

SECTION 1

THE REGULATORY STRUCTURE FOR FIDUCIARIES (CORPORATE AND TRUST SERVICE PROVIDERS)

The Fiduciary Services Act [2000](#) and [2005](#) ("the Acts") are the statutory basis for regulating fiduciaries (corporate and trust service providers). The text of the Acts can be found in Appendix B.

1.1 THE GENERAL STRATEGY FOR LICENSING AND REGULATING FIDUCIARIES

The General Licensing Policy for those seeking a Banking, Investment Business or Fiduciary Services Licence (see [Appendix A1](#)) 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 fiduciary business are summarised in Appendices 1 and 2 to the licensing policy.

The licensing policy applies to applicants for fiduciary 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".

1.2 LEGISLATIVE FRAMEWORK

The Corporate Service Providers Act 2000 as amended by the Fiduciary Services Act 2005 ("the amended Act") (see Appendix B) is the primary legislation relating to the regulation by the Commission of the activities of fiduciaries and the two Acts together are collectively known as the Fiduciary Services Acts 2000 and 2005.

Section 2 of the [amended Act](#) states that subject to the other provisions of the Act, "**any person who, in or from the Island, acts or holds himself out to be a fiduciary**" shall be guilty of an offence unless he is either the holder of a fiduciary licence granted under the Act or is exempt from the requirement to hold a licence.

[The Fiduciary Services Act 2005](#) extends the provisions of the [Corporate Service Providers Act 2000](#) to require trust service providers ("TSPs") as well as corporate service providers ("CSPs") to hold the relevant class and category of fiduciary licence.

1.3 CATEGORIES OF FIDUCIARY LICENCE

A fiduciary licence is designated by the class of activity to which it refers, which may be either CSP or TSP. The classes are further sub-divided into categories as follows:

- a. Category 1 CSP licence,
- b. Category 2 CSP licence,
- c. Trust Corporation licence,
- d. Category 1 TSP licence, and
- e. Category 2 TSP licence

depending on the particular regulated activities the licenceholder is licensed to undertake.

A business may hold either a CSP or a TSP licence or both a CSP and a TSP licence of the relevant category. However, a Trust Corporation licence is restricted to companies (bodies corporate) and a Category 2 CSP or TSP licence is restricted to individuals. See Part 1 (corporate services) and Part 1A (trust Services) of Schedule 1 to the [amended](#)

[Act](#) where the activities that require a CSP or TSP licence are listed. See also paragraph 3(4) of the [Fiduciary Services \(General Requirements\) Regulatory Code 2005](#) for the description of the licence categories and Table B in Appendix 1 to the Commission's [General Licensing Policy](#) in respect of the permitted structures for the different categories of licence.

1.4 ILLEGAL TO OPERATE WITHOUT A LICENCE AND TRANSITIONAL ARRANGEMENTS

All amendments to the Corporate Service Providers Act 2000 made by the Fiduciary Services Act 2005 were brought into operation on 13 July 2005 by the [Fiduciary Services Act 2005 \(Appointed Day\) Order 2005](#). The Order includes transitional arrangements that allow existing TSPs to continue in business until their licence application has been decided, as long as they applied for a TSP licence by 31st October 2005. Under the [Corporate Service Providers Act 2000 \(Appointed Day\) \(No.1\) Order 2000](#), transitional arrangements have applied to CSPs since the earlier introduction of CSP licensing, [Section 2](#) of the amended Act makes it illegal to carry on CSP or TSP business without a licence, unless the business falls within one of the exemptions outlined in Part 1 (CSPs) and Part 1A (TSPs) of Schedule 2 to the [amended Act](#) or is subject to the transitional arrangements made in the Orders. The transitional arrangements allow an applicant for a CSP or TSP licence, where the application was made before 1st January 2002 (CSP) or 1st November 2005 (TSP), to continue in business until its application has been determined by the Commission. However, a new licence applicant which wishes to start-up a CSP or TSP business must not commence business before the issue of its licence. The full text of the Orders can be found in Appendices [C2](#) and [C3](#).

1.5 DEFINITION - FIDUCIARY

Section 1 of the [amended Act](#) defines a fiduciary as "a person who, by way of business, engages in any regulated activity". The [amended Act](#) goes on to state in Section 1(2) that "regulated activity" means any activity falling within Part 1 (CSP) and Part 1A (TSP) of Schedule 1 to the [amended Act](#). The full text of this provision is contained in Appendix B1. (See further [Section 1.7](#) below.)

The [amended Act](#) then goes on to state in Section 2 that:-

"any person who, in or from the Island, acts or holds himself out to be a fiduciary shall be guilty of an offence unless, in respect of the regulated activity concerned he is either
(a) the holder of a licence under this Act .; or
(b) exempted from this Section ."

Several points should be noted here.

Firstly, in order to be licensable, the regulated activity must be engaged in by way of business. Whether or not a regulated activity is undertaken by way of business will depend on the circumstances of each individual case but the intention is that transactions which are essentially private in nature will be excluded.

However, where genuine doubt exists, the Commission has a discretion under Section 17 of the [amended Act](#) to make a declaration as to whether or not a person engaging in a regulated activity is doing so by way of business. In order to make such a declaration, the Commission must be satisfied that a real doubt has arisen. Such a declaration cannot be made simply because a feeling exists that something 'should not be covered'. Anyone who is unsure as to whether or not the amended Act applies to their particular circumstances, in this or any other respect, is recommended to take legal advice and to discuss the circumstances with the Commission.

Secondly, regulated activity is licensable if it is carried on in or from the Island. This is

clarified further in Section 2(2) of the [amended Act](#). It is important to note that any Manx incorporated company which carries on regulated activity requires a licence even if it is conducting its activities abroad. In practice, the Commission is unlikely to grant a licence to an organisation unless it is managed and controlled in the Island, as to do so would leave the Island vulnerable to unscrupulous operators with no accountability in the Isle of Man. (See [Appendix A](#) for guidance on the Commission's licensing policy).

Thirdly, Section 3(4) of the [amended Act](#) allows the Commission to issue a licence subject to conditions and, in terms of Section 3(7) of the [amended Act](#), if the holder of such a licence is in contravention of any condition, the Commission may undertake enforcement action (see [Section 1.9](#) below). The conditions which may be attached to fiduciary licences concentrate, in most circumstances, on the scope of activity which a licenceholder is permitted to conduct. Thus, if the licenceholder conducts fiduciary activity outside the scope of the conditions, the Commission can take action, including the revocation or suspension of the licence.

