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## SECTION 1

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### COLLECTIVE INVESTMENT SCHEMES

#### 1.1 INTRODUCTION

Part 1 of the [Financial Supervision Act 1988](#) ("the FSA") (see [Appendix A1](#)) established a new statutory framework in the Isle of Man for the promotion and regulation of collective investment schemes based upon a wide definition of collective investment scheme and a general prohibition on marketing such schemes. [Appendix A1](#) of the FSA prohibits advertising, or advising or procuring investment in a collective investment scheme unless it is an authorised collective investment scheme or a foreign collective investment scheme recognised under the FSA.

The Financial Supervision Commission ("the Commission") is charged with the responsibility for administering the provisions of the FSA as they relate to collective investment schemes. The FSA, which came into operation on the 1st November 1988, provides for the regulation of three classes of collective investment scheme:

1. Schemes authorised by the Commission under [Appendix A1](#).
2. International collective investment schemes (including professional and experienced investor funds) within the meaning of [Appendix A1](#).
3. Schemes recognised by the Commission under sections [Appendix A1](#) and [Appendix A1](#) of the FSA.

##### 1.1.1 Definition

Section 30(1) of the FSA defines a collective investment scheme as follows:-

"In this Act "a collective investment scheme" means, subject to the provisions of this section, any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income."

Furthermore, [sub-sections 30\(2\) and \(3\)](#) state that these arrangements must be such that the persons who are to participate do not have day-to-day control over the management of the property in question, whether or not they have the right to be consulted or to give directions; and the arrangements must also have either or both of the following characteristics:

- A. that the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- B. that the property in question is managed as a whole by or on behalf of the manager of the scheme.

The definition of collective investment scheme in section 30 of the FSA is sufficiently wide to catch a variety of ordinary commercial arrangements which it is not intended should be caught. Therefore, [sub-sections 30\(5\), \(6\) and \(7\)](#) exclude from the definition of a collective investment scheme various types of arrangements and bodies, e.g. closed-ended companies or employee share ownership schemes.

#### 1.2 AUTHORISED SCHEMES

Any collective investment scheme established in the Isle of Man which is to be promoted to the general public in the Island must be authorised by the Commission under [section 3](#) of the FSA. Furthermore, to benefit from the Island's designated territory status (see [para. 1.2.6](#)), a scheme must be authorised. Authorised schemes are subject to comprehensive regulation concerning their constitution, operation and promotion. Before examining these matters, attention should be given to the types of scheme which may be authorised, and the procedures and requirements for authorisation.

##### 1.2.1 Types of Authorised Scheme

Currently, only authorised securities schemes (of which Government and other public securities funds are a particular type), money market funds, umbrella funds, funds of funds and feeder funds are eligible for authorisation under section 3 of the FSA. Definitions of these types of schemes may be found in [regulation 1.02](#) of the Financial Supervision (Authorised Collective Investment Schemes) Regulations 1988 (see [Appendix B1](#)).

##### 1.2.2

##### Procedures and Requirements for Authorisation

To obtain an Order under section 3 of the FSA declaring a scheme to be an authorised scheme, the proposed manager and the trustee must apply to the Commission in accordance with [section 2](#) of the FSA, using the standard form provided by the Commission, which must be accompanied by the appropriate application fee (see [Section 7](#)). The relevant application form requires information and documents to be provided so that the Commission may satisfy itself that the requirements of section 3 of the FSA have been complied with.

The provisions of [section 3](#) of the FSA include a requirement that both the proposed manager and trustee of the scheme must be "authorised persons". This term is defined in [section 31\(1\)](#) of the FSA as "a person holding a licence granted under section 3 of the Investment Business Act 1991 or such other classes of permitted persons (within the meaning of that Act) as may be prescribed".

So far as proposed managers are concerned, they must hold an investment business licence.

Therefore, if an application is being made by a proposed manager who does not hold an investment business licence it will need to obtain such a licence from the Commission (see [Section 2](#) for a description of the Commission's licensing policy and criteria for managers of authorised schemes).

Only banking institutions licensed under [section 6](#) of the Banking Act 1998 are eligible to act as trustees of authorised schemes. Licensed banking institutions have been prescribed as "authorised persons" for the purposes of the FSA under the [Financial Supervision \(Authorised Persons\) Regulations 1992](#). Consequently, a banking institution wishing to act as trustee of an authorised scheme is not required to hold an investment business licence (see Section 3).

An application for authorisation must also be accompanied by a certificate signed by an advocate to the effect that the contents of the scheme's constitutional documents comply with the requirements of the [Financial Supervision \(Authorised Collective Investment Schemes\) Regulations 1988](#). However, it is recommended that when applying for authorisation the application form should be accompanied by a final draft of the scheme's constitutional documents, so that the Commission may raise any comments or queries on them, before the constitutional documents are executed and the advocate's certificate given.

If the Commission is satisfied that the scheme's application has been made in accordance with the provisions of [section 2](#) and that all the requirements of [section 3](#) of the FSA have been complied with, it may make an Order declaring a scheme to be an authorised scheme. This process normally takes between one and two months, but in any event the Commission is required to inform the applicants of its decision not later than six months after the date on which the application for authorisation was received.

### 1.2.3 Alterations to Authorised Schemes after Authorisation

Once a scheme has been granted authorisation, any proposed alteration to the scheme, or any proposal to replace either the manager or trustee, must be notified in writing to the Commission in accordance with the provisions of [section 7](#) of the FSA. If an alteration is proposed to be made to the documents constituting the scheme, the notice must be accompanied by a certificate signed by an advocate to the effect that the change will not affect compliance of the documents constituting the scheme with the requirements of the [Financial Supervision \(Authorised Collective Investment Schemes\) Regulations 1988](#). No proposed change or alteration covered by [section 7](#) of the FSA may take effect unless either the Commission has approved the proposal, or one month has elapsed since the date that notice was given and the Commission has not notified the manager or trustee that the proposed alteration is not approved. Finally, it should be noted that neither the manager nor the trustee of an authorised scheme may be replaced except by persons who comply with the requirements of [sub-sections 3\(3\) to \(5\)](#) of the FSA.

### 1.2.4 Regulation of Authorised Schemes

[The Financial Supervision \(Authorised Collective Investment Schemes\) Regulations 1988](#) ("the [Authorised Schemes Regulations](#)"), a copy of which is contained in [Appendix B1](#), make comprehensive provision for the constitution and operation of authorised schemes which must be constituted either as:

1. unit trust schemes whose trust deed is made under and governed by the law of the Isle of Man; or
2. open-ended investment companies to which Part 1 of the Isle of Man Companies Act 1986 applies.

Therefore, a scheme constituted under the law of another country or territory, or which is not constituted in the Isle of Man as either a unit trust or open-ended investment company, is not eligible for authorisation under [section 3](#) of the FSA. The [Authorised Schemes Regulations](#) make provision for all aspects of the operation of an authorised scheme. These include such matters as the powers and duties of managers and trustees, and in the case of an open-ended investment company scheme its directors, distributions of income, valuation of scheme property, cancellation and creation as well as sale and repurchase of units, expenses, investment and borrowing powers and restrictions, contents of reports to holders, meetings and termination of schemes.

Schedules [1](#) and [2](#) to the [Authorised Schemes Regulations](#) make provision for those matters which must, as well as those matters which may, be provided for in the constitutional documents of a scheme constituted as either a unit trust scheme or an open-ended investment scheme respectively. To assist applicants and their advisers the Commission has prepared four types of model constitutional documents for schemes constituted as:

- unit trust schemes;
- unit trust schemes intended to be umbrella funds;
- open-ended investment company schemes ;
- open-ended investment company schemes intended to be umbrella funds.

These model constitutional documents are available upon request from the Commission, and applicants should specify the type they require.

It is important to note that, subject to the provisions of [section 6\(4\)](#) of the FSA, and save as expressly provided for in the [Authorised Schemes Regulations](#), the duties imposed by the [Authorised Schemes Regulations](#) on the manager and trustee and, in the case of an open-ended investment company scheme the company and its directors, are in addition to and not in derogation from the duties which are otherwise imposed upon them by law. Indeed, it is an explicit requirement of [regulation 4.07](#) of the [Authorised Schemes Regulations](#) that the general law is complied with.

Authorised Schemes must also comply with the [Financial Supervision \(Scheme Particulars\) Regulations 1988](#) (see [paragraph 1.2.5](#) and [Appendix B2](#)).

### 1.2.5 Promotion of Authorised Schemes in the Isle of Man

Authorised schemes can be promoted to the general public in the Isle of Man. The manager of an authorised scheme, as an investment business licenceholder, may promote its authorised scheme to persons in the Isle of Man. However, any other person wishing to promote an authorised scheme in the Isle of Man must either hold an investment business licence, or be exempt from requiring such a licence.

Before a manager of an authorised scheme may either:

1. market units in an authorised scheme in the Island; or
2. sell any units in an authorised scheme to any person in the Island,

it is required to publish and make available, free of charge, a document known as "scheme particulars" prepared in accordance with the [Financial Supervision \(Scheme Particulars\) Regulations 1988](#) ("Scheme Particulars Regulations") (see [Appendix B2](#)). Scheme particulars must contain the information prescribed in [Schedule 1](#) to the Scheme Particulars Regulations. Furthermore, the scheme particulars document must be prepared in English and copies sent to the Commission and to the trustee of the scheme. The manager of an authorised scheme is also required to revise the scheme particulars document at least once every twelve months, or immediately if any significant change occurs to the information contained in the scheme particulars document or if something new occurs which ought to be contained in the scheme particulars document.

Managers issuing advertisements in connection with an authorised scheme must comply with the [Financial Supervision Commission \(Advertising\) Regulatory Code](#) (see [Appendix E7](#)). It is also a requirement that the manager of an authorised scheme shall not advertise an authorised scheme unless the advertisement has been approved by the scheme's trustee (see [regulation 4.11](#) of the [Authorised Schemes Regulations](#)).

Finally, authorised schemes which are constituted as open-ended investment companies have been exempted from compliance with the requirements of the prospectus provisions of the Isle of Man Companies Acts 1931 to 1993, by virtue of the [Collective Investment Schemes \(Prospectus\) \(Exemption\) Regulations 2005](#) (see [Appendix I1](#)).

### 1.2.6 Promotion of Authorised Schemes outside the Isle of Man

In May 2003, the United Kingdom Treasury renewed the Isle of Man "designated territory status" for the purposes of section 270 of the UK Financial Services and Markets Act 2000 (see [appendix F2](#)). This means that an Isle of Man authorised scheme (except for a feeder fund), may give notice to the Financial Services Authority in the United Kingdom for recognition of the scheme pursuant to section 270 of the UK Financial Services and Markets Act 2000. Upon receiving recognition a scheme may, subject to certain requirements, be promoted to the general public in the UK. Furthermore, the scheme particulars of an Isle of Man authorised scheme need not contain any matter required to be contained in them if they contain corresponding matter required under the [Isle of Man Scheme Particulars Regulations](#).

Similar reciprocal arrangements operate between the Isle of Man, Jersey, Guernsey and Ireland in respect of authorised schemes, and Isle of Man authorised schemes are also subject to the "fast track" approval procedure in Hong Kong and Australia. In addition the Japanese Securities Dealers' Association have agreed that Isle of Man authorised schemes, which have been recognised in the UK, are eligible for promotion to Japanese residents. Further information regarding the procedures for approval of Isle of Man authorised schemes may be obtained from the relevant regulatory authorities in the jurisdictions concerned.

### 1.2.7 Authorised Schemes Compensation Fund

The [Authorised Collective Investment Schemes \(Compensation\) Regulations 1988](#) ("the Compensation Regulations") (see [Appendix B3](#)) provide for the establishment of a fund ("Compensation Fund") out of which compensation is to be paid to eligible investors if a manager or a trustee of an authorised scheme is unable to satisfy claims in respect of any civil liability incurred by them in connection with their business. The maximum pay-out to an eligible investor is £48,000, which is based on the following formula

100% of first £30,000 = £30,000

90% of next £20,000 = £18,000

0% of balance

Total = £48,000

The Compensation Regulations further provide for the levying of contributions to the Compensation Fund from managers and trustees of authorised schemes. There is no standing Compensation Fund; the compensation arrangements are only activated in the event of a default.

## 1.3

### INTERNATIONAL COLLECTIVE INVESTMENT SCHEMES

(for Professional, Experienced Investor & Overseas Funds see sections [1.5](#), [1.6](#)) and [1.7](#) respectively)

An international collective investment scheme is defined in [section 11](#) of the FSA as "every collective investment scheme, not being an authorised scheme or a recognised scheme (see para 1.6) which is

established in the Island".

Before looking at the regulation of international collective investment schemes, it is important to clarify the meaning of the term "established in the Island". [Section 11\(6\)](#) of the FSA states that a scheme is established in the Island:

- a. if -
  - i. it is operated in or from the Island; or
  - ii. it is constituted in, or under the law of, the Island; or
- b. in the case of a scheme which is an open-ended investment company, but without prejudice to the generality of paragraph , if it is -
  - i. a company incorporated in the Island under the Companies Acts 1931 to 1986; or
  - ii. a company incorporated outside the Island and is registered under Part XI of the Companies Act 1931.

However, the Commission acknowledges a number of exceptions to the above general rule:

- A. The following activities should not, in themselves, lead to any scheme they relate to being subject to the provisions of [section 11](#) of the FSA:
  - a. provision of trustee/custodial facilities in the Island for schemes whose management and administration is performed in another jurisdiction;
  - b. acting as investment adviser; or
  - c. acting as investment manager (as distinct from acting as the manager of the scheme).
- B.
  - a. acting as share distributor or dealing agent;
  - b. providing share registration facilities; or
  - c. providing accounting services.

