorisation or permit subject to conditions, or further conditions	Section 9(a) (and section 22(2), in relation to a permit)
The variation or revocation of, or refusal to vary, any condition to which an authorisation or permit is subject	Section 9(b) (and section 22(2), in relation to a permit)
The withdrawal of an authorisation or permit with respect to effecting new contracts of insurance	Section 10(1) (and section 22(2), in relation to a permit)
The decision to impose a requirement on an insurer to secure that insurance business is discontinued and wound up in the event that the insurer proposes to surrender its authorisation or permit	Section 10A (and section 22(2), in relation to a permit)
The issue or variation of, or refusal to vary or revoke, a direction	Section 18(4) or (5)

The issue or variation of, or refusal to vary or revoke, a direction	Section 21I(3) or (4)
The making of a declaration	Section 23(3)
The refusal to register an applicant for registration	Section 25(4)
Making the registration of a registered insurance manager or registered insurance intermediary subject to conditions	Section 25(5)(a)
The variation or revocation of, or refusal to vary or revoke, a condition to which a registration is subject	Section 25(5)(b)
The cancellation of a registration or exemption or the making of a direction	Section 26(1)
The issue or variation of, or refusal to vary or revoke, a direction	Section 29(2) or (3)
The imposition of a prohibition	Section 29A
The variation of, or refusal to vary, a prohibition	Section 29C
The refusal to revoke a prohibition	Section 29C
The giving of a warning notice, or the terms of such a notice	Section 29E
The issue of a direction	Section 31
The decision to impose a requirement	Section 33
The imposition of a penalty	Section 37 ²² .

68 Section 46A inserted

After section 46 (restrictions on disclosure of information) insert –

46A Freedom of Information Act 2015

Where the disclosure of information is prohibited by this Act, that information is absolutely exempt information for the purposes of section 27 of the *Freedom of Information Act 2015* (information the disclosure of which is restricted by law).²²

69 Section 47 amended

In section 47 (fees), for subsection (1A) and (2) substitute –

²²(2) The Authority may by order prescribe in connection with the discharge of any of its functions under this Act such amount as the

- Authority considers is reasonable to cover the cost of discharging the function (including a reasonable proportion of the Authority's administrative and overhead expenses).
- (3) An order made under subsection (2) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid, or at the next following sitting, resolves that it must be annulled, the order ceases to have effect from that time.
 - (4) Before making an order under this section the Authority shall consult with the Treasury and such other organisations and persons as appear to it to be likely to be affected by the proposed order.
 - (5) Any unpaid fee, except an application fee, that is prescribed under this section may be sued for by the Treasury as a civil debt due to the Treasury. **22**.

70 Section 48 amended

- (1) In section 48 (registers), after subsection (1), insert –

23(1A) A former authorised insurer, permit holder, registered insurance manager or registered insurance intermediary must remain on the applicable register for 15 years after the person ceases to be an authorised insurer, permit holder, registered insurance manager or registered insurance intermediary. **24**.

71 Section 50 amended

In section 50 (regulations) –

- (a) in subsection (4), after “under” insert **25**section 37(7) or **26**;
- (b) in subsection (5), after “under” insert **25**section 37(7) or **26**.

72 Section 50A inserted

After section 50 (regulations) insert –

****25**50A Power of Authority to modify regulatory requirements**

- (1) The Authority may, on the application or with the consent of an authorised insurer direct that all or part of regulations or requirements specified in subsection (3) –
 - (a) are not to apply to that person; or
 - (b) are to apply to that person with such modifications as may be specified in the direction.

- (2) The Authority may, on the application or with the consent of an authorised insurer direct that the requirements to submit audited annual accounts under section 14(3) —
 - (a) are not to apply to that person; or
 - (b) are to apply to that person with such modifications as may be specified in the direction.
- (3) The regulations and requirements specified for the purpose of subsection (1) are regulations made by the Authority under this Act or Guidance Notes issued by the Authority as binding guidance under section 51 concerning any of the following matters —
 - (a) the activities in respect of which such persons who are so authorised, permitted or registered (as applicable);
 - (b) the conduct of business by such persons;
 - (c) the services and products provided by or on behalf of such persons;
 - (d) the relationship between such persons and their customers (including policyholders, where applicable);
 - (e) the corporate governance and risk management of such persons;
 - (f) the accounts, accounting records and capital requirements of such persons;
 - (g) the regulatory reporting by such persons; or
 - (h) the giving of full effect to the regulatory objectives and the functions of the Authority under this Act. ²²