1.6 FIDUCIARY SERVICES REGULATORY CODES

When a fiduciary licence is issued, a series of Regulatory Codes ("the Codes") apply to that licenceholder. The Codes also apply to the conduct of fiduciary business by CSPs and TSPs which are subject to the transitional arrangements (see [1.2](#) above) but do not apply to existing TSPs until 1st November 2005, by which time they must have applied for a licence. Information about these Codes is contained in Section 3 below. Should a licenceholder breach any of the Codes, the Commission is empowered to take enforcement action (see further [Section 1.9](#) below).

This is the basic legislative framework for fiduciary businesses licensed by the Commission. The regulated activities and exemptions from the requirement to hold a fiduciary licence are described in Sections 1.7 and 1.8 below.

1.7 DEFINITION - REGULATED ACTIVITIES

The "**regulated activities**" falling within the ambit of the regulatory regime are listed in Part 1 (CSP) and Part 1A (TSP) of Schedule 1 of the [amended Act](#) and cover all the services which would normally be provided by a fiduciary.

Broadly, corporate services include the formation and supplying of companies to clients; acting as a director, secretary or shareholder of client companies; the provision of registered office facilities or accommodation addresses and the provision of company administration services for client companies; and equivalent services in respect of partnerships.

Trust services include acting as a trustee, protector or enforcer of an express trust and the provision of trust administration services. A Trust Corporation as defined in section 65A of the Trustee Act 1961, as amended by Section 2 of the [Fiduciary Services Act 2005](#), is also required to hold a licence. Section 27 of the [amended Act](#), defines relevant expressions such as "**company**", "**express trust**", "**enforcer**" and "**protector**".

1.8 DEFINITION - EXEMPTIONS

Part 1 (CSP) and Part 1A (TSP) of Schedule 2 to the [amended Act](#) list a number of activities which, whilst on the face of it appear to be licensable, are exempted from the requirement to hold a licence. It is necessary to look at the Schedule itself in order to obtain a definitive list of exempted activities and persons. The copy of Schedule 2 to the amended Act contained in [Appendix B1](#) includes the amendments made by the [Corporate Service Providers \(Exemptions\) Regulations 2001](#), the [Corporate Service Providers \(Exemptions\) Regulations 2002](#), the [Fiduciary Services Act 2005](#), the

[Fiduciary Services \(Exemptions\) Regulations 2005](#) and [the Fiduciary Services \(Exemptions\) Regulations 2006](#). The full text of the Exemptions Regulations can be found in Appendix D.

The following points are worthy of note:-

(a) Private Trust Companies (Para. 8 Part 1A)

A company that as a purely private arrangement acts as a trustee for one or more trusts, is exempt from the requirement to hold a TSP licence provided the administration of the relevant trusts is undertaken by a licensed TSP. This exemption would, for example, apply to a corporate trustee that operates in or from the Isle of Man in respect of one or more related family trusts but would not apply to a trust company that accepts business from an off-Island introducer, which would breach the condition that a private trust company must not directly or indirectly hold itself out to the public as a TSP.

(b) Professional Services (Paras. 1 to 4 of Part 1 and paras. 1 and 2 of Part 1A)

The Commission does not wish to regulate professional services provided by accountants, advocates or registered legal practitioners. Therefore, any activity which would otherwise be regulated but which is directly related to the provision of professional legal or accountancy services, is exempt. This exemption would encompass, for example, the filing of a Form 47 by an advocate in relation to a loan transaction for a company on which he had been advising in his capacity as an advocate.

There are other exemptions in respect of TSP activities that apply specifically to advocates, registered legal practitioners and accountants (individuals and firms), who are defined as "specified person" in para. 12 of Part 1A of Schedule 2 of the [amended Act](#). (See (c) and (i) below.)

(c) Domestic Services (paras. 5 and 6 of Part 1 and paras. 12, 13 and 16 of Part 1A)

The Commission does not wish to impose the burden of regulation upon the normal domestic trading activities of companies which carry on their day to day business on the Island. Thus, any corporate service provided to a company which is resident, has a permanent establishment in the Island and carries on as its main business activities directly linked to the Island, is exempt. Thus, the filing of an annual return for a local business, or acting as director or company secretary of such a business, is exempt.

There are also exemptions that apply to the provision of trust services by "specified persons" (see (b) above) in respect of "domestic" trusts. These include testamentary trusts which arise out of the Will of a Manx testator who was resident or domiciled in the Isle of Man at the time of his death and also to quasi testamentary trusts set up in the deceased's lifetime for the purpose of receiving the settlor's assets on the winding up of his estate.

(d) Intra-Group Activity (Para. 7 of Part 1 and para. 3 of Part 1A)

Services provided to companies in the same group are exempt. It should be noted, however, that services provided to clients of other group companies are not exempt and will be licensable if they fall within the definition of "regulated activities".

(e) Joint Ventures (Paras. 8 and 9 of Part 1 and para. 4 of Part 1A)

Activities related to joint ventures are exempt where the activity is undertaken by a person who is or intends to be a participator in a joint enterprise. Thus, if company A and company B wish to enter into a joint enterprise and, for that purpose, form company C as a joint venture vehicle, the activity of forming and running company C, even if it is for a commercial purpose, is exempt.

(f) Introducers (Para. 9 of Part 1)

A person who introduces a client to a CSP licenceholder will not be treated as "arranging for others" (namely the CSP or its appointees) to be officers or nominee shareholders of

any company administered for that client.

(g) Other Regulated Businesses (Para. 14 of Part 1 and para. 10 of Part 1A)

The exemptions for "other regulated businesses" apply to fiduciary activities arising from, or which are part of, an activity that is regulated under another type of licence. For example, where the holder of a Banking or Investment Business licence under the Banking Act 1998 or the Investment Business Act 1991 respectively, undertakes the CSP activity of arranging for others to act as nominee shareholders for purposes incidental to their banking or investment business, that activity is exempt. Thus, where a licensed investment business uses a company to hold investments on behalf of its clients, that activity will not be licensable under the amended Act, although it may be licensable under other regulatory legislation.

Acting as a trustee of a collective investment scheme in specified circumstances, is also exempt.

(h) Insurance Managers and Retirement Benefits Scheme trustees (Para. 14 of Part 1 and para. 10 of Part 1A)

Corporate and trust activities that are already regulated by the Insurance and Pensions Authority are exempt. These include CSP and TSP activities that arise from or form part of the activities of an insurance manager registered under Section 27 of the Insurance Act 1986; and acting as a trustee or an administrator of a retirement benefits scheme, authorised or registered respectively under the Retirement Benefits Schemes Act 2000.

(i) De Minimis relating to Directorships and Trusteeships (Para. 12 of Part 1 and para. 15 of Part 1A)

Where an individual acts as a director of companies by way of business and this is the only CSP regulated activity he undertakes, that individual may hold up to ten appointments before the activity of acting as a company director becomes licensable. This number does not include any directorships which would otherwise be exempt under the provisions of the amended Act. It is therefore possible for an individual to hold more than ten directorships without requiring a licence provided that no more than ten of the offices held are not otherwise exempt.