The activities at (a), (b) and (c) above, do in themselves constitute investment business, and will require an investment business licence if they are conducted in the Isle of Man, even though the schemes to which they relate do not become subject to the provisions of [section 11](#) of the FSA.

- C.
  1. Not more than one of the two "core" activities of fund administration (ie. maintaining and updating share registers and calculating net asset values) can be performed for any one scheme - peripheral activities can generally be administered without restriction;
  2. The Isle of Man licensed manager/administrator should not have any contractual relationship with the scheme;
  3. The functions to be performed by the Isle of Man licensed manager/administrator must be outlined in an outsourcing agreement with the scheme's manager or administrator and must be made available to the Commission on request;
  4. No reference to the Isle of Man licensed manager/administrator should be made in the scheme documentation;
  5. There should be no communication between the Isle of Man licensed manager/administrator and the scheme's investors; and
  6. The Isle of Man licensed manager/administrator and the scheme's manager or administrator should be members of the same group. However, proposals concerning non-group entities could be considered on a case-by-case basis.

However, the Commission has the right to determine, even if all of the above criteria are met, having taken account of all the circumstances in a particular case, that a scheme is being "operated in or from the Island" and should therefore become subject to the provisions of section 11 of the FSA.

### 1.3.1 Types of International Collective Investment Scheme

The Commission has not prescribed what types of schemes may be established as international collective investment schemes as this would be contrary to its policy of providing a flexible regulatory framework in which operators can innovate and develop new products to meet the changing and developing needs of the market place. However, the Commission will have views as to the acceptability or desirability of certain types of schemes and may in such circumstances refuse to grant or extend a manager's licence to enable it to manage a scheme of that particular type. Generally, the Commission does not favour the establishment of international collective investment schemes whose primary investment objective is to invest in:

assets which cannot be readily liquidated or accurately valued through a recognised investment exchange or market; or

assets which are outside the normal scope of exchange traded instruments and where the Commission may have difficulty in assessing a licenceholder's ability to manage those assets.

Therefore, schemes investing in real estate, certain precious metals and gemstones, would not normally be acceptable.

### 1.3.2

#### Registration of International Collective Investment Schemes

International collective investment schemes are not subject to any direct approval or authorisation process. However, the manager is required to give the Commission written notice, in accordance with [sub-sections 11\(2\) and \(3\)](#) of the FSA, within fourteen days of the scheme

becoming or ceasing to be an international collective investment scheme. A standard notification form is available for this purpose (see [Appendix K1](#)). The Commission does, however, exercise some control over the establishment of international collective investment schemes in the Isle of Man through its licensing of international collective investment scheme managers and reference should be made to paragraph 2.5 in Section 2. [Section 11](#) of the FSA requires that every international collective investment scheme must have a manager who is an "authorised person", i.e. a person holding a licence granted under [section 3](#) of the Investment Business Act 1991. The trustee of an international collective investment scheme must also be either an "authorised person" (i.e. an Isle of Man banking institution) (see [Section 3](#)) or authorised to act as a trustee under the law of one of the prescribed countries or territories; presently consisting of the United Kingdom, Jersey and Guernsey (see [Appendix C5](#)).

### 1.3.3 Regulation of International Collective Investment Schemes

The Commission's approach to the regulation of international collective investment schemes differs significantly from the regulation of authorised schemes. For international collective investment schemes, the Commission has sought to avoid comprehensive, prescriptive regulation, leaving managers free to innovate and develop new products, whilst at the same time upholding investor protection by requiring strict disclosure of all material matters to potential investors.

The [Financial Supervision \(International Collective Investment Schemes\) Regulations 1990](#) ("International Collective Investment Scheme Regulations") (see [Appendix C1](#)) therefore prescribe what the contents of the documents constituting an international collective investment scheme shall provide for, without specifying how they shall be provided for. The requirements of the International Collective Investment Schemes Regulations are designed to cover the core matters common to all international collective investment schemes and should not therefore be viewed as exhaustive. Indeed, the different characteristics of the many varied types of international collective investment schemes will make it necessary to add to these core matters as circumstances dictate. For this and other reasons, the Commission feels it both necessary and desirable to provide managers with guidance in certain areas, and has therefore produced guidance notes (see [Appendix C3](#)) to be read in conjunction with the International Schemes Regulations. Whilst the guidance notes are not mandatory, where managers do not intend to follow the Commission's guidance in any particular area, the Commission will expect the manager to provide satisfactory explanations.

An international scheme's arrangements and documentation must be reviewed by the Commission prior to its establishment for compliance with the regulations. However, where a manager has demonstrated to the Commission's satisfaction a "track record" with regard to compliance with the regulations, "pre-vetting" is not required. In such cases, brief details of the additional scheme (using the ["Advance Scheme Notification Form"](#) in [Appendix K2](#)) must be provided at least 14 days in advance of the scheme's launch date. Further details on this procedure are detailed in [2.5.2](#).

International schemes do not have to file returns of allotments and redemptions of shares with the registrar of companies by virtue of the exemption contained in the [Collective Investment Schemes \(Returns of Allotment and Redemption\) \(Exemption\) Order 1999](#), as amended (see [Appendix I2](#)).

### 1.3.4 International Collective Investment Schemes Formed as Limited Partnerships

In accordance with the [Limited Partnerships \(Collective Investment Schemes\) Regulations 2004](#) (see [Appendix C6](#)) a Manx based international collective investment scheme, structured as a limited partnership may have more than 20 partners.

The general partner of a limited partnership, in managing the scheme, would be engaged in investment business and would need to be licensed. However, the general partner may delegate day-to-day management functions to a third party fund administrator (who would also need to be a licenceholder). [Section 11](#) of the FSA would apply to an international collective investment scheme structured as a limited partnership and would require, among other things, that the scheme must have a trustee who is a different person to the manager.

The Limited Partnerships (Collective Investment Schemes) (Exemption) Regulations 2005 ([Appendix C13](#)) exempt a limited partnership that is an international scheme, including professional investor funds and experienced investor funds but not including exempt schemes, from the requirement to disclose details of the limited partners on the public file held at the Companies Registry. The exemption is subject to the condition that the partnership must maintain certain information relating to the limited partners, and the terms of the scheme, at its principal place of business in the Isle of Man.

### 1.3.5 International Collective Investment Schemes Formed as Protected Cell Companies

The Protected Cell Companies (Prescribed Class of Business) (Collective Investment Schemes) Regulations 2004 enable certain collective investment schemes (International Schemes) in corporate form to be a "prescribed class of business" for the purposes of the Protected Cell Companies Act 2004.

International schemes, including professional investor funds and experienced investors but excluding exempt schemes have been prescribed and may be formed as a protected cell company.

Licenceholders operating collective investment schemes formed as protected cell companies should have regard to the Guidance Note at [Appendix C14](#).

### 1.3.6 Alterations to International Collective Investment Schemes after Establishment

Although not subject to Commission approval, the Commission must be notified, in writing, in accordance with [section 11\(4\)](#) of the FSA, of any proposed alteration to an international collective investment scheme, including a change of manager or trustee. Any proposed

replacement manager must be an "authorised person", and any proposed replacement trustee must be either an "authorised person", or authorised to act as a trustee under the law of one of the prescribed countries or territories; presently consisting of the United Kingdom, Jersey and Guernsey.

### 1.3.7 Restriction on Promotion of International Collective Investment Schemes in the Isle of Man

International collective investment schemes are subject to the general prohibition on promotion in the Isle of Man contained in [section 1\(1\)](#) of the FSA. There are, however, two limited exceptions to this general prohibition. The first is contained in [section 1\(2\)](#) of the FSA which states that:

"Subsection (1) shall not apply if the advertisement is issued to or the person mentioned in paragraph of that subsection is -

- a. an authorised person; or
- b. a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates. "

The second exception is contained in Regulations made by the Treasury under [section 1\(3\)](#) of the FSA. These are the [Financial Supervision \(Promotion of Unregulated Schemes\) \(Exemption\) Regulations 1992](#) ("the Exemption Regulations") (see [Appendix F1](#)) which enables schemes which are neither authorised schemes nor recognised schemes to be promoted in the Isle of Man by "permitted persons" to four categories of person; namely:

- a. existing participants in a collective investment scheme;
- b. non-private investors;
- c. other permitted persons; and
- d. established and newly accepted customers of a permitted person for whom (after having sought information about his circumstances and investment objectives) the permitted person has taken reasonable steps to ensure that investment in the scheme is suitable.

NOTE: a "permitted person" is defined in [section 5](#) of the [Investment Business Act 1991](#) (see [Appendix A2](#)) and means a person holding an investment business licence or a person exempt therefrom.

[Regulation 3\(2\)](#) of the Exemption Regulations requires that any advertisement issued to any of the above categories of persons in connection with an international collective investment scheme must contain a statement either:

- a. that participants in the scheme are not protected by any statutory compensation scheme; or
- b. that participants are protected by a statutory compensation scheme, and particulars sufficient to identify the compensation arrangements.

### 1.3.8 Advertising and Scheme Particulars

Where an international collective investment scheme is to be promoted in accordance with the restrictions imposed by [sub-sections 1\(2\) and \(3\)](#) of the FSA, any advertisement issued in connection with such promotion must comply with the requirements of the [Financial Supervision \(International Schemes\) \(Advertising and Scheme Particulars\) Regulations 1995](#) ("Advertising and Scheme Particulars Regulations") (see [Appendix C2](#)).

Managers issuing any advertisement in connection with an international collective investment scheme must also comply with the [Financial Supervision Commission \(Advertising\) Regulatory Code](#) (see [Appendix E7](#)).

The [Advertising and Scheme Particulars Regulations](#) require operators of international collective investment schemes to produce a scheme particulars document (offering document) which contains the information specified in the Schedule to the Regulations. The Regulations are consistent with the Commission's approach to the regulation of international collective investment schemes in seeking to ensure that all material information in relation to an international collective investment scheme and its management is disclosed to potential investors. A copy of the scheme particulars must be offered by the operator to any new investor, free of charge, before the investor becomes a participant in the scheme.

The Commission has issued guidance notes (see [Appendix C3](#)) on the [Advertising and Scheme Particulars Regulations](#) which are intended to provide managers and trustees of international collective investment schemes with a detailed understanding of the Commission's expectations in respect of the nature and extent of the information which should be contained in the scheme particulars document.

The operators of international collective investment schemes are responsible for the completeness and accuracy of the information contained in the scheme particulars document and must certify to the Commission that the scheme particulars comply in all material aspects with the requirements of the Advertising and Scheme Particulars Regulations. The Regulations also require the scheme particulars to be kept up to date.

A copy of the most recent scheme particulars must be sent to the trustee of the scheme and to the Commission.

Because of the requirement to produce a scheme particulars document, international collective

investment schemes which are constituted as open-ended investment companies have, by virtue of the [Collective Investment Schemes \(Prospectus\) \(Exemption\) Regulations 2005](#) (see [Appendix 11](#)), been exempted from the requirement to produce a prospectus under the Companies Acts 1931 to 1993.

### 1.3.9 Promotion of International Collective Investment Schemes outside the Isle of Man

International collective investment schemes may of course be promoted to the public outside of the Isle of Man, but managers or promoters should comply with any applicable local laws. Any advertising of an international collective investment scheme carried out by a licensed manager outside the Isle of Man must be in compliance with the requirements of the [Advertising and Scheme Particulars Regulations](#) and the [Financial Supervision Commission \(Advertising\) Regulatory Code](#).

### 1.3.10 Domicile of International Schemes

See section [1.6.7](#)

## 1.4 "EXEMPT" INTERNATIONAL COLLECTIVE INVESTMENT SCHEMES

Certain international collective investment schemes are not subject to the provisions of [section 11](#) of the FSA, or the regulations made thereunder. [Section 11\(7\)](#) provides that subject to the provisions of [sub-sections \(8\) to \(10\)](#), a scheme is exempted from section 11 if:

- a. it has less than 50 participants; and
- b. the relevant constitutional document prohibits the making of an invitation in any part of the world to the public or any section of it to subscribe for or purchase units in the scheme.

The Commission regards "exempt" international collective investment schemes as private arrangements, and therefore not subject to regulation. The Commission is not required to approve of such arrangements, nor does it seek to do so. Whilst the Commission may be made aware of certain arrangements which may constitute an "exempt" international collective investment scheme, its willingness to comment on such arrangements or indeed the absence of any comment, does not and should not be interpreted as implying approval of those arrangements.

If an "exempt" international collective investment scheme appoints a manager, that manager may be carrying on investment business and therefore require an investment business licence. However, where a manager is acting for only one exempt international collective investment scheme, its activities are excluded from the scope of the Investment Business Act 1991 by virtue of [paragraph 20\(2\) of Schedule 1](#) to the [Investment Business Order 2004](#) (See [Appendix A3](#)). Such managers will be known as "excluded scheme managers". However, should a company seek to act as manager of more than one exempt international collective investment scheme, the Commission regards this as being akin to offering private portfolio management services and such managers will be licensable.

The trustees of exempt international collective investment schemes do not require an investment business licence as they are excluded by virtue of [paragraph 20\(1\) of Schedule 1](#) to the [Investment Business Order 2004](#) (see [Appendix A3](#)).

The provision of administrative services to "excluded scheme managers" is not deemed to be a licensable activity by virtue of [paragraph 20\(4\) of Schedule 1](#) to the [Investment Business Order 2004](#). However, the provider of administrative services to "excluded scheme managers" will require a licence if any of those services include dealing in investments, arranging deals in investments, managing investments or giving investment advice (see [paragraphs 1, 2, 3 and 4 of Schedule 1](#) to the [Investment Business Order 2004](#)).

