
SECTION 1

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 11](#)) 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.