There is also a TSP de minimis exemption, which applies to "specified persons" (see (b) above). This allows an individual or firm which is a specified person to engage in trust services for up to ten trusts without being required to hold a TSP licence.

(j) Personal Representatives, Receivers, Liquidators, etc. (Para. 13 of Part 1 and para. 11 of Part 1A)

Acting as a personal representative in respect of the estate of a deceased person (including acting as a trustee for sale in winding up the estate) is a TSP regulated activity. However, persons who undertake this activity are exempt from licensing in respect of this activity unless they are acting as a Trust Corporation. "Trust Corporation" is defined in section 65A(1) of the Trustee Act 1961 as amended by the [Fiduciary Services Act 2005](#), and acting as a trust corporation is a TSP regulated activity.

Any CSP regulated activity which is wholly incidental to the business or office of official receiver, liquidator or receiver is exempt.

(k) Services provided by subsidiary companies of CSP or TSP licenceholders (Paras. 10 and 10A of Part 1 and para. 9 of Part 1A)

The "nominee services" exemption allows a subsidiary company or a company that is wholly beneficially owned by a sole trader or the partners of a partnership, where respectively the licenceholder is a company, sole trader or partnership, to undertake regulated activities for the clients of its parent without holding a separate licence of its own. Separate exemptions apply in respect of CSP and TSP licences, which restrict the

activities of an exempted "nominee company" to either the relevant CSP or TSP activities and so a nominee company cannot carry out both CSP and TSP functions. It should also be noted that a nominee company's fiduciary activities are nevertheless regulated as part of its parent's licence.

1.9 DEFINITION - ENFORCEMENT ACTION

"**Enforcement action**" is defined in section 27(3) of the [amended Act](#) as -

"the exercise of any one or more of the following powers -

(a) the issue of a recommendation, request or direction under section 7 or 11 in relation to a fiduciary,

(b) the exercise of powers in relation to a fiduciary under section 10, 12 or 13 of the amended Act;

(c) the revocation or suspension of a fiduciary licence;

(d) the withdrawal of an exemption in accordance with regulations under section 22(3)(b) or paragraph 2(b) of Part II of Schedule 2 of the amended Act;

(e) the imposition of a penalty under section 8 of the amended Act;

(f) the issue of a public statement under section 14 of the amended Act."

1.10 EXEMPTION FOR DISASTER RECOVERY OPERATIONS

[The Fiduciary Services \(Exemptions\) \(Temporary Business Continuity\) Regulations 2006](#) (SD291/06) allow fiduciaries regulated in other, approved, jurisdictions to use Isle of Man based computer servers for their disaster recovery arrangements without the need for a licence from the Financial Supervision Commission, subject to certain conditions. Please see [this link](#) for further information.

SECTION 2

LICENSING POLICY

GENERAL LICENSING POLICY FOR THOSE SEEKING A FIDUCIARY (CORPORATE OR TRUST SERVICE PROVIDER'S) LICENCE

2.1 FIT AND PROPER

The Act requires that:-

- the applicant for a fiduciary (CSP or TSP) licence;
- any controller, director, chief executive, manager or partner of the applicant;
- any individual whose appointment as a director or secretary of a client company or as a partner of a partnership is arranged by a CSP; and
- any other person with significant powers or responsibilities with respect to any regulated activity undertaken by the applicant are fit and proper. A direction will be issued under section 9 of the Corporate Service Providers Act 2000 if the Commission determines that such an individual is not "fit and proper". The [Corporate Service Providers \("not fit and proper"\) regulations 2005](#) specify the information to be included in a register and public statements of such directions.

2.2 GENERAL LICENSING POLICY AND SPECIFIC REQUIREMENTS FOR FIDUCIARY LICENCEHOLDERS

The fitness and propriety criteria apply both in relation to the initial application for a fiduciary licence and thereafter on an ongoing basis. In terms of [Section 3 of the amended Act](#), the Commission has published Guidance Notes setting out the criteria it will normally apply in assessing fitness and propriety. The general principles are contained in the [General Licensing Policy for those seeking a Banking, Investment Business or Fiduciary Licence](#). The specific requirements and expectations relating to CSPs and TSPs are set out in the tables in Appendices 1 and 2 to the licensing policy.

In terms of Section 6 of the amended Act, the Commission has also made regulatory codes which set out the Commission's requirements in relation to the conduct of CSP and TSP business and place ongoing objectives on a holder of a CSP and/or TSP licence (see Section 3 below).

2.3 REVIEW PROCESS

A person aggrieved by a decision of the Commission may apply for a review of the decision pursuant to the provisions of [section 18](#) of the amended Act.

SECTION 3

ONGOING REGULATORY REQUIREMENTS FOR FIDUCIARY BUSINESSES (CORPORATE AND TRUST SERVICE PROVIDERS)

Section 3(4) of the [Corporate Service Providers Act 2000](#), as amended by the Fiduciary Services Act 2005 ("the amended Act") empowers the Commission to issue fiduciary licences in respect of the provision of corporate and/or trust services (CSP and TSP licences). (See [Section 1](#) above.)

3.1 CLASSES AND CATEGORIES OF LICENCE

Fiduciary licences are designated by class of activity (CSP or TSP) and categorised in relation to the nature and scope of the activities the licenceholder is permitted to undertake (CSP or TSP Category 1, CSP or TSP Category 2 and Trust Corporation). The classes and categories of fiduciary licence are defined in paragraph 3 of the [Fiduciary Services \(General Requirements\) Regulatory Code 2005](#).

TSPs who carry out a range of trust services will normally require a category 1 TSP licence, unless they also undertake probate work and the functions reserved to Trust Corporations (as defined in section 65A of the Trustee Act 1961 as amended by the Fiduciary Services Act 2005). There is a separate category of licence for Trust Corporations and the Commission's licensing policy in respect of requiring that they be organisations of some substance, follows the previous practice adopted by the Courts in approving Trust Corporations (which preceded TSP licensing). Although the same financial resources requirements apply to a Category 1 TSP and a Trust Corporation licence, Trust Corporations are expected to have at least five directors or key persons who hold relevant qualifications and/or are appropriately experienced (see Table C of Appendix 1 to the [General Licensing Policy](#).)

CSPs which carry out a range of corporate services will require a category 1 CSP licence.

However, individuals whose sole corporate or trust service activity is acting as a director of client companies and/or acting as a co-trustee or protector of an express trust, will require a Category 2 CSP and/or TSP licence. A company (body corporate) is not permitted to hold a Category 2 CSP or TSP licence.