### 1.4.1 Restriction on Promotion of "Exempt" International Collective Investment Schemes

As stated previously, an "exempt" international collective investment scheme in order to qualify for exemption must include in its relevant constitutional document a prohibition on the making of an invitation in any part of the world to the public or any section of it to subscribe for or purchase units in the scheme. If this prohibition is contravened, [section 11\(9\)](#) of the FSA disapplies the exemption provided for by [sub-section \(7\)](#). However, [sub-section \(10\)](#) provides a number of exceptions to the general prohibition, in that the following shall not be treated as invitations to the public or a section of the public:

invitations issued to existing participants in a scheme inviting them to subscribe for or purchase further units in that scheme; invitations to persons whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates; any invitation of a class which is permitted by virtue of regulations made by the Treasury under [section 1\(3\)](#) of the FSA. The regulations referred to in paragraph above are the [Financial Supervision \(Promotion of Unregulated Schemes\) \(Exemption\) Regulations 1992](#) (see [Appendix F1](#)). The provisions of these Regulations have been detailed previously in this Section at paragraph [1.3.5](#).

## 1.5 THE PROFESSIONAL INVESTOR FUND

The professional investor fund ("PIF") was introduced in December 1995 and is a special sub-category of the Isle of Man's international collective investment schemes classification. The launch of the PIF introduces a regulatory approach which provides a framework for the design of mutual fund vehicles which are suitable for sophisticated and high net worth individuals and market professionals. Such investors demand a different level of regulation to that which applies to ordinary investors. The PIF regime provides this and brings with it flexibility and cost savings potential. The key features are:

- The day to day operation of the PIF must be carried out in the Isle of Man by a fund manager or fund administrator (which may be a bank) which has been approved by the Commission to carry on this activity ("an approved person").
- A PIF is not specifically required to have a manager or trustee.

- Where the PIF has a manager situated in the Isle of Man, that manager does not need to hold an investment business licence if the vast majority of its activities have been delegated to an approved person.
- An approved person may establish any number of PIFs without the need for further approval.
- A PIF is not subject to any regulatory restrictions on its investment and borrowing powers.
- A PIF is not required to submit documentation for approval and no prior approval is required before launch.
- The Commission must be notified within 14 days of a PIF being established or wound-up.
- A PIF is required to produce an offering document which contains sufficient information to enable an informed investment decision. However, a PIF is not subject to specific documentation regulations.
- A PIF's offering document must be approved by the approved person.
- The PIF's offering document must contain simple mandatory risk warnings and a description of the custody arrangements.
- The PIF is not covered by any compensation scheme arrangements.
- The PIF is only available to investors who fall within the definition of a "professional investor" contained in the [Financial Supervision \(Professional Investor Fund\) \(Exemption\) Order 1999](#) ("the PIF Order") (see [Appendix C7](#)); generally, market professionals and those who have net assets in excess of \$1 million.
- Investors must sign a declaration that they qualify as professional investors and they have read and understood the mandatory risk warnings prescribed by the [PIF Order](#).
- There must be a minimum initial subscription of \$100,000.

### 1.5.1 Regulation of Professional Investor Funds

The PIF in itself is not subject to approval or regulation by the Commission. However, the operator of a PIF (whether a fund manager, fund administrator or bank) must obtain the Commission's prior approval before operating PIFs.

The PIF regime is based around the [PIF Order](#) (see [Appendix C7](#)) which defines the conditions for a PIF. Certain other secondary measures contribute to the regulatory approach for PIFs.

In order to qualify as a PIF, a collective investment scheme must have all the activities normally undertaken by its manager (i.e. receipt of subscriptions, valuation, share registration, accounting) undertaken in the Isle of Man by an approved person who is either the manager or the fund administrator (which could be a bank).

The prior approval of the Commission is required before a manager or fund administrator may operate PIFs. In assessing whether to grant such approval the Commission will take account of, amongst other things, the applicant's compliance track record, the quality of its internal systems and control procedures, due diligence procedures for the vetting of business associates, and its financial standing.

The Commission will collect statistics on PIFs on a periodic basis.

A PIF must include in its offering document the following statements in a prominent position:

"[name of the scheme] is not subject to any form of regulation or approval in the Isle of Man, and investors are not protected by any statutory compensation arrangements in the event of the Scheme's failure."

"The Isle of Man Financial Supervision Commission does not vouch for the soundness of the Scheme or for the correctness of any statements made or opinions expressed with regard to it."

The investor must sign a written confirmation that he/she is a professional investor who has read and understood these statements.

The Commission will review a PIF's documentation and, during the course of its supervisory visits, inspect the licenceholder's operational activities to seek to ensure that the conditions of the PIF Order and other relevant Isle of Man regulatory requirements, which concern the conduct of investment business, have been met.

PIFs do not have to file returns of allotments and redemptions of shares with the registrar of companies by virtue of the exemption contained in the [Collective Investment Schemes \(Returns of Allotment and Redemption\) \(Exemption\) Order 1999](#), as amended (see [Appendix I2](#)).

As with other international collective investment schemes, the promoter or investment adviser to a PIF need not necessarily be located in the Isle of Man although this would be encouraged. However, if they are, they would, in most cases, fall to be licensed by the Commission.

See [section 2.6](#) for the licensing and regulation of EIF and PIF managers and fund administrators.

### 1.5.2 Custodial Requirements

The PIF is not specifically required to appoint a trustee/custodian - either in the Island or elsewhere. However, it is free to do so and it is envisaged that in the majority of cases it will. If it does not, proper arrangements should nevertheless be made for the safekeeping of the fund's assets.

Whatever the circumstances, the PIF operator must ensure that the PIF's offering document describes the arrangements for the custody of the assets of the PIF. See [section 1.6.2](#) in relation to who, locally, may act as a Custodian to a PIF.

### 1.5.3 Suitability of Investors for the Professional Investor Funds

PIFs are intended only for experienced individuals or market professionals. In order to prevent investment by persons for whom a PIF is unsuitable, the operator must ensure that investors fall within the following categories:

- a. a body corporate which has net assets in excess of \$1 million or which is part of a group which has net assets in excess of \$1 million;
- b. an unincorporated association which has net assets in excess of \$1 million;
- c. any trustee of a trust where the aggregate value of the cash and investments which form part of the trust's assets is in excess of \$1 million;
- d. a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the PIF in question relates;
- e. an individual whose net worth, or joint net worth with that person's spouse, exceeds \$1 million.

The operator of the PIF must obtain from each investor written confirmation that they fall within one of the above categories. In addition there must be a minimum initial subscription of \$100,000.

Sub-paragraph is designed to allow persons to invest in a PIF if their normal business activities involve them in acquiring, holding, managing or disposing of investments of the type held within the fund. The Commission would not expect investments to be made in a PIF pursuant to this category by means of a vehicle established specifically by or on behalf of persons whose established business activities do not involve them in the above.

### 1.5.4 Promotion of Professional Investor Funds

There is no absolute prohibition on the making of an invitation for subscription in the PIF. However, as with other unregulated schemes, the promotion of a PIF in the Island would be subject to the [Financial Supervision \(Promotion of Unregulated Schemes\)\(Exemption\) Regulations 1992](#) (see [Appendix F1](#)). The promotion of the PIF in other jurisdictions must be in accordance with host country rules.

The operator of the PIF must approve the fund's offering document. This must be in accordance with the principles and requirements set down in the [Financial Supervision Commission \(Advertising\) Regulatory Code](#) (see [Appendix E7](#)) and the statements required by the PIF Order.

Those PIFs which are Manx incorporated open-ended investment companies are exempted from the requirement to produce a prospectus under the Isle of Man Companies Act 1931 in accordance with the Collective Investment Schemes (Prospectus) (Exemption) Regulations 2005 ([Appendix I1](#)) However, all PIFs, wherever they are incorporated, must have an offering document which:

"contains all material information which at the date of the offering document is within the knowledge of the licenceholder or which that person would have obtained by making reasonable enquiries which would be relevant for the purpose of making an informed judgement about the merits of participating in the professional investor fund and the extent of the risks accepted by so participating".

### 1.5.5 Fees

No fee is charged for any PIF which is launched. The operator of a PIF is not subject to any additional fees in respect of PIF business.

### 1.5.6 Domicile of Professional Investor Funds

See section [1.6.7](#)

## 1.6 EXPERIENCED INVESTOR FUNDS

The experienced investor fund ("EIF") was introduced in October 1999 and, like the PIF, is a further special sub-category of the Isle of Man's international collective investment schemes classification.

The EIF is specifically developed as a vehicle for global investors with a high degree of experience and is designed to be both simple and flexible to administer. Whilst the fund itself is not subject to regulatory approval, the onus for its proper administration is laid firmly on the licensed fund manager or fund administrator. Also, in the interests of investor protection, there are particular disclosure requirements.

The key features of an EIF are:

- The day-to-day operation of the EIF must be carried out in the Isle of Man by a fund manager or fund administrator (which may be a bank) that has been approved by the Commission to carry on this activity ("an approved person").
- An EIF is not specifically required to have a manager.
- Where the EIF has a manager situated in the Isle of Man, that manager does not need to hold an investment licence if its investment business activities have been delegated to an approved person (see [appendix C8](#)).
- An EIF must make proper arrangements for custody of the property whether with a custodian bank or prime broker, who may or may not be represented in the Isle of Man.
- An approved person may establish any number of EIFs without the need for further approval.

- An EIF is not subject to any regulatory restrictions on its investment and borrowing powers.
- An EIF is not normally required to submit documentation for approval and no prior approval is normally required before launch.
- The Commission must be notified within 14 days of an EIF being established or wound-up.
- An EIF is required to produce an offering document which contains sufficient information to enable an informed investment decision. However, an EIF is not subject to specific documentation regulations.
- An EIF's offering document must be approved by the approved person.
- Any alterations to the offering document must be sent to the Commission within 14 days of the alteration taking place.
- The EIF's offering document must contain mandatory risk warnings and a description of the custody arrangements
- The EIF is not covered by any compensation scheme arrangements.
- The EIF is only available to investors who fall within the definition of an "experienced investor" contained in the [Financial Supervision \(Experienced Investor Fund\) \(Exemption\) Order 1999 \("EIF Order"\)](#).
- The approved person is responsible for satisfying itself that all investors in an EIF are experienced investors.
- Investors in an EIF must sign a statement contained in the application form confirming that they are experienced investors and that they fully understand and accept the risks associated with an investment in an EIF.
- The approved person must certify to the Commission within 14 days of an EIF being established that the offering document and relevant constitutional documents comply with the requirements of the [EIF Order](#).
- There is no mandatory minimum subscription level but such level is required to be determined jointly by the director, scheme trustees or general partners of the EIF and the fund manager or administrator, taking into account the investment policy and risk profile of the scheme, the manner in which the scheme is to be marketed and the target investor envisaged.
- The annual report and accounts of an EIF must be audited

### 1.6.1

#### Regulation of Experienced Investor Funds

The EIF in itself is not subject to approval or regulation by the Commission. However, the operator of an EIF (whether a fund manager or fund administrator, or bank) must obtain the Commission's prior approval before operating EIFs.

The EIF regime is based around the [EIF Order](#) (see [Appendix C10](#)).

In order to qualify as an EIF, a collective investment scheme must have all the activities normally undertaken by its manager (i.e. receipt of subscriptions, valuation, share registration, accounting) undertaken in the Isle of Man by an approved person who is either the manager or the fund administrator (which could be a bank).

The prior approval of the Commission is required before a manager or fund administrator may operate EIFs. In assessing whether to grant such approval the Commission will take account of, amongst other things, the applicant's compliance track record, the quality of its internal systems and control procedures, due diligence procedures for the vetting of business associates, and its financial standing.

The Commission will collect statistics on EIFs on a periodic basis.

An EIF must include in its offering document the following statements in a prominent position:

***"[name of the scheme] is not subject to any form of regulation or approval in the Isle of Man, and investors are not protected by any statutory compensation arrangements in the event of the Scheme's failure." "The Isle of Man Financial Supervision Commission does not vouch for the soundness of the Scheme or for the correctness of any statements made or opinions expressed with regard to it."***

Investors in an EIF must sign a statement contained in the application form confirming that they are experienced investors and that they fully understand and accept the risks associated with an investment in an EIF.

The Commission will review an EIF's documentation and, during the course of its supervisory visits, inspect the licenceholder's operational activities to seek to ensure that the conditions of the EIF Order and other relevant Isle of Man regulatory requirements, which concern the conduct of investment business, have been met.

EIFs do not have to file returns of allotments and redemptions of shares with the registrar of companies by virtue of the exemption contained in the [Collective Investment Schemes \(Returns of Allotment and Redemption\) \(Exemption\) Order 1999](#), as amended (see [Appendix I2](#)).

As with other international collective investment schemes, the promoter or investment adviser to an EIF need not necessarily be located in the Isle of Man although this would be encouraged. However, if they are, they would, in most cases, fall to be licensed by the Commission.

See [section 2.6](#) in relation to the licensing and regulation of PIF and EIF managers and fund administrators.

EIFs which are Manx incorporated open-ended investment companies are exempted from the requirement to produce a prospectus under the Isle of Man Companies Act 1931 in accordance with the Collective Investment Schemes (Prospectus) (Exemption) Regulations 2005 ([see](#)

[appendix J1](#))

### 1.6.2 Custodial Requirements

The EIF must have a custodian who must be a different person from the manager, if a manager is appointed, or the fund administrator, if a fund administrator is appointed. The custodian must be either -

- a. An "authorised person" ie an Isle of Man banking institution (see section 5) or a Category 4 or 5 investment business licenceholder. An investment business licenceholder wishing to act as Custodian will be assessed on a case by case basis taking into account the type or nature of the underlying scheme assets. It will also be required to demonstrate to the Commission that it is an entity with adequate financial resources and has the relevant track record, competence, experience and systems to undertake this function; or
- b. an "eligible custodian" as defined in Code 2.2 of the Financial Supervision Commission (Clients' Investments) Regulatory Code.