73 Section 51 amended

In section 51 (guidance notes) –

- (a) after subsection (1) –
 - ²³(1A) The Authority may, on the application or with the consent of an insurer, insurance manager or insurance intermediary, direct that the whole of any guidance with respect to the matters specified in subsection (1), or any part of such guidance —
 - (a) is not to apply to the insurer, insurance manager or insurance intermediary; or
 - (b) is to apply to that person with such modifications as may be specified in the direction. ²⁴
- (b) in subsection (2) for “shall” substitute ²⁵may ²⁶;
- (c) omit subsection (5).

74 Section 53 amended

In section 53 (offences) –

- (a) in subsection (1) –
 - (i) in subparagraph (za) for “7(ba) substitute ~~33~~(7(1)(ba) ~~22~~;
 - (ii) in subparagraph (a) for “8 or 9” substitute ~~33~~8, 9 or 25~~22~~;
 - (iii) omit subparagraphs (aa) and (ab) and (b);
- (b) in subsection (2)(e) –
 - (i) before subparagraph (zi), insert –
 - ~~33~~(zai) a direction under section 21I(3) or (4), in contravention of section 21I(8) or 21(I)(9); ~~22~~;
 - (ii) omit subparagraphs (ii), (ia), (iv) and (v).

75 Section 53A inserted

After section 53 (offences) insert –

~~33~~ 53A Supervisory action

- (1) The Authority may take such supervisory action as the Authority believes to be appropriate in respect of the following conduct –
 - (a) failure to comply with the terms of an undertaking given under section 7(1)(ba);
 - (b) failure to comply with a condition imposed under section 8 or section 9;
 - (c) failure to comply with a requirement to notify the Authority under section 12B;
 - (d) failure to comply with a direction under section 13(6C);
 - (e) failure to comply with section 14(3) or (4), subject to any exemptions granted under section 14(5);
 - (f) the carrying on of an activity by an authorised insurer in contravention of section 16;
 - (g) the carrying on of an activity by a registered insurance manager in contravention of section 23(2);
 - (h) failure to comply with the terms of an undertaking given under section 25(3)(ca);
 - (i) failure to comply with a requirement under section 26(6);
 - (j) failure to comply with section 27A(3) or (4);
 - (k) failure to comply with section 30;
 - (l) failure to comply with a requirement under section 33(1);
 - (m) failure to comply with paragraph 4, 7B, or 12 of Schedule 2;

- (n) failure to comply with a requirement to serve specified documents upon the Authority under paragraph 7C(a) of Schedule 2.
- (2) Subject to section 37(5), any supervisory action that is taken in respect of a failure referred to in subsection (1) shall not prevent the exercise of any other power or remedy under this Act nor prevent the commencement of proceedings for an offence under this Act. ~~22~~.

76 Section 54 amended

In section 54 (interpretation) –

- (a) in subsection (1) –
 - (i) for the definition of “associate” substitute –
 - ~~22~~ “associate” means –
 - (a) in relation to any individual –
 - (i) the parent, spouse, civil partner, child, stepchild or sibling of the individual;
 - (ii) any body corporate of which that individual is a director;
 - (iii) a partner or employee of that individual;
 - (b) in relation to a body corporate –
 - (i) any director or employee of that body;
 - (ii) any subsidiary of that body;
 - (iii) any holding company of that body;
 - (iv) any subsidiary of that holding company;
 - (v) any director of any such holding company or subsidiary;
 - (c) in relation to an individual or a body corporate, any person with whom the individual or body corporate has an agreement, arrangement or other obligation –
 - (i) in respect of the acquisition, holding or disposal of shares or other interests in a body corporate; or
 - (ii) to act together in exercising voting power with respect to such a body corporate; ~~22~~;
 - (ii) in the definition of “controller” –
 - (A) after “in relation to a person” insert ~~22~~ (“P”) ~~22~~;
 - (B) in paragraphs (a) and (b) for “the person” substitute ~~22~~ P ~~22~~;
 - (C) for paragraphs (c), (d), (e) and (f) substitute –