3.2 LICENCE CONDITIONS

A licence may also be subject to one or more conditions, for example a restriction on the nature and scope of the activities the licenceholder is permitted to undertake or in relation to its meeting the fitness and propriety criteria.

It is important that licenceholders appreciate the significance of licence conditions and that a breach of a licence condition may result in the Commission taking Enforcement Action (see [Section 1.9](#) above).

3.3 DEFINITION - REGULATORY CODES

Section 6 of the [amended Act](#) empowers the Commission to make regulatory codes ("the Codes"). The Codes set standards of good practice and behaviour. The Commission is empowered to take Enforcement Action (see [Section 1.9](#) above) in respect of any breach of the Codes. Such action will depend upon the seriousness of the breach.

The Codes for the conduct of CSP and/or TSP business are:-

[Fiduciary Services \(General Requirements\) Regulatory Code 2005](#) ("General Requirements Code"); and

[Fiduciary Service \(Clients' Money and Trust Money\) Regulatory Code 2005](#) ("Clients' Money Code").

3.4 APPLICATION OF THE CODES TO THE BUSINESS OF FIDUCIARIES

The Codes apply to all licenceholders and to a small number of fiduciary licence applicants which are operating under the transitional arrangement (see [section 1.4](#) above).

3.5 THE GENERAL REQUIREMENTS CODE

The Fiduciary Services (General Requirements) Regulatory Code 2005 including the guidance notes, can be found in [Appendix E1](#).

General Principles

Paragraph 2 of the [General Requirements Code](#) sets out the main objectives and a fiduciary's obligations for the general conduct of its business. These require a fiduciary to:

know its customer

act with due skill, care and diligence in providing any service which it provides or holds itself out as willing to provide;

act with high standards of integrity in its conduct as a fiduciary;

deal fairly with its clients in any transaction entered into or which it arranges to be entered into, on its client's behalf; and

maintain adequate financial resources.

The Code is expressly stated as not being intended to alter a fiduciary's obligations under company or trust law.

Know Your Customer

In addition to a fiduciary's obligations under the Criminal Justice (Money Laundering) Code 2007, paragraph 4 of the [General Requirements Code](#) specifically requires a CSP to -

"(a) identify its client; and

(b) identify the beneficial owner of each of its client companies, (if not the same person as the client)."

Guidance on the identification procedures is contained in [section 3 of the Anti-Money Laundering Guidance Notes](#).

The Criminal Justice Act 1990, as amended, contains comprehensive provisions relating to the countering of "all-crimes" money laundering. The Criminal Justice (Money Laundering) Code 2007 ("ML code") applies to the business of engaging in any regulated activity within the meaning of the Fiduciary Services Acts 2000 and 2005. It also provides that Fiduciary licenceholders are to be regarded as "eligible introducers" for the purposes of that code.

The Commission has produced [Anti-Money Laundering Guidance Notes](#) for all licenceholders. (See Anti Money Laundering Handbook.)

Additional guidance has been issued relating to a CSP's continuing anti money

laundering obligations in respect of services provided to companies registered under the Companies Act 2006. (See [Appendix E4.](#))

Client Agreement/Terms of Business

Fairness and transparency in the dealings between a fiduciary and its client is the principle behind requiring fiduciaries to provide a client agreement or terms of business. It may, however, not always be clear in particular circumstances as to who the client is and the Code includes some guidance in this respect. (See paragraph 5 of the [General Requirements Code](#) and the accompanying guidance.) Additional guidance has been issued in respect of resigning as a registered agent of a company registered under the Companies Act 2006. (See [Appendix E4.](#))

Key Persons

Paragraph 6 of the [General Requirements Code](#) requires that key persons must remain fit and proper. In applying the "fit and proper" test the Commission will consider, on a case-by-case basis, a fiduciary's staffing structure and what responsibilities any particular individual carries in relation to the regulated activities. The expression "key persons" as defined in paragraph 1(2) of the Code includes controllers, directors, managers, individuals whose appointment as directors or secretaries of client companies is arranged by the fiduciary and such other persons as appear to the Commission to have significant powers or responsibilities with respect to any regulated activity undertaken by the fiduciary. (See also section 3(3) of the [amended Act.](#))

Individuals whose appointment as a director or secretary of a client company is arranged by the CSP but who are not directly or indirectly employed by a CSP, are defined as "Professional Associates" (see paragraph 1(2) of the Code). As Professional Associates have significant responsibilities in relation to a CSP's regulated activities, they are also required to meet the "fit and proper" criteria.

Compliance systems and procedures

A fiduciary is required to organise and control its internal affairs in a responsible manner. It should be able to demonstrate to the Commission that it has in place documented control systems and procedures, which are appropriate to the level and scope of its business. (See paragraph 9 of the [General Requirements Code.](#)) Additional guidance has been issued in respect of services provided to companies registered under the Companies Act 2006, including acting as a registered agent. (See [Appendix E4.](#))

Provision of directors

Paragraph 10 of the [General Requirements Code](#) applies to CSPs and requires that they take reasonable steps to ensure that where they are responsible for arranging the appointment of directors of client companies, the individuals concerned are suitable and competent for that office and understand the duties and responsibilities of directors under all relevant laws. This includes the directors of corporate directors.

CSPs must also take reasonable steps to ensure that those individuals effectively carry out their responsibilities and duties in respect of each of those client companies in a diligent and proper manner.

This paragraph includes guidance on various issues such as the number of directorships any one individual may be competent to handle and considerations in respect of the delegation of a director's powers by power of attorney.

There are also a number of publications available that give guidance in respect of the duties and responsibilities of directors and the Commission has also issued

["Guidance Notes on the Duties and Responsibilities of Directors under the laws of the Isle of Man"](#) which can be found in Section 5.

Additional guidance has been issued in respect of services provided to companies registered under the Companies Act 2006, including acting as a corporate director of such companies. (See [Appendix E4](#).)

Financial resources, going concern and reporting requirements

The financial resources, going concern and reporting requirements are set out in paragraph 11 of the [General Requirements Code](#). A fiduciary's business must be able to meet its liabilities (taking into account contingent and prospective liabilities) as they fall due and be able to continue in operation for the foreseeable future (the "going concern" principle).

The accompanying guidance to paragraph 11 of the General Requirements Code expands on the going concern principle. Fiduciaries are expected to demonstrate that the business has adequate financial resources and the directors or partners of a fiduciary structured respectively as a company or partnership, are therefore expected to maintain a level of capital appropriate to that business. The guidance is 25,000 issued and paid up share or partners' capital as a minimum. However, as there was no specific capital requirement when CSP licensing was introduced, this minimum level of capital only applies to TSPs and to CSPs which apply for a TSP licence.