A fiduciary trustee may be appointed who -

- a. must be a different person to a manager or fund administrator but need not be a different person to the custodian; and
- b. must satisfy himself that the scheme is and continues to be managed and maintained by the manager, if a manager is appointed, or the fund administrator, if a fund administrator is appointed, in accordance with the fund's constitutional documents.

### 1.6.3 Suitability of Investors for the Experienced Investor Funds

EIFs are intended for the "experienced investor" which means a person who, in relation to any experienced investor fund, is sufficiently experienced to understand the risks associated with an investment in that fund

### 1.6.4 Promotion of Experienced Investor Funds

There is no absolute prohibition on the making of an invitation for subscription in the EIF. However, as with other unregulated schemes, the promotion of an EIF in the Island would be subject to the [Financial Supervision \(Promotion of Unregulated Schemes\) \(Exemption\) Regulations 1992](#) (see [Appendix F1](#)) . The promotion of the EIF in other jurisdictions must be in accordance with host country rules.

The manager of fund administrator of the EIF must approve the fund's offering document. This must be in accordance with the principles and requirements set down in the [Financial Supervision Commission \(Advertising\) Regulatory Code](#) (see [Appendix E7](#)) and the statements required by the EIF Order.

Those EIFs which are Manx incorporated open-ended investment companies are exempted from the requirement to produce a prospectus under the Isle of Man Companies Act 1931 by virtue of the [Collective Investment Schemes \(Prospectus\) \(Exemption\) Regulations 2005](#), as amended. However, all EIFs, wherever they are incorporated, must have an offering document which contains:

***"all material information which at the date of the offering document is within the knowledge of the licenceholder or which that person would have obtained by making reasonable enquiries which would be relevant for the purpose of making an informed judgement about the merits of participating in the experienced investor fund".***

### 1.6.5 Alterations to EIFs after establishment

In accordance with article 4(8) of the [EIF Order](#), the approved person must give written notice to the Commission of any alterations to the offering document within 14 days of the alteration taking place. The offering document, with amendments, should be submitted in blacklined format.

### 1.6.6 Fees

No fee is charged for any EIF which is launched. The operator of an EIF is not subject to any additional fees in respect of EIF business.

### 1.6.7 Domicile of International Schemes (including Professional and Experienced Investor & Overseas Funds)

In keeping with the unregulated nature of EIFs, PIFs and Overseas Funds where the regulatory focus is on their proper administration by the licensed fund manager or fund administrator ("the licenceholder"), the onus on determining the suitability of a jurisdiction rests with the licenceholder.

In relation to international schemes, subject to the full provisions of section 11 of the FSA, the suitability of a jurisdiction will be assessed by the Commission rather than the licenceholder.

To assist licenceholders in considering the suitability of jurisdictions for the establishment or domicile of international schemes, including PIFs, EIFs and Overseas Funds, the Commission has issued a "Guidance Note" in the form of a list of criteria ([Appendix C11](#)) .

## 1.7 OVERSEAS FUNDS

The "overseas fund" is another type of "international scheme". Such schemes are unregulated schemes in that they are exempted from the legal and regulatory requirements that apply to other international

schemes (including PIFs and EIFs).

The Financial Supervision (Overseas Funds) (Exemption) Order 2003 (see [Appendix C12](#)) ("Overseas Funds Order") came into operation on 1st May 2003 and provides an exemption from certain provisions of section 11 of the FSA for schemes which are constituted or incorporated outside the Island and managed or administered from the Isle of Man, subject to certain conditions specified in the Overseas Funds Order. Such schemes are known as "overseas funds".

The Overseas Funds Order provides a flexible regime for "overseas funds". Overseas funds can either be subject to the legislation in place under section 11 of the FSA or not be subject to any of the Isle of Man legislation.

Although an overseas fund is not subject to approval or regulation by the Commission, the operator of an overseas fund must be specifically licensed to undertake the provision of management or administration services to an overseas fund.

The Commission wishes to be kept informed of the number of overseas funds administered by its licenceholders and the "Notification Form for Overseas Funds" (see [Appendix K3](#)) should be used for providing such notification. The notification form for each overseas fund should be submitted to the Commission within 14 days of the overseas fund entering into a fund management or fund administration agreement with the licenceholder.

The form to be used to provide notification that an overseas scheme is to become subject to S11 of the FSA is in [Appendix K1](#).

Licenceholders should inform the Commission in advance of the intention for an existing overseas fund to cease to be subject to S11 of the FSA.

The Commission will collect statistics on overseas funds on a periodic basis.

There are no fees payable in respect of an overseas fund.

See section [1.6.7](#) above regarding the suitability of jurisdictions for the establishment or domicile of overseas funds.

## 1.8 RECOGNISED SCHEMES

The term "recognised scheme" refers to schemes which originate from outside the Isle of Man and which, subject to recognition being granted by the Commission, may be promoted to the general public in the Isle of Man.

The FSA provides two different routes for obtaining recognition in the Isle of Man. [Section 12](#) makes provision for the recognition of schemes from countries or territories which have been designated by the Isle of Man, while [section 13](#) provides for the recognition of schemes originating from other countries or territories outside the Isle of Man.

### 1.8.1 Recognition of Schemes from Designated Countries or Territories

As stated above, [section 12](#) of the FSA provides for the recognition of schemes which are managed in and authorised under the law of a designated country or territory outside the Isle of Man. To date, the Isle of Man Treasury has designated the United Kingdom, Jersey, Guernsey and Ireland. However, only those schemes which are of a class specified in the relevant designation orders are eligible for recognition under [section 12](#). Copies of the Orders designating the United Kingdom, Jersey, Guernsey and Ireland are contained in Appendices [D3](#), [D4](#), [D5](#) and [D6](#) respectively. Schemes from a designated country or territory which are not of a class specified in the relevant designation orders, must apply for recognition under [section 13](#) of the FSA.

### 1.8.2 Procedures and Requirements for Recognition

To obtain recognition under [section 12](#) of the FSA the manager of the scheme must give written notification to the Commission in accordance with section 12 of the FSA that it wishes the scheme to be recognised and provide the information required by the [Financial Supervision \(Recognised Schemes\) \(Notification\) Regulations 1988](#) (see [Appendix D2](#)). A standard notification form is available from the Commission which must be completed by the manager of the scheme and submitted together with the appropriate periodical fee (see [Section 7](#)). A scheme for which valid notice of recognition has been given, becomes automatically recognised for the purposes of [section 12](#) of the FSA upon expiry of the prescribed two month period from the date of giving notice for recognition, unless the Commission objects in the meantime. It is normally the practice of the Commission, having processed a notice for recognition, to indicate that it does not intend to raise any objection.

### 1.8.3 Regulation of Section 12 Recognised Schemes

As well as receiving no objection from the Commission, a scheme recognised under [section 12](#) of the FSA is required to comply with the requirements of the [Financial Supervision \(Recognised Schemes\) \(Facilities in the Island\) Regulations 1988](#) (see [Appendix D1](#)). These Regulations require the managers of recognised schemes to maintain at an address in the Isle of Man facilities where:

- a. the instruments constituting the scheme, the most recent scheme particulars, and the latest annual and half-yearly reports and accounts may be inspected and copies obtained at a reasonable charge;
- b. the most recent sale and purchase prices can be obtained and units redeemed;
- c. holders of bearer certificates, if any, may obtain free of charge:
  - copies of the annual and half-yearly reports;

- details or copies of any notices published by the operator;
  - payment of dividends due; and
- d. complaints about the operation of the scheme can be lodged.

Schemes recognised under [section 12](#) must also comply with the [Financial Supervision \(Scheme Particulars\) Regulations 1988](#) (see [paragraph 1.7.7](#)).

#### 1.8.4 Recognition of Schemes from other Countries or Territories

[Section 13](#) of the FSA provides for the recognition of schemes managed in a country or territory outside the Isle of Man and not designated under [section 12](#).

#### 1.8.5 Procedures and Requirements for Recognition

Schemes applying for recognition under [section 13](#) of the FSA are subject to detailed scrutiny similar to that applicable to authorised schemes. The Commission must be satisfied that the scheme affords adequate protection to the participants; makes adequate provision for the matters dealt with by the [Financial Supervision \(Authorised Collective Investment Schemes\) Regulations 1988](#); and satisfies the provisions of section 13 of the FSA. A standard application form is available from the Commission, which must be completed by the manager of the scheme and submitted together with the appropriate application and periodical fees (see Section 7). There is no prescribed time within which the Commission is required to process an application for recognition under [section 13](#), nor is it possible to give an indication of the average processing time as each application will be unique. However, schemes which conform with known international standards such as "UCITS" are likely to be processed quicker than those which do not.

It is not the Commission's policy to encourage applications in respect of schemes from countries or territories which, in the Commission's opinion, do not exercise adequate regulation and supervision of their schemes and operators in accordance with internationally accepted standards. Also, the Commission does not favour applications under [section 13](#) from schemes which originate from a designated country or territory but which are not of a class specified in the relevant designation order. If a scheme is not permitted to be promoted to the general public in its home jurisdiction, it is unlikely that it will be permitted to be promoted to the general public in the Isle of Man.

There are a number of important provisions affecting schemes recognised under [section 13](#) of the FSA. The manager of such a scheme must have a representative in the Isle of Man who is an authorised person (i.e. a person holding a licence granted under [section 3](#) of the [Investment Business Act 1991](#)). That person must be empowered to act generally for the operator and to accept service of notices and other documents on his behalf. Also, written notice must also be given to the Commission of any proposals to make any alteration to the documents constituting a scheme recognised under [section 13](#), and furthermore one month's notice must be given to the Commission of any proposal to replace either the manager or trustee of a scheme recognised under [section 13](#).

#### 1.8.6 Regulation of Section 13 Recognised Schemes

A scheme recognised under [section 13](#) of the FSA must also comply with the requirements of the [Financial Supervision \(Recognised Schemes\) \(Facilities in the Island\) Regulations 1988](#). These Regulations require the manager of a recognised scheme to maintain at an address in the Isle of Man where:

- a. the instruments constituting the scheme, the most recent scheme particulars, and the latest annual and half-yearly reports and accounts may be inspected and copies obtained at a reasonable charge;
- b. the most recent sale and purchase prices can be obtained and units redeemed;
- c. holders of bearer certificates, if any, may obtain free of charge: copies of the annual and half-yearly reports; details or copies of any notices published by the operator; payment of dividends due; and
- d. complaints about the operation of the scheme can be lodged.

Schemes recognised under [section 13](#) must also comply with the [Financial Supervision \(Scheme Particulars\) Regulations 1988](#) (see [paragraphs 1.2.5](#) and [1.7.7](#)).

#### 1.8.7 Promotion of Recognised Schemes in the Isle of Man

Recognised schemes can be promoted to the general public in the Isle of Man. However, anyone wishing to promote recognised schemes in the Isle of Man must either hold an investment business licence or be exempt from requiring such a licence.

As already mentioned, all recognised schemes must comply with the requirements of the [Financial Supervision \(Scheme Particulars\) Regulations 1988](#), as they apply to authorised schemes. However, recognised schemes from designated countries or territories may be exempt from complying with some or all of the requirements of Schedule 1 to the Scheme Particulars Regulations. The extent of any exemption for schemes from designated countries or territories is specified in [Schedule 2](#) to the Scheme Particulars Regulations.

Recognised schemes which are constituted as corporate entities have been exempted from compliance with the requirements of the prospectus provisions of the Isle of Man Companies Acts 1931 to 1993, by virtue of the [Collective Investment Schemes \(Prospectus\) \(Exemption\) Regulations 1995](#) (see [Appendix 11](#)).

For schemes recognised under [sections 12 or 13](#) of the FSA, the Commission normally requires (by notice in writing issued under [section 15\(2\)](#) of the FSA) the manager of the scheme to

include in any investment advertisement issued or caused to be issued by him in the Isle of Man in connection with the scheme a prominent statement that includes both:

- a. the country or territory under whose law the scheme is both constituted and authorised; and
- b. whether or not Isle of Man investors in the scheme are protected by statutory compensation arrangements, and if so, particulars sufficient to identify the compensation arrangements.

#### 1.9 Restriction on Promotion of Non-recognised Foreign Schemes in the Isle of Man

Any scheme from outside the Isle of Man which has not been recognised under sections [12](#) or [13](#) of the FSA, is subject to the general prohibition on promotion contained in [section 1\(1\)](#) of the FSA. There are, however, two limited exceptions to this general prohibition. The first is contained in [section 1\(2\)](#) of the FSA which states that:

"Subsection (1) shall not apply if the advertisement is issued to or the person mentioned in paragraph (b) of that subsection is -

- a. an authorised person; or
- b. a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which this scheme relates."

The second exception is contained in regulations made by the Treasury under [section 1\(3\)](#) of the FSA. These regulations are the [Financial Supervision \(Promotion of Unregulated Schemes\) \(Exemption\) Regulations 1992](#) ("the Exemption Regulations") (see [Appendix F1](#)) which enable schemes which are neither authorised schemes nor recognised schemes to be promoted in the Isle of Man by "permitted persons" to four categories of person; namely:

- a. existing participants in a collective investment scheme;
- b. non-private investors;
- c. other "permitted persons"; and
- d. established and newly accepted customers of a "permitted person" for whom (after having sought information about his circumstances and investment objectives) the permitted person has taken reasonable steps to ensure that investment in the scheme is suitable.

NOTE: a "permitted person" is defined in [section 5](#) of the [Investment Business Act 1991](#) and means a person holding an investment business licence or a person exempt therefrom.

[Regulation 3\(2\)](#) of the Exemption Regulations requires that any advertisement issued to any of the above categories of person in connection with a non-recognised foreign scheme must contain a statement either:

- a. that participants in the scheme are not protected by any statutory compensation scheme; or
- b. that participants are protected by a statutory compensation scheme, and particulars sufficient to identify the compensation arrangements.