- (c) a person in accordance with whose directions or instructions one or more of the directors of a body corporate of which P is a subsidiary are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
 - (d) a person who either alone or with any associate or associates is entitled to exercise or control the exercise of 15 per cent or more of the voting power at any general meeting of P or of another body corporate of which it is a subsidiary;
 - (e) a person who either alone or with any associate or associates is able to exercise a significant influence over the management of P or of another body corporate of which P is a subsidiary by virtue of —
 - (i) a holding of shares in P; or
 - (ii) an entitlement to exercise, or control the exercise of, the voting power of P; or
 - (f) a person who has the power to appoint directors to the board or other executive committees of P and to remove them; ~~and~~;
- (iii) for the definition of “director” substitute —
 - “director”** includes —
 - (a) any person occupying the position of director by whatever name called;
 - (b) any person in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
 - (c) in relation to a limited liability company constituted under the *Limited Liability Companies Act 1996*, a member, the company’s manager and the registered agent;
 - (d) in respect of any other body corporate such persons as occupy a position equivalent to that of director; or
 - (e) in relation to a foundation within the meaning of the *Foundations Act 2011*, a member of the council of the foundation; ~~and~~;
 - (iv) after the definition of “insurer” insert —
 - “key person”** means an individual working for or on behalf of an insurer, insurance manager or insurance intermediary
 - (a) appearing to the Authority to have significant powers or responsibilities (including controlling the exercise of key

- functions) with respect to any regulated activity undertaken or intended to be undertaken by an insurer, insurance manager or insurance intermediary, or an applicant to be an insurer, insurance manager or insurance intermediary; and
 - (b) specified by the Authority as being a key person;
- “key function”** in respect of an insurer, insurance manager or insurance intermediary a function in relation to –
- (a) risk management;
 - (b) internal audit;
 - (c) internal control;
 - (d) regulatory compliance;
 - (e) money laundering reporting; or
 - (f) the actuarial function in respect of an insurer, where it is required by the Authority to have an actuarial function;²²;
 - (v) in the definition of “principal control officer” –
 - (A) in paragraph (c), omit “or”;
 - (B) after paragraph (d) insert –
 - ²³(e) money laundering reporting; or
 - (f) the actuarial function in respect of an insurer, where it is required by the Authority to have an actuarial function;²⁴;
 - (vi) omit the definition of “principal control officer”;
 - (vii) after the definition of “subsidiary” insert –
- “supervisory action”** means the exercise by the Authority of such power as the Authority is permitted to exercise in or under this Act, including any one or more of the following powers –
- (a) the withdrawal of –
 - (i) an authorisation; or
 - (ii) a permit issued under section 22;
 - (b) the issue of a direction as to fitness or propriety under section 18, 21I or 29;
 - (c) the cancellation of a registration or exemption, or issue of a direction, under section 26;
 - (d) the imposition of a prohibition under section 29A;
 - (e) the service of a warning notice under section 29E;
 - (f) the issue of a direction under section 31;
 - (g) the imposition of a requirement under section 33;
 - (h) the issue of a public statement under section 35;
 - (i) the imposition of a penalty under section 37;

- (j) an application for an injunction or other remedy under section 38;
- (k) an application for restitution under section 39;
- (l) an application for the appointment of a receiver under section 39A;
- (m) an application for the appointment of a business manager under section 39B;
- (n) the powers of investigation and inspection under Schedule 5. ~~22~~;
- (viii) after subsection (2) insert –
- ~~22~~(3) The Authority may by order amend the definition of “key function” to include other functions.
- (4) An order made under subsection (3) shall not come into operation unless it is approved by Tynwald. ~~22~~.