TSPs are also required to monitor their liquidity and submit a quarterly liquidity declaration to the Commission.

As a sole trader's business cannot be segregated from his/her personal assets and liabilities, the Commission's expectation is that a segregated bank deposit in the sum of 10,000 (CSP) or 25,000 (TSP) be maintained in respect of the business having adequate financial resources to meet unforeseen contingencies.

All fiduciaries (companies) are required to have their accounts audited.

The Fiduciaries (Civil penalties) Regulations 2006 which impose civil penalties for late submission of returns come into operation on 1st November 2006. See [Appendix E3](#).

Matters to be notified to the Commission

Paragraph 13 of the [General Requirements Code](#) sets out various occurrences that must be notified to the Commission whenever they arise as these matters are considered to be material to a fiduciary's licence.

The matters to be reported include legal proceedings and criminal convictions against the fiduciary, changes to the fiduciary's particulars or circumstances, and changes affecting the appointment or functions of "key persons" or the individual's particular circumstances where this may affect their fitness and propriety.

Avoidance of inappropriate conflicts of interest

Paragraph 16 of the [General Requirements Code](#) requires a fiduciary to use its best endeavours to avoid inappropriate conflicts of interest between itself and its clients and between one client and another; and where such a conflict arises, to notify the clients concerned.

3.6 THE CLIENTS' MONEY CODE

The Fiduciary Services (Clients' Money and Trust Money) Regulatory Code 2005 including the guidance notes, can be found in [Appendix E2](#).

The [Clients' Money Code](#) defines "clients' money" in paragraph 3 and "trust money" in paragraph 4.

As in some cases a picture is worth a thousand words, the three diagrams below have been included in an attempt to clarify the difference between clients' money, trust money and a fiduciary's own money. They illustrate in a simplistic way accepted industry best practice and the requirements of the Clients' Money Code, in respect of handling of the usual financial income and outgoings of a CSP ([diagram A](#)), a TSP ([diagram B](#)) and a fiduciary that has both CSP and TSP business ([diagram C](#)). Readers are, however, reminded that the purpose of this Handbook is to assist in understanding the legal framework that governs the licensing and regulation of fiduciaries. Whilst these illustrations may assist in understanding the Clients Money Code, the Code itself is the legal document that applies to the conduct of fiduciary business.

In particular it should be noted that the [Clients' Money Code](#) requires that clients' money and trust money be segregated from the fiduciary's own funds (see paragraph 6, "Duty to segregate (clients' money and trust money)"). There is also a duty to account properly for such moneys and the operational procedures relating to the handling of clients' money are set out in paragraphs 7 to 10. The requirements for a fiduciary to identify and reconcile trust money are set out in paragraph 11 of the Clients' Money Code.

Paragraph 2 of the [Clients' Money Code](#) clarifies that, except where expressly stated, the Code does not alter a fiduciary's obligations under company or trust law.

SECTION 4

APPLICATION FOR A CORPORATE SERVICE PROVIDERS OR TRUST SERVICE PROVIDERS LICENCE

Copies of the Commission's application forms and other personal and banker's questionnaires are available on the Commission's website. Samples are contained in appendices [H4](#), [H5](#) and [H6](#).

4.1 LICENCE APPLICATIONS

The staff of the Commission are available to be consulted 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 Board 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.

For further information about the authorisations process and a link to licensing policies go to <http://www.fsc.gov.im/doclibrary/Licenceappforms.xml>

1. Prospective applicants are encouraged to contact officers of the Commission at an early stage to discuss their proposals for establishing and operating a business in the Isle of Man. 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.
2. After preliminary discussions have been held with the Commission's officers, the applicant submits an application form, together with the required enclosures and the application fee (see [Section 7](#)).

The Commission's officers will analyse the proposals and discuss the application with the applicant. The Chief Executive will make a recommendation to the Commissioners as to whether a licence should be granted, or refused, or in some circumstances that a decision should be deferred.

The Chief Executive may make a recommendation that is "subject to" certain actions, for example completion of the vetting of an individual, or the applicant putting its professional indemnity insurance into effect.

3. The applicant may seek an adjournment in order to obtain more time to make representations.
Once the application has been considered, the Commission will communicate its decision to the applicant in writing, together with reasons. The hearing of the licence application will be taped for note-taking purposes

only.

4. The applicant must advise the Commission if its application alters materially after the Commissioner's decision and before a licence is signed.

4.2 RENEWAL OF CSP LICENCES AND PAYMENT OF LICENCE FEES

Licences are normally issued for an indefinite period, although a specific expiry date may be imposed in certain circumstances.

The annual fee payable is calculated in accordance with the provisions of the [Fiduciary Services \(Fees\) Regulations 2005](#) and is due on 1st August in any year. (See also [Section 7](#) below.)

SECTION 5

GUIDANCE NOTE ON THE RESPONSIBILITIES AND DUTIES OF DIRECTORS UNDER THE LAWS OF THE ISLE OF MAN

The Commission's Guidance Notes on the responsibilities and duties of directors under the laws of the Isle of Man are relevant to all directors of Isle of Man incorporated companies but in particular, the Commission is concerned to ensure that directors understand their responsibilities for the proper conduct and financial well-being of an Isle of Man licenceholder. Where the licenceholder is a corporate service provider providing directors for client companies, such directors are also expected to be aware of their duties and responsibilities. The Commission's Guidance Notes are intended as a general guide only and must be read in conjunction with the relevant legislation. The guidance is general in scope, and is not in any particular order of relative importance. These notes are derived from the duties and responsibilities that already exist at law, but are not exhaustive and further guidance should be obtained from your legal adviser.

Where corporate directors are permitted, the actions of the directors and members of the corporate director will be relevant in assessing the standards of conduct of the corporate director. Furthermore, these actions will also be relevant in assessing the ongoing fitness and propriety of those directors and members themselves. (see 5.2.2 and 5.6 below).

- 5.1 These guidance notes are published by the Financial Supervision Commission ("the Commission") in order to assist current and future directors of Isle of Man incorporated companies to perform their duties responsibly and within the laws of the Isle of Man. Directors should ensure that principles of good corporate governance are followed.**

INTRODUCTION

- 5.2 WHO IS A DIRECTOR? HOW A DIRECTOR IS APPOINTED TO OFFICE AND HOW HE CEASES TO BE A DIRECTOR**

- 5.2.1** There are two distinct company forms in the Isle of Man. These are companies incorporated under the Companies Acts 1931-2004 of the Isle of Man ("1931 Act companies") and companies incorporated under the Companies Act 2006 ("2006 Act companies").