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## SECTION 2

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### LICENSING OF FUND MANAGERS, FUND ADMINISTRATORS AND THIRD PARTY FUND ADMINISTRATORS

#### 2.1 [INVESTMENT BUSINESS ACTS 1991- 1993](#)

[The Investment Business Act 1991](#), as amended by the Investment Business (Amendment) Act 1993 ("the IBA") is the statutory basis for regulating investment businesses operating in or from the Isle of Man. The IBA, which became fully operational on 31st March 1992, repealed and replaced section 7 of the Banking Act 1975, which was previously the statutory basis for regulating investment businesses.

[Section 1\(2\)](#) of the IBA states that "the Treasury may by Order prescribe activities which shall constitute investment business ...". Accordingly, the Investment Business Order 2004, at [Part 1](#) of Schedule 1, ("the IB Order") (see [Appendix A3](#)) prescribes and defines the activities which constitute investment business.

The activities which constitute investment business are as follows:

1. dealing in investments, either as principal (but not private investment companies) or as agent;
2. arranging deals in investments on behalf of other people;
3. giving investment advice;
4. managing investments; and
5. acting as manager or trustee of any collective investment scheme, whether or not such scheme is established in the Island, or providing any of the services which the operator of such a scheme would normally undertake.

This should be read in conjunction with paragraph 19 of Schedule 1 of the Order which states: -

"Collective Investment Schemes

20(1) The trustee of:-

- a. any collective investment scheme which is exempted under [Section 11\(7\) to \(10\)](#) of the Financial Supervision Act 1988 ("exempt international collective investment scheme"); or
- b. any collective investment scheme which is managed in and subject generally to the law of a country or territory outside the Isle of Man instead of to the law of the Island

shall not be treated as carrying on investment business as respects any business he may carry on by virtue of that position.

2. A person who acts as manager of no more than one exempt international collective investment scheme ("an excluded scheme manager") should not be treated as carrying on investment business as respects any business he may carry on by virtue of that position.
3. The provision of registration services or accountancy services to any collective investment scheme which is exempt under [Section 11\(7\) to \(10\)](#) of the Financial Supervision Act 1988 shall be deemed not to constitute services within the contemplation of paragraph 5.
4. The provision of administrative services to excluded scheme managers shall be deemed not to constitute services within the contemplation of paragraph 5."

[Section 2](#) of the IBA states that:

"Any person who carries on, or holds himself out as carrying on, in or from the island, investment business -

- a. in respect of which no investment business licence is in force; or
- b. if such a licence is in force, other than in accordance with the conditions, if any, of the licence, shall be guilty of an offence".

Where an investment business licence is issued, a series of regulatory codes will apply to that licenceholder (see [para 2.8](#)).

#### 2.2 LICENSING REQUIREMENT

As can be seen, except where a manager of a professional or experienced investor fund is situated in the Isle of Man and that manager has delegated the majority of its activities to a fund administrator (ie an "exempt person" in accordance with the [Investment Business \(Exemption\) \(Fund Managers\) Regulations 1999](#)), managers of authorised and international collective investment schemes as well as fund administrators and third party fund administrators are carrying on investment business by virtue of paragraph 5 of [Part 1 of Schedule 1](#) of the IB Order. Consequently, they are required to hold an investment business licence issued by the Commission under section 3 of the IBA. Furthermore, the provisions of [sections 3 and 11](#) of the Financial Supervision Act 1988 ("the FSA") require that the managers of authorised and international collective investment schemes must hold an investment business licence.

It should be noted that, where collective investment schemes are constituted as open-ended investment companies, the fund company itself does not require an investment business licence as it is exempted from requiring a licence by virtue of the Investment Business (Exemption) (Miscellaneous) Regulations 1998.

### 2.3 GENERAL LICENSING POLICY

The General Licensing Policy for those seeking a Banking, Investment Business or Fiduciary Services Licence (see [Appendix M1](#)) sets out the general criteria the Commission will normally apply in assessing the fitness and propriety of licence applicants and of individuals with key roles and/or significant influence in respect of those businesses. The specific requirements and considerations applicable to investment business are summarised in tables A to E in Appendix 1 to the licensing policy.

The licensing policy applies to applicants for investment business licences, which are required to meet the "fit and proper" criteria, and, on an on-going basis, to licenceholders which must continue to be "fit and proper". (See also [section 2.8](#) below.)

#### 2.3.1 The Commission's Fit and Proper Test

The Investment Business Act 1991, as amended by the Investment Business (Amendment) Act 1993 ("IBA") requires that: -

1. an applicant for an investment business licence; and
2. any controller, director or manager (including the company secretary and compliance officer) of the applicant

must be "fit and proper persons".

The fitness and propriety criteria apply both in relation to the initial application for an investment business licence and thereafter to the licenceholder on an ongoing basis. The Commission's General Licensing Policy for those seeking a Banking, Investment Business or Fiduciary Services Licence sets out the criteria it will normally apply in assessing fitness and propriety.

### 2.4 AUTHORISED SCHEME MANAGERS - Licensing and Regulation

#### 2.4.1 General

Before applying for an investment business licence, the manager of an authorised scheme must first satisfy the requirements of section 3 of the FSA. That is the manager must be independent of the authorised scheme's trustee, it must also be a body corporate having a place of business in the Island, and must not be prohibited from acting as a manager of an authorised scheme under any enactment. The Commission's interpretation of the independence requirement for managers and trustees of authorised schemes is that they must be completely separate entities both in terms of ownership and operation.

A manager of authorised schemes is normally licensed by the Commission to manage specifically named schemes. Consequently, a manager of authorised schemes may not undertake the management of additional schemes unless the Commission grants its approval by extending the manager's licence to cover those additional activities.

It is important that authorised scheme managers carefully note the restriction on their activities imposed under section 8 of the FSA. Essentially, [section 8](#) restricts the manager of an authorised scheme from engaging in any activity other than that of acting as a manager of collective investment schemes; although additional activities may be undertaken provided they are agreed in writing by the Commission.

#### 2.4.2 The Collective Investment Schemes Compensation Scheme ("Compensation Scheme")

Managers of authorised schemes are also required to be party to the compensation arrangements for authorised schemes provided for by the [Authorised Collective Investment Schemes \(Compensation\) Regulations 1988](#) ("the Compensation Regulations" see [Appendix B3](#)). [Regulation 13](#) of the Compensation Regulations requires every manager of an authorised scheme during the financial year of the compensation scheme to submit to the Commission a declaration in writing of the annual value of the property of every authorised scheme of which it was the manager. The written declarations must be submitted each year to the Commission within four months of 31 March, which is the Compensation Scheme's year-end. The annual value of the property of each authorised scheme must be calculated in accordance with the formula laid down in [regulation 13](#) of the Compensation Regulations. The Commission would expect managers to take account of their potential liability to the Compensation Scheme as a "contingent liability" for accounting purposes. Each manager's liability is calculated in accordance with the formula contained in [regulation 16](#) of the Compensation Regulations, based on the value of the funds stated in the annual declaration.

### 2.5 INTERNATIONAL (EXCLUDING PROFESSIONAL AND EXPERIENCED INVESTOR & OVERSEAS FUNDS) SCHEME MANAGERS - Licensing and Regulation

The only requirement imposed under [section 11](#) of the FSA regarding managers of international collective investment schemes, apart from the requirement to hold an investment business licence, is that they must be a different person to the trustee of the international collective investment scheme. The requirement to be different persons rather than independent persons, as is the case with managers and trustees of authorised schemes, means that the manager and trustee of an international collective investment scheme may be separate entities within the same corporate structure. However, the Commission recognises that it is desirable in the interest of investors that there should be a clear separation of functions between the manager and trustee where they are companies within the same group, so as to ensure that the interests of participants or potential participants in an international collective investment scheme are not compromised. To this end, the Commission would expect certain requirements to be satisfied before licensing a manager who is associated with the trustee of the international collective investment scheme which it manages. The Commission's requirements in this regard are contained in the Guidance Notes for Managers and Trustees of International Collective Investment Schemes (see [Appendix C4](#)).

#### 2.5.1

##### "Real Presence"

Whilst the Commission requires a manager of an international collective investment scheme to be an Isle of Man body corporate, it need not maintain a "real presence" in the Island provided that its business is administered by a licensed third party fund administrator (see [paragraph 2.6](#)). The managers of international collective investment and authorised schemes whose businesses are administered by third party fund administrators will still be required to hold an investment business licence, and therefore, to satisfy the Commission's normal licensing criteria in respect of fitness and propriety (see [licensing policy](#)).

### 2.5.2 Licensing

A manager of international collective investment schemes is normally licensed by the Commission to manage specifically named schemes. Consequently, a manager of international collective investment schemes may not undertake the management of additional international collective investment schemes or engage in any other licensable activity, unless the Commission grants its approval by extending the manager's licence to cover those additional activities.

This involves review by the Commission of the scheme's arrangements and documentation for compliance with the regulations. The Commission will also require personal and bankers questionnaires ("PQs and BQs") to be submitted in respect of the scheme's directors, controllers, managers etc. (if a copy of these, no older than 5 years is not already held by the Commission).

A manager of international schemes may however be exempted from the requirement to submit a scheme's documentation for "pre-vetting" provided that the manager can demonstrate a "track record" with regard to compliance with the regulations for international schemes in respect of the manager's three previous international schemes. In such cases the Commission will only require brief details of the additional scheme to be submitted to the Commission (together with completed PQs and BQs) no less than 14 days in advance of the additional scheme's launch date. The Commission has an ["Advance Scheme Notification Form"](#) for this purpose (see [Appendix K2](#)).

Upon receipt of the Advance Scheme Notification Form, the additional scheme will be added to the licenceholder's investment business licence. Notification of the scheme should be submitted within 14 days of the scheme becoming an international scheme using the standard [Notification form](#) in Appendix K2.

Managers who wish to take advantage of this exemption must obtain the written consent of the Commission. The exemption may be lifted should the Commission subsequently find scheme documentation to be unsatisfactory.

## 2.6 PROFESSIONAL AND EXPERIENCED INVESTOR FUND MANAGERS AND FUND ADMINISTRATORS – Licensing and Regulation

Whilst a PIF or EIF is not specifically required to appoint a manager, it is free to do so.

Should a manager be appointed, an Isle of Man based manager must hold an investment business licence which specifically includes this activity.

The manager may also be an "exempt person", as defined in the Investment Business (Exemption) (Fund Managers) Regulations 1999 (see [Appendix C8](#)). An exempt person is exempt from the requirements to hold an investment business licence so long as it has delegated, with the exception of receipt of management fees and the powers to appoint investment advisers, all activities to an Isle of Man licensed fund administrator. If a representative of the fund administrator takes a place on the board of the manager, that manager may also engage in introducing subscribers to the fund. This ensures that the day-to-day operation of a PIF or EIF is always carried out by an Isle of Man investment business licenceholder and that the arrangements of the PIF or EIF are subject to that licenceholder's oversight.

An existing licenceholder must request an extension to its licence to enable the management or administration of EIFs or PIFs. In assessing whether to grant such approval the Commission will take account of, among other things, the applicant's compliance track record, the quality of its internal systems and control procedures, due diligence procedures for the vetting of business associates, and its financial standing.

New applicants will be required to satisfy the Commission's normal licensing criteria by demonstrating that they are "fit and proper" and that they have appropriate track record and experience in managing and administering funds similar to the EIF or PIF. In addition, the Commission will also take account of the applicant's due diligence procedures for the vetting of business associates, the quality of its internal systems and control procedures and its financial standing. (See also [Licensing Policy](#))

Once approval has been given (unless it is subject to conditions) the manager or fund administrator is free to take on any number of EIFs or PIFs without any further approval from the Commission. A notification of the establishment of each PIF or EIF (using the standard notification form in [Appendix K1](#)) or winding-up of each PIF or EIF must be made to the Commission within 14 days, in accordance with [section 11\(2\)\(a\)](#) of the FSA. In the case of an EIF, at the time of notification, the approved person must certify to the Commission that the offering document and relevant constitutional documents comply with the requirements of the [EIF Order](#).

In permitting a manager or fund administrator to act for PIFs or EIFs, the Commission may impose special conditions upon the way in which the licenceholder undertakes its activities.

The Commission will review the [PIF](#) and [EIF](#) documentation and, during the course of its supervisory visits, inspect the licenceholder's operational activities to seek to ensure that the conditions of the PIF and EIF Order and other relevant Isle of Man regulatory requirements, which concern the conduct of investment business, have been met.

It should be emphasised that the responsibility for the proper management and administration of an EIF or PIF rests with the licensed fund manager of fund administrator.

It should be noted that an exempt person cannot appoint an investment adviser without the prior written approval of the fund administrator.

The Commission has issued Guidance Notes for Managers, Fund Administrators, Custodians and Fiduciary Trustees of EIFs (see [Appendix C9](#)).

### 2.6a OVERSEAS FUND MANAGERS AND FUND ADMINISTRATORS – Licensing and Regulation

In accordance with the Overseas Fund Order (see [Appendix C12](#)), an overseas fund must be managed or administered by the holder of an investment business licence which specifically permits the provision of management or administration services to an overseas fund. An "overseas fund" is defined in the Overseas Fund Order.

An existing licenceholder must request an extension to its licence to enable the management or administration of an overseas fund. In assessing whether to grant such approval the Commission will take account of, among other things, the applicant's compliance track record, the quality of its internal systems and control procedures, due diligence procedures for the vetting of business associates and its financial standing.

New applicants will be required to satisfy the Commission's normal licensing criteria by demonstrating they are "fit and proper" and that they have appropriate track record and experience in managing and administering collective investment schemes. In addition, the Commission will take account of the matters mentioned above. (See also [Licensing Policy](#).)

