

# 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.