77 Schedule 5 amended

In Schedule 5 (inspection and investigation) –

- (a) in paragraph 1A (appointment of expert), for “powers conferred by or under this Schedule” substitute ~~22~~ powers and functions conferred by or under this Act, including, for the avoidance of doubt, the Authority’s supervisory functions ~~22~~;
- (b) in paragraph 2 (requests for information) –
 - (i) in subparagraph (1), omit “specified in subparagraphs (a) to (l) of paragraph 1(1) (“the requested person)”;
 - (ii) in subparagraph (2), omit “requested”;
- (c) in paragraph 3(1) (attendance before the Authority: justice’s authorisation), omit “requested”;
- (d) in paragraph 5 (paragraphs 1 to 4: supplementary), omit subparagraph (1);
- (e) in paragraph 6(1)(c) (use of powers for the benefit of other authorities, etc), for “in relation to income tax” substitute ~~22~~ under any enactment ~~22~~;
- (f) in paragraph 7 (expenses of investigation) –
 - (i) in subparagraph (1), for “A person” substitute ~~22~~ Subject to subparagraph (4), a person ~~22~~;
 - (ii) after subparagraph (3), insert –
- ~~22~~(4) In any case where, pursuant to its power in paragraph 1A, the Authority has appointed an independent expert to investigate the business of any person mentioned in subparagraphs (a) to (i) and (k) to (l) of paragraph 1(1) or of a scheme mentioned in

- subparagraph (j) of that paragraph, the costs and expenses of and relating to a report under that paragraph shall be paid by the person whose affairs or scheme are investigated.
- (5) Subparagraph (6) applies where a person (“appointee”) has been appointed under subparagraph (4) and the Authority or the appointee considers that the circumstances are such that the appointee may not recover its costs or expenses for its work conducted in pursuance of its appointment from the person whose affairs or scheme are investigated;
- (6) Where this subparagraph applies, the Authority may guarantee to pay the amount of the costs or expenses of the appointee, or such amount of the costs or expenses of the appointee, as the Authority considers to be reasonable in all the circumstances.
- (7) If the Authority pays the costs or expenses of the appointee under subparagraph (6), the Authority may direct the person in respect of whom the costs or expenses have accrued to reimburse the Authority immediately or by instalments. ²².

78 Schedule 6 amended

In Schedule 6 (restrictions on disclosure of information) –

- (a) in paragraph 2 (exceptions from restrictions on disclosure) –
- (i) in subparagraph (1)(h) for “to discharge its functions under Schedule 4 to the *Financial Services Act*” substitute ²³to carry out any of its functions ²²;
- (ii) in subparagraph (1)(k), for “enactments relating to taxes” substitute ²³any enactment ²²;
- (iii) in subparagraph (1)(u) for “enabling the Financial Services Tribunal to carry out its functions (regardless of the enactment under which the function is conferred)” substitute ²³enabling or assisting the Tribunal to carry out its functions (regardless of the enactment under which the function is conferred);
- (iv) for subparagraph (1)(v) substitute –
- ²³(v) for the purpose of enabling or assisting the Department for Enterprise under enactments relating to the regulation and registration of companies, limited partnerships and other similar bodies; ²²;
- (v) in subparagraph (1)(y) for the full stop substitute a semi-colon and after that subparagraph insert –
- ²³(z) to the Cabinet Office, for the purpose of it carrying out any of its functions;

- (za) the Financial Intelligence Unit, for the purpose of it carrying out any of its functions. ²²;
- (vi) for subparagraphs (4) and (5), substitute –
- ²³(4) The Treasury may by order amend subparagraph (1) to add, remove or amend an entry relating to a public or other authority in the island.
- (5) An order under subparagraph (4) which adds an entry –
 - (a) must specify the functions of that public or other authority in respect of which disclosure of information is not precluded;
 - (b) may impose conditions subject to which the disclosure of information is permitted by that subparagraph; and
 - (c) may otherwise restrict the circumstances in which that subparagraph permits disclosure. ²⁴;
- (b) after paragraph 2 (exemptions from restrictions on disclosure), insert –

²⁵*Contractual duties of confidentiality*

3 (1) Any provision in an agreement (whether a worker's contract or not) between a worker and a person who is an insurer, an insurance intermediary or an insurance manager is void in so far as it purports to preclude a worker from making a disclosure relevant to its functions under any enactment to the Authority.

(2) "Worker" has the meaning given in Part IV (protected disclosures) of the *Employment Act 2006* and includes any person engaged in any work in relation to the insurer, insurance intermediary or insurance manager. ²⁶.

79 Schedule 7 amended

In Schedule 7 (matters in respect of which regulations may be made), in paragraph 8A, omit "liability".

PART 5 –AMENDMENTS TO DESIGNATED BUSINESSES (REGISTRATION AND OVERSIGHT) ACT 2015

80 Designated Businesses (Registration and Oversight) Act 2015 amended

- (1) The Designated Businesses (Registration and Oversight) Act 2015 is amended in accordance with this Part.
- (2) Except as otherwise specified, a reference to a section in this Part is a reference to the corresponding section in the Designated Businesses (Registration and Oversight) Act 2015.