In permitting a manager or fund administrator to act for overseas funds, the Commission may impose special conditions upon the way in which the licenceholder undertakes its activities.

Once approval has been given (unless it is subject to conditions), the manager or fund administrator is free to take on any number of overseas funds without any further approval from the Commission.

The Commission wishes to be kept informed of the number of overseas funds administered by its licenceholders and the "Notification Form for Overseas Funds" (see [Appendix K3](#)) should be used for providing such notification. The notification form for each overseas fund should be submitted to the Commission within 14 days of the overseas fund entering into a fund management or fund administration agreement with the licenceholder.

Should an overseas fund cease to be managed or administered by a licenceholder, the licenceholder should notify the Commission in writing within 14 days of the termination of the fund management or fund administration agreement.

The form to be used to provide notification that an overseas scheme is to become subject to S11 of the FSA is [Appendix K1](#).

It should be emphasized that the responsibility for the proper management and administration of an overseas fund rests with the licensed fund manager or fund administrator. Such schemes are unregulated schemes in that they are exempted from the legal and regulatory requirements that apply to other international schemes (including PIFs and EIFs). The Commission expects therefore that licenceholders will be extra vigilant when conducting due diligence on overseas schemes.

Licenceholders of overseas funds should be aware of the Guidance Notes on Domicile of International Schemes (see [Appendix C11](#)).

### 2.7 THIRD PARTY FUND ADMINISTRATORS - Licensing and Regulation

When the regulatory regime for international collective investment schemes was introduced in March 1990, the Commission recognised that the development of the Island's collective investment scheme industry would be assisted by encouraging the development and growth of third party fund administrators, who would administer the businesses of international collective investment scheme managers who would become known as "managed managers". This concept was subsequently extended to include the managers of authorised schemes. Third party fund administrators are also able to administer professional and experienced investor and overseas funds and, on a managed basis, those organisations whose investment activities are limited to managing the investments of captive and mutual insurance companies.

Providing services as a third party fund administrator in the aforementioned circumstances requires an investment business licence. In considering an application to act as third party fund administrators the Commission will particularly seek to satisfy itself that the level of investment in data processing and information systems is adequate and that proper provision has been made for operational and data security, including arrangements for backup in the event of a systems failure.

The Commission will normally expect that organisations offering third party fund administration services will be organisations of considerable size, or which are part of larger groups offering similar services. (See also [Licensing Policy](#).)

In certain circumstances licensed banks may also be permitted to provide third party fund administration services. Banking institutions contemplating taking on an appointment as third party fund administrator should note the provisions of [paragraph 10.2](#) of the Banking (General Practice) Regulatory Code 1999 (S.D. No: 122/99) which states:-

***"The banking institution shall obtain the consent of the Commission - in writing - before accepting an appointment as third party fund administrator to a collective investment scheme."***

Before granting such consent, the Commission will require to be satisfied that the banking institution in

question is adequately resourced both financially and in terms of qualified personnel and systems to fulfil its obligations to investors as well as the promoters of authorised and international collective investment schemes.

## 2.8 REGULATORY CODES, LICENCE CONDITIONS AND KNOW YOUR CUSTOMER

Regulatory Codes ("the Codes")

Under the powers contained in [section 6](#) of the IBA the Commission has made the following regulatory codes:

- [Financial Resources and Compliance Reporting](#)
- [Audit Requirements](#)
- [Clients' Money](#)
- [General Requirements](#)
- [Clients' Investments](#)
- [Advertising](#)
- [Conduct of Business](#)

Each of the Codes is described in further detail below. All investment business licenceholders must comply with the Codes. Failure to do so will lead to the Commission taking appropriate enforcement action. It should be noted that Category 5 licenceholders (Stockbrokers), however, are covered by a separate code - the Financial Supervision Commission (Stockbrokers) Code which is available upon request from the Commission.

### 2.8.1 Financial Resources and Compliance Reporting - (Appendix E1)

The financial resources requirements are designed to promote a stable and orderly business environment which inspires confidence by minimising the risk of loss to investors which could arise from over-trading by a licenceholder or from adverse developments in the markets in which it operates. No system can eliminate risk and so the Commission's objective is to minimise risk, without over-regulating those licenceholders conducting legitimate and well resourced investment business. The requirements are directly related to the scope of investment business conducted by the licenceholder and therefore depend upon which category of business it is permitted to conduct. The categories of licenceholders in respect of the management and administration of collective investment schemes are as follows:

#### Category 2(b)

(Minimum net tangible assets of £30,000 and 3 months annual audited expenditure to be maintained as liquid capital)

- managers of international collective investment schemes (apart from experienced investor funds or professional investor funds), but only where the manager is administered by a licenceholder who is authorised as a category 4 business.

#### Category 3(a)

(Minimum net tangible assets of £50,000 and 3 months annual audited expenditure to be maintained as liquid capital)

- managers of international collective investment schemes (except as provided in category 2(b) above), (apart from experienced investor funds or professional investor funds), and managers of more than one "exempt international collective investment" scheme within the meaning of section 11(7) of the FSA.

#### Category 3(b)

(Minimum net tangible assets of £75,000 and 3 months annual audited expenditure to be maintained as liquid capital)

- Managers of authorised collective investment schemes;
- Managers or administrators of professional investor funds and/or experienced investor funds.
- Managers or administrators of overseas funds

#### Category 4

(Minimum net tangible assets of £175,000 and 3 months annual audited expenditure to be maintained as liquid capital - see above)

- licenceholders providing administrative services to managers of authorised and/or international collective investment schemes including PIFs and EIFs (except as provided for in categories 2(b) and 3(b) above).

There are two separate tests of the financial resources of licenceholders - the minimum net tangible asset test and the liquid capital test. The two tests reflect two measures of the solvency of a business; that its assets should exceed its liabilities and that it should be able to meet its liabilities as they fall due.

The net tangible assets test applies to all categories of licenceholder and requires every licenceholder to commit capital resources to the business scaled broadly in line with the requirement for investment in equipment, etc.

The liquid capital test, which applies to all categories except category 1, is an expenditure-based requirement which focuses upon realisable assets available against a number of months expenditure. The intention is that each licenceholder should have enough liquid working capital to sustain its business for a number of months to provide a cushion against unexpected market shocks or disruption of business and provide time, if necessary, for an orderly reconstruction or winding down of the business.

In addition, the Commission believes that all licenceholders should carry professional indemnity insurance. The level of insurance required is dependent upon the category of business being conducted. For example, category 1 businesses ought to hold professional indemnity cover of not less than £250,000 or three times total revenue, whichever is the greater, whereas the minimum level for higher categories is £500,000. This requirement recognises that licenceholders are subject to a range of different types of risk (e.g., negligence), not all of which can be reduced by a financial resource requirement.

This code contains details of how the financial resource requirements are to be calculated and specifies a number of adjustments. One of the most important of these adjustments is that monies owing to the licenceholder from other group companies will be excluded for the purposes of calculating the financial resource requirement, except in certain very limited circumstances. Thus, a licenceholder will be expected to "stand alone" financially from the rest of its group.

Although the financial resource requirement is a day-to-day requirement, licenceholders are required to submit financial statements to the Commission at periodic intervals, generally either half-yearly or quarterly depending upon the category of licence.

The Commission attaches great importance to accurate and timely reporting. Late, incomplete, or inaccurate returns are never a good sign and are often a symptom of serious problems. In any case, prompt and accurate reporting is an important part of the Commission's criterion that the business shall be conducted with prudence and professional skill, which is part of the "fit and proper" test.

### 2.8.2 [Clients' Money - \(Appendix E2\)](#)

This code should be read in conjunction with the Investment Business (Clients' Money) Regulations 1991 ("the Regulations") (see [Appendix E8](#)).

One of the main purposes of this code and the Regulations is to provide for the protection of clients' money in the event of the insolvency of the licenceholder, i.e., to ensure that a liquidator is unable to claim clients' monies as part of the general assets of the licenceholder. Thus, a fundamental requirement of the Regulations and the code is that clients' money should at all times be held in segregated and properly designated accounts on trust for the investor. The Commission requires bankers to provide confirmation that monies held in such accounts are not subject to any charge or lien, right of set-off, etc.

Additional safeguards have been included in this code for those situations where clients' money is paid into bank accounts abroad. In such circumstances, it is the responsibility of the licenceholder to ensure and demonstrate to the Commission that clients' money held in such accounts is afforded similar protection to that provided under the Island's code and Regulations. If this cannot be done the licenceholder must warn the client in writing that his money may not be as well protected (see [paragraph 6.1\(d\)](#) of the Clients' Money Code).

The other main aim of this code is to ensure that clients' monies are properly recorded, reconciled and controlled so that money belonging to one client is not utilised to meet the liabilities of either the licenceholder or another client. Special provisions are included for clients with a high volume of investment transactions and for those undertaking margined transactions (e.g. futures).

### 2.8.3 [Clients' Investments - \(Appendix E3\)](#)

The principal objective of this code is to ensure that, where licenceholders have possession or control of investments belonging to others, adequate arrangements are maintained to ensure that such investments are kept safely and are properly recorded, identified, segregated and controlled so that at any time investments belonging to others are accounted for and no administrative or financial difficulties to which the licenceholder may be exposed would have adverse consequences for those clients or other persons. The code recognises that licenceholders may hold clients' title documents on a temporary basis while they are in transit to clients. In such circumstances, the code will not be applied as long as the title documents are registered in the name of the client and are forwarded to him within 2 business days.

This code requires that a licenceholder must not recommend to a client that any other person should have custody of or should act as the registered holder of the client's investments unless that person is an "eligible custodian". An eligible custodian can be either an approved banking institution, a nominee company with no other business which acts solely in accordance with the directions or instructions of the licenceholder (in which case the nominee will be regulated through the licenceholder) or an institution providing custodial services in another territory which, in the opinion of the Commission, is adequately supervised by a regulatory body or Government agency in that territory. The licenceholder is responsible for ensuring that the custodian acknowledges in writing that the provisions of the code will be complied with by such custodians.

The Commission requires all licenceholders and any "eligible custodians" to maintain adequate insurance for non-registered securities which are in their possession at any time, against negligence, accidental loss, fire, flood, theft and employee fidelity.

The Code also requires that written statements of investments held should be provided to each client normally twice a year after a complete reconciliation of clients' title documents has been carried out by the licenceholder and any "eligible custodians". In certain circumstances, the

Commission is prepared to allow licenceholders to adopt a "rolling" basis of reconciliation. Before doing so, however, the Commission will require a report from the licenceholder's auditors on the adequacy of the licenceholder's system of internal controls for recording client investments.

#### 2.8.4 [Conduct of Business - \(Appendix E4\)](#)

This code describes the general principles and standard of conduct which the Commission expects licenceholders to adopt in their dealings with clients and others. Throughout the code, the distinction is drawn from time-to-time between the private investor (i.e., the man in the street) and the experienced or professional investor. All clients will be deemed to be private investors unless they have elected in writing not to be.

The Commission considers that the private investor requires a greater level of protection than the experienced or professional investor and this is reflected in the Code. Where no distinction is drawn, the Commission considers that a similar level of protection is appropriate for all types of client.

The Code is self explanatory and is divided into 7 main headings:

- i. integrity and fair dealing;
- ii. skill, care and diligence;
- iii. disclosure and information;
- iv. acting with agreement;
- v. responsible conduct;
- vi. futures, options and contracts for differences; and
- vii. documentation and records.

#### 2.8.5 [Audit Requirements](#)

This code requires that auditors of investment businesses are restricted to those firms which are covered by professional indemnity insurance of not less than £10 million. The Commission also wishes to be satisfied that the firm has sufficient knowledge and expertise in this specialised area and that the partner in charge of the audit can demonstrate that he has adequate experience. The Commission also prefers the auditors of its licenceholders to have local representation in the Isle of Man.

The code lays down specific requirements for the letter of engagement between the licenceholder and its auditor. These specify the rights and duties of the auditor and include also a number of specific audit report requirements which are contained within this code. The code requires the auditor to make reports to the Commission in relation to the Financial Resources and Compliance Code, the [Clients' Money Code](#), the [Clients' Investments Code](#) and specific parts of the [Conduct of Business Code](#) and these reports play an important part in the effective enforcement of the Codes.

#### 2.8.6 [General Requirements - \(Appendix E6\)](#)

The overriding principle within this code is contained in paragraph 3 which states:

***"A licenceholder should co-operate in an open and honest manner with the Commission and any other regulatory body to which it is accountable and should keep them promptly informed of anything relevant to the Regulator's task."***

Indeed, the Commission believes that compliance with this code is a substantive test of a licenceholder's continued fit and proper status and would not expect any licenceholder to have difficulty with it.

Dual Control ("four-eyes" control)

The code lays down several fundamental requirements, perhaps the most important of which is the requirement for the business of licenceholders within categories 2 to 4 to be conducted on a day-to-day basis by at least 2 individuals (the "4-eyes" principle). The Commission must be satisfied that the individuals proposed to fulfil the four-eyes requirement are competent and that they are people of integrity - but they must also have the maturity and strength of character to act with proper independence of mind. The Commission writes, as a matter of routine, to the individuals proposed by the licenceholder, describing its requirements and reminding them that failure to carry out their responsibility has implications for their "fit and proper" status (See [Appendix G4](#)). In addition, the Commission will generally wish to interview those who will be acting as the licenceholder's "4-eyes". In order to appoint, or replace an individual who forms part of the four-eyes control, the licenceholder must write to the Commission to recommend an appropriate individual. The Commission has the right to object to the person proposed.

The concept of four-eyes control seeks to prevent the day-to-day management of a licenceholder and its affairs being carried on under the influence of a dominant individual, whether that person is an owner, controller or a director.

