

Statutory Document No. 2014/0359

*Financial Services Act 2008*

FINANCIAL SERVICES (APPOINTMENT OF MANAGER) ORDER 2014

Approved by Tynwald: 9 December 2014
Coming into Operation: 1 January 2015

The Financial Supervision Commission makes the following Order under section 22(1) of the Financial Services Act 2008¹ after carrying out the consultations required by section 44(5) of that Act.

1 Title

This Order is the Financial Services (Appointment of Manager) Order 2014.

2 Commencement

If approved by Tynwald, this Order comes into operation on 1 January 2015.

3 Interpretation

In this Order —

“**the Act**” means the Financial Services Act 2008;

“**the Commission**” means the Financial Supervision Commission;

“**key person**”, in relation to a relevant person, means a person appearing to the Commission to have significant powers or responsibilities with respect to any regulated activity undertaken;

“**relevant person**” means a person with respect to whose affairs an application referred to in article 4 is made.

4 Circumstances in which Commission may apply for the appointment of manager

The circumstances in which the Commission may apply to the High Court for the appointment by the court under section 22(3) of the Act of a manager to

¹ AT 8 of 2008

manage the affairs of a person, in so far as those affairs relate to the carrying on of a regulated activity, are specified in the Schedule.

5 Revocation

The Financial Services (Appointment of Manager) Order 2008² is revoked.

MADE 10 NOVEMBER 2014

J.R. ASPDEN
Chief Executive

G.F. KARRAN
Commissioner

² SD 2008/0946

SCHEDULE**PRESCRIBED CIRCUMSTANCES**

- 1) Where the Commission is satisfied that there is sufficient evidence to show that the affairs of the relevant person have been inadequately managed for any reason, including but not limited to –
 - a) dishonesty on the part of a director or key person of the relevant person;
 - b) the commission by the relevant person of a serious breach of fiduciary duty in respect of a regulated activity;
 - c) a serious failure by the relevant person to maintain proper records;
 - d) the commission by the relevant person of serious and persistent breaches of the Act or of any Regulations, Orders or Rule Book made under the Act;
 - e) the death or incapacity or prolonged absence of a director or key person of the relevant person which is to the detriment of the regulated activity;
 - f) the giving with respect to a director or a key person of the relevant person of a direction under section 10 of the Act or section 11A of the Collective Investment Schemes Act 2008³;
 - g) the imposition with respect to a director or key person of the relevant person of a prohibition under section 10A of the Act or section 11B of the Collective Investment Schemes Act 2008;
 - h) the making with respect to a director, secretary or key person of the relevant person of a disqualification order or undertaking under the Company Officers (Disqualification) Act 2009⁴ or similar action taken under equivalent legislation in another jurisdiction; or
 - i) a serious failure in the governance of the relevant person or the functioning of its directors or senior management.
- 2) Where a relevant person has given notice to the Commission that it has ceased, is ceasing or intends to cease carrying on a regulated activity but the Commission is satisfied that the relevant person –
 - a) is continuing to carry on such activity; or
 - b) has failed or will fail to transfer the business in question in an orderly manner or at all.
- 3) Where the Commission –
 - a) has issued a notice under section 9 of the Act to suspend or revoke a financial services licence; or
 - b) is satisfied for any other reason,

³ AT 7 of 2008

⁴ AT 4 of 2009

and such an appointment is necessary to —

- i) protect or preserve assets, books and records or other property for which the relevant person is responsible; or
 - ii) protect the interests of a customer, creditor or others who have or have had dealings with the relevant person.
- 4) Where the Commission is satisfied that there is sufficient evidence that the relevant person has, in relation to a regulated activity, persistently failed —
 - a) to deliver services in a timely manner; or
 - b) to investigate claims or complaints made by its customers.
 - 5) Where the Commission is satisfied that there is sufficient evidence that the relevant person is carrying on a regulated activity in contravention of section 4(1)(a) of the Act.
 - 6) Where the Commission is satisfied that there is sufficient evidence that the relevant person, in relation to a regulated activity, is unable to or has failed to protect or preserve assets, books and records or other property for which it is responsible.
 - 7) Where the Commission is satisfied that there is sufficient evidence that the appointment of a manager is required due to the failure of a relevant person to take steps to comply with a direction given by the Commission under the Act or the Collective Investment Schemes Act 2008.
 - 8) Where the relevant person is required to comply with the rules of an exchange or clearing house and the Commission is satisfied that there is sufficient evidence to show that the relevant person is in default under those rules.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order specifies the circumstances in which the Financial Supervision Commission may apply to the High Court for the appointment of a manager to manage the affairs of a person, so far as they relate to the carrying on of a regulated activity.