5.2.2

1931 Act companies must have at least two individual directors and corporate directors are not permitted. However, 2006 Act companies may have a single director and corporate directors are permitted, provided that the corporate director is the holder of a corporate service provider ("CSP") licence (which does not exclude acting as such) or is the subsidiary of such a CSP licenceholder. A corporate director of a 2006 Act company is a legal person whose actions are directed and determined by natural persons. The directors of the corporate director therefore have responsibilities to ensure that the corporate director fulfils

its duties and responsibilities as set out in this guidance.

- 5.2.3** A director includes any person acting as a director by whatever name called, and acts of a director are valid notwithstanding any defect that may afterwards be discovered in his appointment or qualification. (See sections 341 and 142 of Companies Act 1931 ("1931 Act") and sections 221 and 100 of Companies Act 2006 ("2006 Act")). Therefore, even though it is an offence not to comply with the formalities of a director's appointment, a person is recognised as a director by his functions and by the authority and power he in fact exercises. Acting as a director in this way makes you a "de facto" director in the eyes of the law.
- 5.2.4** Although the actual term "shadow director" is not used in the 1931 Act or 2006 Act, both Acts contain provisions which refer to persons in accordance with whose directions or instructions the director(s) are accustomed to act - and this is the widely accepted definition of a shadow director. A "shadow director" must comply with the same standards as a properly appointed director. Directors should not allow a person who has not been formally appointed to act as a director, nor should they allow their discretion to be fettered by such a person. Equally, a person who has not been appointed as a director should not seek to direct or instruct the directors of a company.
- 5.2.5** The law relating to the standards to be observed by directors in discharging their duties applies no distinction between executive and non-executive directors. However, it is widely recognised that non-executive directors have a useful independent role to play to ensure that the company's activities are undertaken in compliance with the law and pursuant to principles of good corporate governance.
- 5.2.6** There is no such entity in law as a "nominee" director. Every director has exactly the same responsibility to the company as a whole and if he neglects that responsibility in the interests of or on the orders of his principal, he will be guilty of a breach of duty. Directors should not allow others to unduly influence them in such a way as to undermine the exercise in good faith of their powers in the manner in which they consider to be in the best interests of the company. Any attempted "string-pulling", whether by other directors, shareholders, beneficial owners or other third parties, should be firmly resisted by directors. The directors must make their own decisions, after receiving appropriate professional advice if necessary. They must not simply "rubber stamp" decisions made by others.
- 5.2.7** In addition to other statutory requirements for certain information about the company to be available on the public record, both 1931 Act and 2006 Act companies are required to file an annual return with the Companies Registry. This ensures that there is an annual up-date of the company's public record, including details of the company's directors. (See also 5.2.8 and 5.7.1 below.)

5.2.8 A 1931 Act company is required to file notice of any change in its directors with the Companies Registry. When a new director is appointed, resigns or ceases to be a director, a form 9N must be completed, and filed with the Companies Registry within one month of the date of the appointment, resignation or cessation (by removal, disqualification or death) taking effect. Failure to notify within the time frame will incur a late filing penalty. Also, any changes in personal details, such as change of name, address, nationality, and occupation, should be notified on the relevant form within one calendar month of the date of such change. A 2006 Act company is not required to file notice of any changes in its directors or of any change of directors' personal details but may elect to do so. If such an election is made, changes to the information filed must be notified to the Companies Registry within one month of the change (see section 204 of the 2006 Act). Whether an election is made or not, a 2006 Act company is required under section 85 of the 2006 Act to file an annual return which, as prescribed by regulations, records the details of serving directors and any changes since the date of the last return so that the directors' details at the date of the annual return will be available on the public record.

5.2.9 The rules governing the appointment and retirement of directors are contained in the 1931 Act and 2006 Act respectively and the constitutional documents of the company. For example, the articles of association may require a director to take shares in the company as a condition of his appointment, and may require all the directors or one third of the directors to retire and offer themselves for election or re-election at the company's annual general meeting.

5.2.10 Both the 1931 Act and the 2006 Act include statutory provisions for the removal of a director from office. (See section 141A of the 1931 Act and section 96 of the 2006 Act.) The constitutional documents may also provide for the removal of a director from office. However, nothing in the constitutional documents or in any service agreement can prevent members of the company from using the statutory power in preference to the procedure set out in the constitutional documents, if they so wish.

5.2.11 Persons may be disqualified from acting as directors by statute. For example, section 141 of the 1931 Act prohibits an undischarged bankrupt from acting as a director of a 1931 Act company without the permission of the court which adjudged him a bankrupt.

5.2.12

In relation to 2006 Act companies, section 93 of the 2006 Act expressly sets out a list of persons who are not permitted by statute to act as a director of a 2006 Act company, including:

1. an individual who is under 18 years of age;
2. an undischarged bankrupt;
3. in the case of a corporate director, a body corporate which does not hold an appropriate Isle of Man CSP licence or which is not a

subsidiary of such a body corporate.

5.2.13 In addition, the constitutional documents of the company may include provisions disqualifying or prohibiting certain persons from being eligible to act as a director of that particular company.

5.2.14 Persons may also be disqualified from acting as director of a 1931 Act company or a 2006 Act company by the court (see section 26 of the Isle of Man Companies Act 1992 and section 31 of the Isle of Man Companies Act 1982).

5.3 DUTIES OF DIRECTORS

5.3.1 Directors should understand the nature and extent of the duties, which they owe as directors. They should understand the nature of the role they perform. If they are in any doubt then they should take appropriate professional advice where necessary.

5.3.2 Directors are subject to certain minimum standards of care, skill and diligence in discharging their duties.

5.3.3 The law imposes duties on directors. If a person does not comply with his duties as a director he may be liable to civil and/or criminal proceedings and he may be disqualified from acting as a director. Set out below is a summary of the main duties of a director to his company. It is not an exhaustive and complete statement of a director's duties and the law is subject to change. If a person is unsure about his duties as a director in any particular set of circumstances he should seek advice.

5.3.3.1 Loyalty - A director must act in good faith in what he considers to be the interests of the company.

5.3.3.2 Obedience - A director must act in accordance with the company's constitution (contained in the memorandum and articles of association) and must exercise his powers only for the purposes allowed by law.

5.3.3.3 Independence - A director must not agree to restrict his power to exercise an independent judgement. But if he considers in good faith that it is in the interests of the company for a transaction to be entered into and carried into effect, he may restrict his power to exercise an independent judgement by agreeing to act in a particular way to achieve this.

5.3.3.4 No secret profits - A director must not use the company's property, information or opportunities for his own or anyone else's benefit unless he is allowed to by the company's constitution or the use has been disclosed to the company in general meeting and the company has consented to it (although this may not be sufficient in some circumstances).