The Commission requires, wherever possible, the persons responsible for the "4-eyes" not to be also responsible for compliance matters.

This code also lays down certain notification requirements, some of which are, for obvious reasons, immediate ("forthwith") while others are designed to enable proper consideration and discussion to take place before a change is implemented. For example, 21 days notice must be given to the Commission prior to the appointment of any new director, manager, or secretary.

Directors responsibilities

The Commission is concerned to ensure that directors accept their responsibilities for the proper conduct and financial well-being of an Isle of Man licenceholder. Accordingly, the Commission has issued Guidance Notes on the responsibilities and duties of directors under the laws of the Isle of Man (see [Appendix I3](#)).

#### Company Secretary

[The General Requirements Code 5](#) requires the company secretary of a licenceholder either to be properly qualified in accordance with section 19(4), paragraphs (a) to (e) of the Isle of Man Companies Act 1982 or, exceptionally, an individual who, by virtue of his knowledge and experience, is specifically approved by the Commission to act as company secretary.

Normally, the Commission would not expect the Managing Director of a licenceholder to also act as company secretary.

#### Compliance Officer

The Commission deems the person responsible for compliance matters (i.e. the Compliance Officer/Manager) a "manager" for the purposes of [General Requirements Code 7.2](#). Accordingly, it should be noted that the Commission must be appropriately notified of the appointment or resignation of the compliance person. The Commission also requires, wherever possible, the persons responsible for the day to day operation of the business of the licenceholder (i.e. the "4-eyes") should not be responsible for compliance matters.

#### Commission Approval

Other parts of the code require licenceholders to obtain Commission approval before certain important changes are effected (e.g. acquisitions, mergers, etc.).

### 2.8.7 Advertising - (Appendix E7)

The term "advertisement" is defined in the IBA as follows:-

***"Every form of advertising whether in a publication or by the display of notices or by means of circulars or other documents or by an exhibition of photographs or cinematograph films or by way of sound broadcasting or television (including transmission by cable)."***

This definition includes scheme particulars, prospectuses and any other offer documents.

The Commission does not require licenceholders to submit draft advertisements for approval prior to publication. However, this code lays down general principles relating to advertisements to which licenceholders should adhere.

The code is divided into two sections:

- a. General Requirements. These are basic principles which apply to any advertisement. For example "an advertisement shall not contain a statement, promise or forecast which is untrue or misleading".
- b. Requirements relating to specific investments. These are designed to ensure that advertisements disclose adequately any special areas of risk in the investment product being advertised. In the case of advertisements inviting direct investment in futures, options and contracts for differences, it is a requirement that a specific risk warning be included as follows:

"The risks of loss from investing in commodity and financial futures, foreign exchange contracts, securities and index contracts and options can be substantial".

This requirement is, of course, consistent with the Commission's requirements under the [Conduct of Business Code](#).

### 2.8.8 Licence Conditions

The Commission's regulation and supervision of investment business licenceholders is founded upon the system of the Codes. However, [section 3\(4\)](#) of the IBA empowers the Commission to issue investment business licences subject to conditions. Normally, the only licence condition that managers, fund administrators and third party fund administrators will find attached to their investment business licence upon issue will be one that prescribes the scope of the investment business activities that they may carry on. For example, a manager of authorised schemes will be licensed subject to the condition that it acts only as manager of the schemes named in the schedule attached to the licence.

It is important that licenceholders appreciate the significance of the difference between licence conditions and the Codes. Whereas a breach of a regulatory code can lead to regulatory enforcement action being taken by the Commission, a contravention of a licence condition risks criminal prosecution and/or civil action at the suit of anyone who suffers loss.

### 2.8.9 "KNOW YOUR CUSTOMER"

Although the nature of a licenceholder's business is within the control of the Board and management, the Commission has long been aware of the risk of abuse of the Island's investment businesses by criminals. As long ago as 1985, the Commission introduced a "Know Your Customer" policy, designed to alert investment businesses to the dangers of doing business with people they did not know and of relying solely upon introductions from the marketplace. The Know Your Customer policy requires licenceholders to seek evidence of identity, to verify

that identity, to enquire as to the nature of the business and activity of the customer and to monitor the activity of any doubtful accounts.

Since then, there have been numerous international initiatives to combat money laundering - the Basel Supervisors Committee introduced its Statement of Principles in December 1988; the G7 countries formed a Financial Action Task Force on money laundering in June 1989, which produced its Recommendations in April 1990; and in December 1990 the Joint Money Laundering Working Group in the UK produced its Guidance Notes for Banks and Building Societies. The Criminal Justice Act 1990, as amended, contains comprehensive provisions relating to the countering of "all-crimes" money laundering. The Anti-Money Laundering Code, which came into force on 1 December 1998, applies to investment businesses and the Commission has produced [Anti-Money Laundering Guidance Notes](#) for its licenceholders.

Compliance with the Island's Anti-Money Laundering requirements is a requirement of the Commission's [Conduct of Business Regulatory Code](#), as well as a recommendation pursuant to [section 9 of the IBA](#).

## 2.9 Compliance Procedures

The Financial Supervision Commission (Conduct of Business) Regulatory Code at [paragraph 6.7](#) states: -

"Compliance

A licenceholder should establish and maintain compliance procedures in writing where appropriate with a view to ensuring that: -

- a. its officers, employees and other representatives are aware of their obligations under the [Investment Business Act 1991](#) and any licence conditions, codes or regulations and are able to comply with them; and
- b. sufficient information is recorded and retained about the conduct of the licenceholder's business and its compliance with the [Investment Business Act 1991](#) and any licence binding upon it.

Compliance procedures should be in writing where the staff of the licenceholder exceeds ten.

A licenceholder should, at least annually, carry out a review of its compliance procedures to ensure that they are effective and have been complied with."

It is important that licenceholders are able to demonstrate compliance with all regulatory codes which impact upon them. The maintenance of comprehensive procedures and compliance manuals will assist licenceholders to evidence compliance with the above code and a review of such manuals will form a key part of supervisory visits. Licenceholders are also required to submit a Compliance Statement to the Commission on an annual basis in accordance with the Financial Resources and Compliance Regulatory Code.

## 2.10 Supervisory And Focused Visits

The Commission's aim in conducting a programme of Supervisory and Focused Visits on its licenceholders is to promote high standards amongst those it regulates by identifying instances where investors or indeed, the licenceholder, may be at risk or where the standards and practices required by the Regulatory Codes are not being observed.

Specifically, the Supervision programme is to: -

- Assess whether those the Commission regulates remain fit and proper persons;
- Identify potential weaknesses in controls or procedures which may cause regulatory concern;
- Identify and investigate instances where investors' interests may be at risk from any failure to comply with the regulatory requirements;
- Assist those involved in investment business in understanding and meeting the Commission's requirements.

Commission's officers normally undertake supervisory visits on licenceholders at a pre-arranged time when the licenceholder is required to demonstrate that the requirements of the regulatory codes have been met. Reviews are not intended to be a comprehensive investigation of the licenceholder's activities. Whilst the Commission's Officers may suggest certain remedial actions and provide guidance where appropriate, it remains the ultimate responsibility of the licenceholder's Board to ensure the financial well-being and efficient management of the licenceholder, including compliance with the regulatory requirements and to protect the interests of shareholders.

Officers may conduct full Supervisory Visits, which extend to all activities carried on by the licenceholder, including any non-investment business and which will be undertaken over a number of days, or Focused Visits, concentrating on a particular area or areas such as [Know Your Customer](#) or [Clients' Money](#) which may be concluded in a shorter timescale.

Each area reviewed will be given a rating ranging from Good to Unsatisfactory. In addition, the visit will be given an overall rating. The Commission expects those issues rated as "Unsatisfactory" to be dealt with or brought into compliance as a matter of urgency while those issues rated as "Room for Improvement" will be given a period of time in which to comply. Evidence of such action, in the case of "Unsatisfactory" issues, will need to be supplied to the Commission within the timescales given or, in the case of "Room for Improvement" will be reviewed at the next Supervisory Visit.

It should be noted that an "Unsatisfactory" rating may have an impact on the ["fit and proper"](#) status of the licenceholder and its management. Licenceholders will recall that the "fit and proper test" is both an initial test at the time of granting a licence and a continuing test in relation to the conduct of business and the relationship with the Commission. The Commission's approach is cumulative and it

may therefore conclude that the "fit and proper test" is not met on the basis of a number of instances of conduct, which, if taken individually, might not lead to that conclusion.

It should be noted that the Commission's officers are bound by the strict rules of confidentiality laid down in [sections 23 and 24 of the Financial Supervision Act 1988](#).

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## Section 3

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### TRUSTEES OF AUTHORISED AND INTERNATIONAL COLLECTIVE INVESTMENT SCHEMES - LICENSING AND REGULATION

#### 3.1

##### **FINANCIAL SUPERVISION ACT 1988**

The [Financial Supervision Act 1988](#) ("the FSA") requires that all authorised and international collective investment schemes (with the exception of professional investor funds ("PIFs"), experienced investor funds ("EIFs") (where the appointment of a trustee is optional) and exempt international collective investment schemes) must have a trustee.

In the case of an authorised scheme, the trustee must be an authorised person. The trustee of an international collective investment scheme must be either an authorised person or a person authorised to act as trustee under the law of one of the prescribed countries or territories which presently consist of the United Kingdom, Jersey and Guernsey.

The term "authorised person" is defined in [section 31\(1\)](#) of the FSA as:

***"a person holding a licence granted under section 3 of the [Investment Business Act 1991](#) or such other classes of permitted persons (within the meaning of that Act) as may be prescribed."***

Except for an international collective investment scheme whose trustee is authorised under the law of one of the prescribed countries or territories, only banking institutions licensed under section 6 of the Island's [Banking Act 1998](#) ("the BA") are permitted to act as trustees of authorised or international collective investment schemes. Licensed banking institutions are a class of permitted persons which have been prescribed as authorised persons for the purposes of the FSA by virtue of the [Financial Supervision \(Authorised Persons\) Regulations 1992](#) (see [Appendix J](#)). Consequently, a licensed banking institution does not require an investment business licence when acting as trustee of authorised or international collective investment schemes.

However, banking institutions contemplating taking on the trusteeship of an authorised or international collective investment scheme should note the provisions of [paragraph 10.1 of the Banking \(General Practice\) Regulatory Code 1999](#) (S.D. No: 122/99) which states:

***"The banking institution shall obtain the consent of the Commission - in writing - before accepting the trusteeship of any collective investment scheme as defined by the [Financial Supervision Act 1988](#)".***

Before granting consent to a licenceholder to act as trustee of either an authorised or international scheme, the Commission must be satisfied that the banking institution in question is adequately resourced both financially and in terms of qualified personnel and systems.

Applications in respect of authorised schemes are made jointly by the proposed manager and trustee of the scheme. Indeed, the application form must be signed by the trustee.

The Commission will generally expect any bank wishing to act as trustee of an authorised scheme to have a minimum issued and fully paid up share capital of £5million. Trustees of authorised schemes are also required to be party to the compensation arrangements for authorised schemes provided by the [Authorised Collective Investment Schemes \(Compensation\) Regulations 1988](#) (see [Appendix B3](#)) and prior to accepting any such trusteeship must complete and return to the Commission the declaration contained on page (i) of the [Compensation Regulations](#).

Trustees of authorised schemes, in addition to the normal duties and responsibilities of a trustee, are required to undertake detailed supervisory functions imposed on them under the [Financial Supervision \(Authorised Collective Investment Schemes\) Regulations 1988](#) (see [Appendix B1](#)). Indeed, within the annual report of the manager to unitholders, the Trustee of an authorised scheme must make a report to unitholders in accordance with [Part V of Schedule 3](#) to the [Authorised Scheme Regulations](#).

Subject to the provisions of [../showpdf.aspx?pdf=CIS/PDF/CIS - Appendix A1.pdf&page=10](#) of the FSA, the duties imposed by the [Authorised Scheme Regulations](#) on the trustee are in addition to, and not in derogation from, the duties that are otherwise imposed upon the trustee by law - see [regulation 4.07 of the Authorised Scheme Regulations](#).

Whilst trustees of international collective investment schemes are not required to undertake the same detailed supervisory functions, this does not diminish the fundamental role of trustees as both custodians of Scheme assets and guardians of investors' interests. Indeed the Commission expects any trustee/custodian agreement in connection with an international collective investment scheme to impose upon the trustee a duty to ensure that the scheme is managed in accordance with the provisions of its constitutional documents (see [paragraph 2.2 of the Guidance Notes for Managers and Trustees of International Collective Investment Schemes - Appendix C4](#)).

The Commission requires trustees of international schemes to have a fiduciary role as well as a custodial role. The Commission expects the trustee to safeguard the interests of investors at all times. This means that the Commission expects that fiduciary responsibility should be exercised not only from paper-based internal monitoring of the fund manager and scheme, but also by external on-site review of the activities of the fund manager in relation to the scheme.

The Commission will expect trustees of international schemes to establish a monitoring programme to be used for both the internal paper-based monitoring and the external on-site reviews. The programme should cover all areas of the fund manager's activities, for example:

- compliance arrangements;
- accuracy of pricing;
- investment and borrowing powers and restrictions;
- registration;
- application and redemption procedures;
- issue of contract notes;
- complaints procedures.

The activity of acting as trustee of "exempt" international collective investment schemes is excluded from the scope of the IB Act by virtue of [paragraph 20\(1\)\(a\)](#) of Schedule 1 to the Order.

Trustee/custodial facilities can be offered in the Island to schemes whose management and administration is performed in another jurisdiction without the scheme becoming an international collective investment scheme and subject to section 11 of the FSA 1988. This activity is also excluded from the scope of the IB Act by virtue of [paragraph 20\(1\)\(b\) of Schedule 1](#) to the Order.