81 General amendment

For “sub-paragraph” wherever it appears substitute **“subparagraph”**.

82 Section 3 amended

In section 3 (interpretation), in subsection (1) –

(a) For the definition of “associate” substitute –

(a) **“associate”** means –

(a) in relation to any individual –

- (i) the parent, spouse, civil partner, child, stepchild or sibling of the individual;
- (ii) any body corporate of which that individual is a director; or
- (iii) a partner or employee of that individual;

(b) in relation to a body corporate –

- (i) any director or employee of that body;
- (ii) any subsidiary of that body;
- (iii) any holding company of that body;
- (iv) any subsidiary of that holding company;
- (v) any director of any such holding company or subsidiary;

(c) in relation to an individual or a body corporate, any person with whom the individual or body corporate has an agreement, arrangement or other obligation –

- (i) in respect of the acquisition, holding or disposal of shares or other interests in a body corporate; or
- (ii) to act together in exercising voting power with respect to such a body corporate; **or**;

(b) in the definition of “controller” –

(i) in paragraph (d), after “any associate” insert **“or associates”**;

(ii) after paragraph (d), insert –

“(e) a person who either alone or with any associate or associates is able to exercise a significant influence over the management of the registered person or of another body corporate of which the registered person is a subsidiary by virtue of –

- (i) a holding of shares in; or
- (ii) an entitlement to exercise, or control the exercise of, the voting power of,

- the registered person or other body corporate of which the registered person is a subsidiary; or
- (f) a person who has the power to appoint directors to the board or other executive committees of the registered person or other body corporate of which the registered person is a subsidiary and to remove them; ²².

83 Section 5 amended

In section 5 (functions of authority) –

- (a) number the text beginning “Without limiting” as subsection (1);
- (b) for “AML/CFT legislation insert ²² this Act and with any breach of a code made under section 157 (money laundering codes) of the *Proceeds of Crime Act 2008* or section 68 (codes relating to the financing of proliferation and terrorism) of the *Terrorism and Other Crimes (Financial Restrictions) Act 2014* ²²;
- (c) after paragraph (b) insert –
 - ²²(2) For the avoidance of doubt –
 - (a) the Authority is responsible for ensuring that it delegates a function to such person that it considers is competent to exercise the function; and
 - (b) where a function is delegated by the Authority, the Authority is responsible for ensuring that any power or duty exercised in pursuance of the delegated function is exercised appropriately by the person to whom the function is delegated. ²².

84 Section 6 amended

In section 6 (delegation of functions of Authority), after subsection (5) insert –

- ²²(6) Where functions are exercised by a person other than the Authority that person must –
 - (a) exercise the function in accordance with the requirements of the Authority; and
 - (b) disclose to the Authority such information as the authority may reasonably require about the manner in which the function is being exercised. ²².

85 Section 7 amended

In section 7 (prohibition on carrying on designated business if not registered), in subsection (3)(a), after “title” insert ²², content ²².

86 Section 9 amended

In section 9 (grant or refusal of registration), for subsection (3) substitute —

- (3) The Authority must refuse to register an applicant if it is not satisfied that —
 - (a) the applicant or a specified person in relation to the applicant is a fit and proper person; or
 - (b) the applicant is managed and controlled in the Island. ■

87 Section 10A and 10B inserted

After section 10 (conditions of registration) insert —

■ 10A References to registration

- (1) The Authority may prescribe by order the manner in which a registered person must or may refer to the registered person's registration under this Act.
- (2) For the purposes of subsection (1), such a reference includes a reference to the registered person's registration in advertisements and other marketing material, in its letterheads, on the registered person's website, or otherwise making the fact of the registration known to the public.

10B Suspension of registration

- (1) The Authority may at any time suspend a registration granted under this Act instead of, or before, it exercises its power under section 11.
- (2) The Authority must give written notice to the person concerned of any decision to suspend a registration under this section together with a statement of the reasons for the decision.
- (3) Where the Authority suspends a registration under subsection (1), it must review the suspension on a regular basis. ■

88 Section 11 amended

In section 11 (revocation of registration) —

- (a) in subsection (1)(f), for the full stop substitute a semi-colon;
- (b) after subsection(1)(f) insert —
 - (g) that the registered person is not managed and controlled in the Island;
 - (h) that the registered person has failed to submit an annual return to the Authority under section 13(1)(a);

- (i) that the registered person has failed to pay a penalty imposed under section 30. ~~22~~;
- (c) after subsection (4) insert –
- ~~22~~ (5) For the purposes of subsection (1)(a), a person may not be a fit and proper person if any of the matters described in section 9(4) applies to that person. ~~22~~.