5.3.3.5 Conflict of Interest - Directors must not put themselves in a position where there is a conflict (actual or potential) between their personal interests and their duties to the company or between their duty to the company and a duty owed to another person. If there is a conflict between an interest or duty of a director and an interest of the company in any transaction, the director must account to the company for any benefit he receives from the transaction. This applies whether or not the company sets aside the transaction. But the director does not have to account for the benefit if he is allowed to have the conflicting interest or duty by the company's constitution (and he has complied strictly with the requirements and terms of the company's constitution in that regard) or the interest or duty has been fully and properly disclosed to and approved by the company in general meeting. The 2006 Act contains express statutory provisions which provide that (subject to any provision to the contrary in the company's constitutional documents) a director of a 2006 Act company may in certain circumstances have a conflicting interest with the company and still retain any benefit which he derives by reason of such interest provided that the director has disclosed his interest in accordance with, and strictly complied with, the requirements of sections 103 to 105 of the 2006 Act. Directors must also remember their duty to disclose any interest to the board of directors of the company (see section 148 of the 1931 Act and section 104 of the 2006 Act).

5.3.3.6 Care, skill and diligence - A director owes the company a duty to exercise the care, skill and diligence which would be exercised in the same circumstances by a reasonable person having both (a) the general knowledge, skill and experience that may reasonably be expected from a person carrying out the same functions as are carried out by that director in relation to the company, and (b) the actual knowledge, skill and experience which the director has.

5.3.3.7 Fairness - A director must act fairly as between different members.

5.4 POWERS OF DIRECTORS

5.4.1 The powers of directors are derived from law and their powers relating to the management of the company may be further defined in its constitutional documents. They must exercise their powers:

5.4.1.1 in what they honestly believe to be the best interests of the company; and

5.4.1.2 for a proper purpose, being the purpose for which the power is intended.

5.4.2 Directors' powers are not individual but collective. However a board

(subject to the articles of association) may delegate certain powers to one or more of their number or, if its constitutional documents permit, to non-directors.

- 5.4.3** Usually the board of directors will take all management decisions, and only those matters required by statute or the company's constitutional documents to be decided by the shareholders or members will be left in their hands. The directors are not agents of the members, and cannot be instructed by the members in general meeting as to how they should exercise their powers. It is important therefore that directors are mindful of any attempt to influence either themselves or any other board member in such a way so as to undermine the exercise of their powers. The members have a statutory right to remove a director before the expiration of his period of office (see section 141A of the 1931 Act and section 96 of the 2006 Act).
- 5.4.4** A director cannot delegate his overall responsibility. There can be no total abrogation of responsibility. Directors remain responsible for the exercise of powers they delegate. Where delegation is properly authorised there still must be a proper monitoring of the exercise of the delegated powers. Provided it is duly authorised the board of directors may delegate their powers to a third party. For example the board may pass a resolution agreeing to enter into a contract but may, by power of attorney authorise a third party to execute the contract. In all circumstances the board should keep the attorney's powers within restricted parameters and ensure that it does not relinquish control over the company's affairs.
- 5.4.5** A director may rely on information, given by an employee, expert, professional adviser or another director in relation to matters within their competence or responsibility, provided that the director acted in good faith, made proper enquiries and had no ground for suspicion.
- 5.4.6** In general terms it is for the directors to meet, discuss and if appropriate, approve the substance of any material transactions the company is entering into. To a certain extent the directors can rely on opinions provided by the company's advocates, accountants and other advisers but the decision of whether to enter into a transaction or not must be a decision for the directors.

5.5 KNOWLEDGE OF THE LEGAL FRAMEWORK

- 5.5.1** A director must operate within the legal framework of the laws of the Isle of Man (or be reasonably able to rely on someone who possesses the relevant knowledge), to ensure that the company's operations comply with all relevant laws. In addition to the laws of the Isle of Man, directors must also have sufficient knowledge (or be reasonably able to rely on someone who does) of the laws of any other jurisdictions within which their companies may operate and ensure that such operations comply with those laws.

- 5.5.2** In addition to complying with relevant laws, a director should ensure that he has knowledge of the memorandum and articles of association of the company. The memorandum gives the basic information about the company (name, registered office, type of company etc) and the articles of association deal with the internal conduct of the company's affairs. However, a 2006 Act company does have more flexibility than a 1931 Act company as to what information can be included in its memorandum of association.
- 5.5.3** A 1931 Act company incorporated after 1st June 1988 or to which Part I of the Isle of Man Companies Act 1986 applies may adopt all or any part of the statutory standard model articles of association made under section 7 of the Companies Act 1986 and contained in the Companies (Memorandum and Articles of Association) Regulations 1988. (Table A is the model for a company limited by shares.) A 1931 Act company may, however, tailor its own articles, within the powers and limitations of the relevant statutory requirements, to meet its particular needs.
- 5.5.4** A 2006 Act company limited by shares or limited by guarantee may adopt all or any part of the relevant statutory model articles of association made under section 5 of the 2006 Act and contained in the Companies (Model Articles) Regulations 2006. A 2006 Act company may also tailor its own articles, within the powers and limitations of the relevant statutory requirements, to meet its particular needs.
- 5.5.5** It should be noted that the 1931 Act and 2006 Act only permit companies to do certain specified acts if their constitutional documents also authorise it. For example, a 1931 Act company may reduce its capital only if authorised to do so by its articles of association (and subject to the sanction of the court) (section 56 of the 1931 Act) and the directors of a 2006 Act company can only remove a fellow director if this is expressly permitted by its constitutional documents (section 96(4) of the 2006 Act).
- 5.5.6**

The 2006 Act allows flexibility concerning the internal management of the company and many sections of the 2006 Act allow the company's constitutional documents to provide otherwise than is required by or stated in the 2006 Act. For example,

1. the rights attaching to a share in the company are set out in section 27(1) of the 2006 Act but the company's constitutional documents may negate, modify or add to such rights
2. section 68(2) of the 2006 Act enables a members' meeting to be held at short notice if a member or members holding at least 90%, or such smaller percentage as may be specified in its articles, of the voting rights have waived notice of the meeting;
3. section 106(1) of the 2006 Act provides that the directors of a 2006 Act company may meet at such times and in such manner and places within or outside the Isle of Man as they may

the company's constitutional documents.

- 5.5.7** The company's constitutional documents have no effect to the extent that they contravene or are inconsistent with the Act. Although not expressly specified in the 1931 Act, for the avoidance of doubt this is stated in the 2006 Act (see section 7(2)).