### 3.2 [INVESTMENT BUSINESS ACT 1991](#)

As stated in [Part I of Schedule 1 to the Investment Business Order 2004](#) (see [Appendix A3](#)) acting as trustee to a collective investment scheme constitutes licensable activity and therefore requires an investment business licence. However, banking institutions licensed under section 6 of the BA are exempt from having to hold an investment business licence by virtue of the Investment Business (Exemption) (Banks and Building Societies) Regulations 1992. A condition of this exemption is that the [Clients' Investments](#) and [Conduct of Business Regulatory Codes](#) apply in respect of investment business activity carried on by the Bank or Building Society. In addition, the [Advertising Code](#) and [General Requirements Code](#) apply in part.

It is intended that banks will in due course cease to be required to comply with these codes and that a separate regulatory code relating to investment business carried on by banks will be issued under [section 10](#) of the BA.

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## SECTION 4

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### LICENCE APPLICATIONS AND RENEWAL PROCEDURES

#### 4.1 LICENCE APPLICATIONS

Licence applications must be made on prescribed forms, copies of which are available from the Commission's website (see [Appendix G1](#)).

The staff of the Commission are available to be consulted on a formal or an informal basis in the course of the preparation of an application for a licence and will try to give appropriate guidance where it is sought. However, in order that the role of the staff of the Commission is not misunderstood, the Commission wishes to emphasise that:

- i. the preparation and submission of an application for a licence is the responsibility of the applicant;
- ii. the decision whether or not to issue a licence is the responsibility of the Commission; and
- iii. the Commission normally takes legal advice on questions of law that confront it and applicants for licences must similarly be prepared to seek legal advice on questions of law that confront them.

The recommended procedure for applying for an investment business licence involves two stages - firstly to seek "approval in principle" to the proposed operation by submission of an application for such approval, followed by submission of full detailed proposals.

##### 4.1.1 Consultation with Officers of the Commission

Prospective applicants are encouraged to approach officers of the Commission in order to discuss their preliminary proposals for their operations in the Isle of Man at an early stage. These discussions enable the Commission's officers to give applicants any appropriate guidance where it is sought and to identify any foreseeable difficulties connected with the proposed operation.

##### 4.1.2 Approval in Principle

After preliminary discussions have been held with the Commission, the applicant submits an application form, enclosing where applicable draft documentation and business plan, together with the application fee (see [Section 7](#)) seeking the Commission's conditional approval to its proposals. The final declaration at the back of the application form should not be signed at this stage.

Should the Commission then decide to grant "approval in principle" to the issue of an investment business licence, applicants will be required to submit full detailed proposals. Seeking "approval in principle" hopefully assists in minimising costs by enabling the applicant to obtain the Commission's formal view, before incurring the expense of incorporating and capitalising a company.

##### 4.1.3 Consideration of the application by the Commission

The applicant will be notified at least 14 days in advance of the proposed Commission meeting at which the application will be considered, together with details of the proposed recommendations. The Applicant may attend the Commission meeting with up to two other individuals who may be another executive of the applicant or an adviser.

If the applicant has a recommendation for refusal, then the applicant will be given the opportunity for an adjournment for legal representation.

Once the application has been considered, the Commission may announce its decision in writing together with reasons. Any rights of appeal (ie to the Council of Ministers Review Committee) will be explained to the applicant.

It should be noted that the hearing of the licence application will be taped for note taking purposes only.

##### 4.1.4 Appeals Process

Where the primary legislation provides a right of appeal from a decision of the Commission, any appeal will be to an independent Committee set up by the Council of Ministers, known as the Council of Ministers' Review Committee ("the Review Committee").

Any application for review must be sent in the first instance to the Chief Secretary who will report the application to the Council of Ministers. Upon notice of the application the Council of Ministers will then appoint a Review Committee made up of three members. The Review Committee will be entirely independent of the Commission and the members of each Review Committee will be appointed by the Council of Ministers from persons "of appropriate experience" who have no links to either the Commission or the applicant for review.

Upon determination of the issue in question the Review Committee must "confirm, vary or revoke" the decision of the Commission and, without prejudice to any right of recourse to the High Court, a decision of the Committee on a review will be binding on the Commission and the applicant.

##### 4.1.5 Full Approval and Issue of Licence

Normally, once the applicant has complied with all the Commission's conditions and requirements for the issue of a licence final approval is given and the investment business licence is issued. Upon the issue of the licence the annual licence fee becomes payable (see [Section 7](#)). Each

investment business licence will specify to which category the licenceholder belongs for the purposes of the Financial Resources and Reporting Regulatory Code. Attached to each licence will be a condition specifying the scope of the investment business activities the licenceholder may undertake.

#### **4.2 RENEWAL OF INVESTMENT BUSINESS LICENCES AND PAYMENT OF LICENCE FEES**

Investment business licences are normally issued for an indefinite period, although a specific expiry date may be imposed in certain circumstances. An annual fee is payable on 1 July each year (see [Section 7](#)). Fees may be paid by direct debit.

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## SECTION 5

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### TAXATION

#### 5.1 INTRODUCTION

Individuals and companies who are resident in the Isle of Man for income tax purposes enjoy complete independence from the United Kingdom on matters of direct taxation. The Island's taxation system is quite separate from that of its neighbour. There are no death or estate duties, capital transfer or gifts taxes, capital gains or wealth tax.

#### 5.2 PERSONAL TAX

The Isle of Man is a low tax area with a personal standard rate of income tax of 12% and a higher rate of 18%. The higher rate of 18% is also levied on all taxable income arising in the Isle of Man to a non-resident person, but bank and building society interest as well as dividends from certain companies (including open-ended investment companies which constitute collective investment schemes) may be paid without deduction of tax, by virtue of various Income Tax Extra-Statutory Concessions granted by the Isle of Man Treasury. However, before any bank, building society or collective investment scheme may pay interest or dividends without deduction of tax to non-resident persons, it must first have made a successful application to the Isle of Man Treasury to be included in the relevant list maintained for the purposes of the Income Tax Extra-Statutory Concessions.

#### 5.3 CORPORATE TAX

Generally, companies are liable to tax at 18% on the whole of their taxable income. If the activity is being carried on outside the Island and the shares are beneficially owned by non-residents there are currently two special categories of resident companies which are also assessable.

The exempt company, which instead of paying income tax on its profits, pays an annual fee of £400.

The international company, which provides for a flexible rate of tax between 1% and 35% on the whole or part of its income. The nature and circumstances of the company's activities are factors which are considered in determining these aspects.

It should be noted that it is not permissible for banks, building societies, fund managers or other investment businesses incorporated in the Isle of Man which are licensed or authorised by the Commission to be "exempt", "international" or "non-resident" companies. However, in certain circumstances, it may be possible for collective investment schemes to qualify for such treatment.

#### 5.4 TAXATION OF FUND MANAGERS

Managers of Isle of Man authorised and international collective investment schemes are required to be Isle of Man incorporated entities with a place of business in the Island. Normally, they would be subject to the standard rate of income tax of 18%. However, with effect from 5th April 1992, the Isle of Man Treasury introduced an effective 5% concessionary rate of tax for managers of authorised and international collective investment schemes (including professional investor funds and experienced investor funds). The effective 5% concessionary rate of tax applies in respect of profits arising in connection with management of authorised and international collective investment schemes but does not apply in respect of profits arising from other activities. The Isle of Man Treasury intend that the concessionary rate of tax will apply, initially, until 2005. Further information regarding the operation of the concessionary rate of tax for fund managers may be obtained by writing to the Assessor of Income Tax, Isle of Man Treasury, Government Offices, Douglas, Isle of Man.

#### 5.5 TAXATION OF COLLECTIVE INVESTMENT SCHEMES

Collective investment schemes constituted as open-ended investment companies may apply for "exempt" company status under the Income Tax (Exempt Companies) Act 1984. Schemes which obtain "exempt" status do not pay Isle of Man tax on any profits arising, whether or not these profits are retained or distributed. As such they may be utilised for "roll-up" schemes. It is important to note that it is not permissible for an Isle of Man resident to have any interest in a scheme which has obtained exemption from income tax. Collective investment schemes constituted as open-ended investment companies that do not qualify or apply for "exempt" status will be required to pay Isle of Man tax at 20% on any retained profits. They will not be liable to pay Isle of Man tax on any distributed profits, provided that the scheme has been included in the list maintained by the Treasury for the purpose of the Income Tax Extra-Statutory Concession (Dividends paid to non-residents). A copy of the criteria for inclusion in the list may be obtained from the Financial Supervision Commission.

Collective investment schemes which are constituted as unit trusts will not have any liability to Isle of Man tax provided that all income arises outside the Island and no Isle of Man resident has any interest in the scheme.

Collective investment schemes structured as limited partnerships may apply for International Limited Partnership status. A Manx resident interest in such a partnership is not permitted other than where that interest is that of an International Company, an exempt company or where it is held through a public or quoted company. The general partner must be a Manx resident company with a place of business in the Isle of Man and have a resident director and resident qualified or approved company secretary. The general partner may itself be an exempt or International Company. The annual fee payable by an International Limited partnership is £400. The limited partners have no liability to Manx income tax and any share of profit or other distribution is not subject to non-resident tax/withholding tax.

#### 5.6 INDIRECT TAXES

Customs and Excise duties, value added tax and import and export controls on certain goods apply in the Isle of Man, but there are no Customs barriers between the UK and the Island. The Isle of Man has the statutory authority to levy its own rates of duty and tax, but an agreement exists between the

Governments of the UK and Isle of Man whereby the Isle of Man keeps its indirect taxation, with some exceptions, notably a reduced rate of VAT of 5% on hotel accommodation and the non-imposition of Insurance Premium Tax and Landfill Tax, in line with that levied in the UK. There is provision for further variations, with the concurrence of the UK Government, and the agreement may be terminated by either party on 6 months' notice. The managers of authorised and international collective investment schemes in the Isle of Man (but with the exception of professional investor funds, experienced investor funds and exempt international collective investment Schemes) are exempted from the requirement to charge VAT on management fees.

The Isle of Man has its own Customs and Excise administration, which is completely independent of the UK Customs and Excise service, and collects the duties and taxes arising in the Island and applies the same import and export controls as those in the UK.

**NOTE:** The taxation section of this publication is intended as a general guide. It should not be relied upon when considering individual cases, and circumstances and tax practice may change. Before proceeding, the advice of a qualified tax adviser or Isle of Man Customs and Excise should be sought.

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## SECTION 6

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### E-COMMERCE AND REGULATION IN THE FINANCE SECTOR

The Commission is committed to applying international standards of regulation and supervision across all areas of its work, whilst also striving to maintain a level playing field with other jurisdictions. Indeed, its leadership in the regulation of offshore markets over many years has done much to enhance the Commission's reputation internationally.

The internet is a vitally important channel of distribution, especially for many Isle of Man institutions whose offshore clients can readily take advantage of the convenience provided by electronic commerce. The Electronic Transactions Act 2000, which came into force on 1st November 2000, provides an ideal platform for e-business to flourish on the Island, encouraging and facilitating the use of information technology by removing legal constraints affecting the use of electronic communications. Additionally, the pro-active stance of the Isle of Man Government - contained within the Report by the Council of Ministers on the Government's E-commerce Strategy is of great benefit to Island businesses.

Against this background, the Commission recognises that a key aspect of confidence in the Island's attractiveness as an e-commerce centre is the regulatory approach to existing licenceholders who may be considering entering into e-business, and also to new e-business propositions.

In principle, the Commission's policy towards the licensing of banking and investment businesses remains the same whether for e-business or traditional business. However, as a relatively new medium, e-commerce has resulted in a change in focus to some of the traditional supervisory risk areas. Broad risk categories remain unaltered, but their importance and impact has changed dramatically. An example of this is systems dependency and security risk. To an Internet-based business, these risks have assumed very great significance.

The Commission has produced guidance notes for licenceholders and potential licenceholders, which can be found at [Appendix H1](#), and which provide further detail on some of the risk areas and other relevant areas to which any financial business contemplating using the internet ought to give careful thought.

The Commission will ensure that its regulatory approach is realistic and pragmatic, at the same time as taking full account of international standards as they continue to evolve.

## SECTION 7

### FEES

When the Commission was established in 1983, Tynwald expressed the view that the expenses of the Commission should be covered by licence fee income. The Commission therefore sets its licence fees with a view to balancing its budget, and also having regard to equivalent fees in other jurisdictions.

#### COLLECTIVE INVESTMENT SCHEMES

Type of Scheme		Application Fee	Periodical Fee
Authorised	Single Tier	£1,200 per fund	£850 per fund
	Umbrella	£1,200 per fund plus £375 per sub-fund	£450 per sub-fund
Recognised	Section 12	None	£1,050 per fund
	Section 13 Single Tier	£2,300 per fund	£1,200 per fund
	Section 13 Umbrella	£1,800 per fund plus per sub-fund 1-10 £350 per sub-fund 11+ £200	per sub-fund 1-10 £350 per sub-fund 11+ £200
International*	Section 11	None	£1,000 per fund

\* With the exception of professional investor funds, experienced investor funds and overseas funds where no fee is applicable

#### INVESTMENT BUSINESSES

Category of Licence	Application Fee	Periodical Fee
Manager of Authorised Schemes (category 3(b))	£1,200	£6,600 per annum
Manager of International Collective Investment Schemes (including professional and experienced investor & overseas funds) (category 2(b), 3(a) or 3(b))	£1,200	£4,300 per annum
Third Party Fund Administrators (Category 4)	£1,200	£6,900 per annum
Fee payable upon the issue of a new licence following the addition of an international collective investment scheme to the licence of an existing manager.		£750

[SD 53/05](#) and [SD 54/05](#) are the regulations covering fees in respect of collective investment schemes and investment business respectively