89 Section 14 amended

In section 14 (on-site inspections and investigations) –

- (a) in the heading, for “On-line inspections” substitute ~~22~~ Inspections ~~22~~;
- (b) after paragraph (1), insert –
- ~~22~~ (1A) The Authority may carry out such inspections and investigations as it considers appropriate without physical attendance at the registered person’s premises. ~~22~~;

Commented [A1]: Proposal is to include a new power for the Authority to create secondary legislation detailing the number of returns to be submitted in relation to VASPs. The addition in the Primary would allow for the Authority to create secondary legislation relating to the frequency of returns to be submitted by Virtual Asset Service Providers.

90 Section 15 amended

In section 15 (requests for information), after subsection (2), insert –

- ~~22~~ (2A) Any provision in an agreement (whether a worker’s contract or not) between a worker and a registered person is void in so far as it purports to preclude a worker from making a disclosure described in subsection (2) to the Authority.
- (2B) In subsection (2A) “worker” has the meaning given in Part IV (protected disclosures) of the *Employment Act 2006* and includes any person engaged in any work and in any capacity for the registered person. ~~22~~.

91 Section 18 amended

In section 18 (offences in connection with inspections and investigations, in subsection (1)(a)(i), omit “on-site”.

92 Section 20 amended

In section 20 (offences in connection with supply of information), omit subsection (1).

93 Section 22A inserted

After section 22 (restrictions on disclosure of information), insert –

22A Freedom of Information Act 2015

Where the disclosure of information is prohibited by this Act, that information is absolutely exempt information for the purposes of section 27 of the *Freedom of Information Act 2015* (information the disclosure of which is restricted by law).

94 Section 25 amended

In section 25 (report and action to be taken), in subsection (1), omit “on-site” in both places where it occurs.

95 Section 26A and 26B inserted

After section 26 insert —

26A Directions: persons unfit to be specified persons

- (1) In this section a reference to a registered person includes a reference to an applicant for registration.
- (2) If a registered person does not satisfy the Authority that a person is a fit and proper person to be appointed as a specified person in relation to a registered person (whether or not that person is or has previously been considered as such a fit and proper person) the Authority may direct that such person must not, without the written consent of the Authority, be appointed as such specified person.
- (3) If, on reasonable grounds, it appears to the Authority that any specified person of a registered person, is not a fit and proper person to continue as such, the Authority may direct that such person must not, without the written consent of the Authority, continue as such a specified person.
- (4) For the purposes of subsection (2) and (3), a person may not be a fit and proper person if any of the matters described in section 9(4) applies to that person.
- (5) The Authority must give written notice to the person concerned and to the registered person of any decision to make a direction under this section together with a statement of the reasons for the decision.
- (6) Subject to subsection (7), where a notice has been given under subsection (5), the direction shall take effect —
 - (a) if no appeal under section 33 is made within the period prescribed for the purposes of such an appeal, on the expiry of that period; or
 - (b) if there is an appeal under section 33 —

- (i) where the appellant abandons the appeal, on the date of abandonment; or
 - (ii) where the decision of the Authority is confirmed, on the date of confirmation; or
 - (iii) where the decision of the Authority is varied, on such date as the Tribunal constituted under section 33 directs.
- (7) If the Authority is of the opinion that a direction should have immediate effect, the notice under subsection (5) shall contain a statement to that effect together with the reasons for that opinion, and the direction shall have effect on the giving of the notice.
- (8) Any direction by the Authority under subsection (1) or (2) may be —
 - (a) given subject to conditions;
 - (b) varied from time to time; and
 - (c) revoked at any time.
- (9) The Authority must give written notice to the person concerned of any decision to exercise the powers conferred by subsection (8)(a), (b) or (c).
- (10) No person shall accept or continue in any appointment as a specified person in contravention of a direction under subsection (2) or (3).
- (11) A registered person must not appoint a person in contravention of a direction under subsection (2) or (3).
- (12) It shall be the duty of a registered person to take reasonable care not to continue the appointment of a person in contravention of a direction under subsection (3).