5.6 LIABILITIES - CRIMINAL AND CIVIL

- 5.6.1** Many provisions in the 1931 Act impose specific duties on a company's officers (particularly directors) in connection with the conduct of the company's business. In many instances, the 1931 Act provides that a failure to perform such duties constitutes a criminal offence.
- 5.6.2** Generally the 2006 Act imposes duties on the company itself but section 223 provides that if an offence committed by the company is proved to have been committed with the consent or connivance of or to be attributable to neglect on the part of a director, manager or other officer of the company or its registered agent, or a person who was purporting to act in any such capacity, that person as well as the company is guilty of the offence and is liable to be proceeded against and punished accordingly.
- 5.6.3** Where a director acts in breach of his fiduciary duty, he may be liable to indemnify the company for any loss it has suffered as a result, and to account to the company for any profit made. In some cases the members, with full knowledge, can ratify the actions of the directors. Such ratification cannot obviously be guaranteed and, in any event, may not be sufficient in some circumstances.
- 5.6.4** A director must always remember that he may be held accountable for losses if he has not complied with his statutory and fiduciary duties or failed to exercise the requisite duty of care, diligence and skill and that there is no such entity as a "nominee" director when it comes to liability.
- 5.6.5** Directors should also be aware of potential liability on a "constructive trust" basis if they are engaged or assist in wrongful conduct. A constructive trust is imposed where a person receives assets and, although there is no formal recognition by him that anyone else has any interest in them, it would be inequitable to deny such an interest.

5.6.6

Directors should also be aware of the various statutory provisions which impose personal liability on directors guilty of wrongdoing. For example section 259 of the 1931 Act (which also applies to 2006 Act companies by virtue of section 182 of the 2006 Act) contains detailed provisions in relation to the personal responsibility of directors for fraudulent trading. If a director enables a company to carry on business and incur debts when to the knowledge of the director there is no reasonable prospect of the debts being paid, the director could suffer personal liability in such circumstances. Section 260 of the 1931 Act (which also applies to 2006

Act companies by virtue of section 182 of the 2006 Act) gives the court wide powers to make an order requiring a director to repay or restore any money which he has misapplied or retained or become liable or accountable for to the company or to contribute to the company's assets an appropriate sum by way of compensation. In addition, section 51 of the 2006 Act imposes a statutory personal liability on directors of a 2006 Act company where a 'distribution' has been made by the company to the members and the company did not, immediately after the distribution, satisfy the solvency test.

- 5.6.7** There are also provisions which enable the court to make orders disqualifying individuals from acting as directors (section 31 of the Companies Act 1982; section 26 of the Companies Act 1992).

5.7 ADMINISTRATION AND ACCOUNTS

- 5.7.1** The directors are responsible for the company's administration, including maintenance of proper accounting records, minutes of meetings, statutory books and filing of information at the Companies Registry. It is usual for these duties to be delegated - to the Secretary of a 1931 Act company or to the Registered Agent of a 2006 Act company - but this does not relieve the directors of the ultimate responsibility.

- 5.7.2** It is the duty of the directors under the Companies Acts:

- to ensure that proper accounting records are kept by the company;
- to prepare and approve annual accounts which comply with the Companies Acts;
- to ensure that the company sends a copy of the accounts to parties entitled to receive them; and
- to lay the accounts and reports before the shareholders in general meeting.

- 5.7.3** Under the 2006 Act, the obligation to maintain accounting records falls on the company and the Registered Agent is required to hold such records. However, the responsibility for accounting records lies with the directors as they are responsible for the management of the company (see section 91(1) of the 2006 Act). The 2006 Act does not require a 2006 Act company to prepare financial statements or have them audited (but the company's constitutional documents may so provide) and there is no statutory requirement in the 2006 Act to lay accounts before the members in general meeting or send them copies, but members may on request access the accounting records of a 2006 Act company (see section 82 of the 2006 Act).

5.8 BOARD MEETINGS

- 5.8.1** As already mentioned, the powers of directors are not individual but

collective. The directors should therefore exercise their powers by holding board meetings at which collective decisions are taken. The articles of association may stipulate when and how board meetings shall be held, and the quorum requirements. A meeting cannot proceed to business unless a quorum is present. Any member of the board is entitled to call a meeting of directors and every director is entitled to receive notice of a meeting.

- 5.8.2** Minutes must be kept of the proceedings of board meetings. Once agreed and signed by the chairman of the meeting they are evidence, though not conclusive evidence, of the proceedings to which they relate. In respect of 1931 Act companies, where minutes have been made in accordance with the relevant statutory provisions then, until the contrary is proved, the meeting shall be deemed to have been duly held and convened, and all proceedings shall be deemed to have taken place, and all appointments of directors, managers, or liquidators shall be deemed to be valid (see section 119 of the 1931 Act). A written resolution, may replace a meeting of the board (section 109(3) of the 2006 Act and in respect of a 1931 Act company, section 118A to 118C of the 1931 Act and its articles).

5.9 GOOD CORPORATE GOVERNANCE

- Corporate governance relates to ownership and control and the roles of owners, directors, company secretary (1931 Act companies), registered agent (2006 Act companies), managers and shareholders and the way the business of the company is run. The board of directors are but one component. Good corporate governance can best be achieved by appropriately experienced and qualified individuals applying informed and independent judgements. Directors have an important role in ensuring good corporate governance.

SECTION 6

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 licence holders 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, investment businesses and corporate service providers 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 licence holders and potential licence holders, which can be found at [Appendix \[I\]](#), 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 its expenses should be covered by licence fee income. The Commission therefore sets its licence fees with a view to balancing its budget.

[The Fiduciary Services \(Fees\) Regulations 2007](#) prescribe the fees payable by an applicant for a CSP or TSP licence and, on issue of a licence, the annual fee payable thereafter.

7.1 APPLICATION FEE

Application fees must accompany the initial application and are not refundable if the application is unsuccessful or is withdrawn. A person wishing to establish a CSP or TSP business must apply for and be granted the relevant licence before commencing business.

7.2 ANNUAL FEES

Annual fees are due on 1 August each year and are not refundable if the licence is surrendered or revoked during the course of the year.

1. **Category 1 CSP and/or TSP or Trust Corporation Licenceholder**

In order to gauge the size of the licenceholder's business and the commensurate amount of work for the Commission in regulating that business, the relevant annual licence fee in respect of a Category 1 CSP and/or Category 1 TSP or Trust Corporation licence is based on the number of client companies, partnerships and/or trusts for which the licenceholder provides services. The annual fee due on 1 August each year is based on the total number of client companies, partnerships and trusts for which the licenceholder provides services **as at the preceding 30 June**.

In the first year, the fee payable is pro rata in relation to the number of months remaining in the annual fee year until the next following 31 July.

The Fees Regulations include provisions that a combined fee will be charged if more than one company in a group (as defined) is licensed as a CSP or TSP.

2. **Category 2 Licenceholder**

In the first year, the fee will be calculated on a pro rata basis to cover the number of months between the date of issue of the licence and the following 31 July.