26B Warning notices

- (1) The Authority may —
 - (a) before making a direction under section 26A; or
 - (b) in any other circumstances that the Authority considers it appropriate to do so,give a written warning notice under this section to a registered person or any person connected to the registered person.
- (2) A warning notice under this section is a notice that the Authority has grounds to believe that such activities or circumstances as are specified in the notice are prejudicial to the notified person's fitness and propriety and must be accompanied by a statement of the reasons for the giving of the notice.

- (3) A warning notice may (but need not) —
- (a) propose that the notified person take such action as is specified in the notice;
 - (b) request the notified person to propose action; or
 - (c) specify action that the notified person must take and the time within which it must be taken.
- (4) Where a warning notice has been given under this section, the Authority must before making a direction under section 26A(2) or (3) take into account any action taken by the notified person in response to the warning notice.
- (5) The giving of a warning notice under this section —
- (a) does not limit the powers of the Authority under section 26A; and
 - (b) is not required before the Authority may exercise those powers.
- (6) A warning notice issued under this section shall have effect —
- (a) for a period of up to 3 years from the date on which it is issued under subsection (1) and such period shall be specified in the notice; or
 - (b) until such time as the Authority is content that any action under subsection (4) has been completed to its satisfaction.
- (7) The Authority may disclose the circumstances surrounding a warning notice to —
- (a) an employer who currently employs a notified person;
 - (b) a person who has received an employment or engagement application from a notified person who, if successful in the application, would be required to be a director, money laundering reporting officer, compliance officer or controller of a registered person; or
 - (c) a company of which a notified person is, or is likely to become an officer.
- (8) In subsection (7) —
- “**notified person**” means a person to whom a notice under subsection (1) has been given that is still effective in accordance with subsection (7); and
- “**officer**” means an officer of a company for the purposes of the *Company Officers (Disqualification) Act 2009* (see section 1(2) of that Act). ²².

96 Section 30 substituted

For section 30 (civil penalties) substitute —



30 Civil penalties

- (1) If the Authority is satisfied that a person specified in an order under subsection (6) —
- (a) has contravened, or caused the contravention of, any provision of this Act;
 - (b) has contravened, or caused the contravention of, any prohibition or requirement imposed under this Act; or
 - (c) in purported compliance with any such requirement, has furnished the Authority with false, inaccurate or misleading information,
- it may require the person to pay a financial penalty in respect of the contravention.
- (2) The Authority must give written notice to the person concerned of any decision under subsection (1), together with a statement of the reasons for the decision.
- (3) If the person does not appeal the decision of the Authority under section 33, the financial penalty must be paid within such period as may be specified by order under subsection (6).
- (4) If the person appeals the decision of the Authority and on the determination of the appeal any amount of the financial penalty remains payable, that financial penalty must be paid within 14 days of the determination of the appeal.
- (5) The Authority may not in respect of any such contravention —
- (a) both require a person to pay a financial penalty under this section and revoke the person's registration under section 11(1); or
 - (b) require a person to pay a financial penalty under this section if criminal proceedings have been commenced in respect of the contravention.
- (6) The Authority must make an order —
- (a) specifying the persons it may require to pay a financial penalty under subsection (1);
 - (b) specifying the maximum amount of financial penalty which the Authority may impose on a person under subsection (1);
 - (c) specifying the amount or method of calculation of financial penalty it may impose in respect of a matter mentioned in subsection (1); and
 - (d) specifying any contravention under this Act in respect of which the power of the Authority to require payment of a financial penalty applies.

- (7) Despite subsection (5), the Authority may revoke a registration of a person under section 11 if the person has failed to pay a financial penalty within the time limit imposed on the person for that financial penalty to be paid.
- (8) Any amount received as a financial penalty shall be paid into and form part of the General Revenue of the Island.
- (9) A financial penalty may be enforced as if it were a debt owed by the person on whom it was imposed to the Authority. ²².

97 Section 30A inserted

After section 30 (civil penalties), insert –

²² 30A Contravention of statutory provisions

Except as otherwise provided for in this Act, if a person contravenes any statutory provision of or under this Act, the Authority may exercise any power under this Act to address the contravention as the Authority considers appropriate in the circumstances. ²².

98 Section 33 amended

In section 33 (appeals)

- (a) after subsection (1)(b) insert –
 - ²² (ba) suspension of the person’s registration under section 10B(1) (suspension of registration); ²²;
- (b) after subsection (1)(f) insert –
 - ²² (fa) issue of a direction to the person under section 26A(1) or (2); ²².

99 Section 34A inserted

After section 34 insert –

²² 34A Fees

The Authority may by order prescribe in connection with the discharge of any of its functions under the *Proceeds of Crime Act 2008* or the *Terrorism and Other Crime (Financial Restrictions) Act 2014* such amount as the Authority considers is reasonable to cover the cost of discharging the function (including a reasonable proportion of the Authority’s administrative and overhead expenses). ²².

100 Section 35 amended

In section 35 (orders), for subsection (3) substitute –

- (3) An order under this Act (other than an order under section 2) must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve it, the order ceases to have effect.

101 Schedule 1 amended

In Schedule 1 (designated businesses and exemptions), in Part 2 (persons exempt from this Act), in paragraph 8(g), after “2001” insert “except the holder of a software supplier licence or a token-based software supplier licence, within the meaning given in the Online Gambling (Exclusions) Regulations 2010¹”.

102 Schedule 2 amended

In Schedule 2 (exceptions to prohibition on disclosure), in paragraph 1 (specific exceptions) –

- (a) in subparagraph (1)(o), for “enactments relating to income tax” substitute “any enactment”;
 - (b) in subparagraph (1)(u), for adjudicator to discharge their functions under Schedule 4 (mediation and adjudication) to the Financial Services Act 2008 or for the purpose of enabling or assisting any person exercising equivalent functions outside the Island” substitute “ombudsman to discharge their functions;
 - (c) in subparagraph (1)(z), omit “or”;
 - (d) after subparagraph (1)(aa), insert –
 - (ab) for the purpose of enabling the Cabinet Office to carry out any of its functions; or
 - (ac) for the purpose of enabling the Financial Intelligence Unit to carry out any of its functions.
 - (e) omit subparagraphs (2) and (3);
- after subparagraph (4), insert –
- (5) The Treasury may by order amend subparagraph (1) to add, remove or amend an entry relating to a public or other authority in the Island in respect of which paragraph (1) shall not preclude the disclosure of information.
 - (6) An order under subparagraph (5) which adds an entry –
 - (a) must specify the functions of that public or other authority in respect of which disclosure of information is not precluded;

¹ SD 909/2009.

- (b) may impose conditions subject to which the disclosure of information is permitted by that subparagraph; and
- (c) may otherwise restrict the circumstances in which that subparagraph permits disclosure. ²²;

PART 6 – MISCELLANEOUS REPEALS AND AMENDMENTS

103 Companies Act 1931 amended

In the *Companies Act 1931* –

- (a) in section 266 (disposal of books and papers of company), after subsection (1), insert –
 - ²²(1A) The court must not give a direction under subsection (1)(a) requiring the destruction of the books and papers of the company unless it has satisfied itself that the books and papers are not required by the Isle of Man Financial Services Authority to be retained.
 - (1B) If the court has been given notice by the Isle of Man Financial Services Authority (either in writing or at a court hearing) that the Authority requires the books or papers of the company to be retained, the court must direct that the books and papers are taken into the custody of the Isle of Man Financial Services Authority, to be retained and used for the purpose or purposes as may be required by that Authority.
 - (1C) Before giving a direction under subsection (1)(b), the company, Committee of Inspection or creditors of the company, as the case may be, –
 - (a) must give at least 14 days’ notice of the date on which it is intended that a direction be made; and
 - (b) must not direct the destruction of the books or papers of the company if the Authority gives notice before the date on which the direction is intended to be made that it requires the books or papers of the company to be retained. ²²
- (b) in subsection (3), after “contributory of the company” insert ²², or of the Isle of Man Financial Services Authority ²²

104 Fiduciary Services Act 2005 repealed

The *Fiduciary Services Act 2005* is repealed.

105 Bank (Recovery and Resolution) Act 2020 amended

- (1) In the *Bank (Recovery and Resolution) Act 2020*, in section 15 (limitation of Authority's liability), "This is subject to subsection (2)" and subsection (2) are omitted.