



**ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY**

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## **Financial Services Act 2008**

### **Guidance on Rules 7.3 to 7.8 for Licenceholders**

**Changes in Ownership and Structure matters  
Mergers, Takeovers & Acquisitions  
Sale or Disposal of Business**

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## Introduction

1. Rules 7.3 to 7.8 set out a variety of changes in the ownership, capital structure or assets and liabilities of a licenceholder<sup>1</sup> which require the prior consent of or notification to the Isle of Man Financial Services Authority (“the Authority”).
2. The rules cover (but are not limited to):
  - 2.1. Re-registration as a 2006 Act Company;
  - 2.2. Re-domiciliation of the licenceholder and/or any subsidiaries<sup>2</sup>;
  - 2.3. An acquisition of:
    - 2.3.1. A trading subsidiary;
    - 2.3.2. A controlling interest in a licenceholder; or
    - 2.3.3. 10% or more of the issued share capital of a company.
  - 2.4. Changes to:
    - 2.4.1. Share capital and/or loan capital;
    - 2.4.2. Existing controlling interests;
    - 2.4.3. The ownership structure between the licenceholder and its ultimate parent company
  - 2.5. Purchases of the assets or liabilities of another business;
  - 2.6. The sale or disposal of the licenceholder and/or any subsidiaries, branches or representative offices; and
  - 2.7. Mergers.

The Rule Book confirms the notification and approval requirements applicable to the various changes covered by these Rules. In addition, the Authority’s Consent and Notification table which can be found on the [Compliance Support](#) page of the website, provides a summary of the changes subject to the Authority’s approval and the changes notifiable under the Rule Book.

Please note, if the Authority is not satisfied with a proposal of which it is notified, it may issue a direction to restrict or prevent the change.

### STATUS OF GUIDANCE

*The Isle of Man Financial Services Authority issues guidance for various purposes, including to illustrate best practice, to assist licenceholders to comply with legislation and to provide examples or illustrations. Guidance is, by its nature, not law, however it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.*

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<sup>1</sup> “licenceholder” has the same meaning as in section 7(7) of the Financial Services Act 2008.

<sup>2</sup> “Subsidiary” is defined in the Financial Services Act 2008 principally by reference to section 1 of the Companies Act 1974.

## Information to be provided to the Authority

The Authority would expect the licenceholder to supply supporting and background information.

Where licenceholder A buys all or part of the business of another licenceholder B, but does not buy the licenceholder itself, then both licenceholders will need to answer some of these questions.

A list of the type of information that would be expected is set out below.

It should be noted that:

- This list is guidance;
- **Not all of these items will be relevant in every case;**
- The Authority may request further information to clarify its understanding of what is proposed; and
- Additional information will be required for Class 1 licenceholders which will be addressed on a case by case basis. Some examples of additional matters that need to be considered are included in **appendix 1**.

### 1. Details of a proposed Change of Control or Acquisition

- 1.1. Names of the proposed new controllers;
- 1.2. Fitness and propriety assessment forms for any new controllers<sup>3</sup>;
- 1.3. The proposed new ownership structure for the licenceholder, to include the numbers of shares held by each shareholder, and the identity of the UBOs where different from the shareholders;
- 1.4. A copy of the sale and purchase agreement (this will often be in draft initially);
- 1.5. The proposed completion date;
- 1.6. The rationale for the change; and
- 1.7. Information about the due diligence being undertaken by the purchaser. (Rule 7.3(6) or 7.4(5) sets out requirements regarding the timely completion of due diligence. If 20 business days is not practicable, it is important to establish what would be reasonable, practical and achievable and then approach the Authority with the proposal.)

### 2. Financing of the Transaction

- 2.1. The purchase price;
- 2.2. Source of funds and source of wealth information from the acquirer of the business or new controllers;

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<sup>3</sup> See Regulatory Guidance – Fitness and Propriety (especially Appendices 3 and 6)

- 2.3. If the transaction is being financed in whole or part by borrowing, the identity of the lenders; and
- 2.4. The nature of any security being granted to lenders. (Note that the Authority is more likely to accept borrowing secured against the shares of the licenceholder than secured against its assets.)

### 3. Business Planning

- 3.1. Any changes to the corporate strategy, including any changes required to be notified under rule 8.13 (changes to activities, services or products;
- 3.2. An updated business plan for the licenceholder under rule 8.11; and
- 3.3. Projected financial resources calculations for the licenceholder (excluding class 1) in the format set out in Appendix 3 of the Rule Book, as at the end of the first and second year of trading. Information in respect of class 1 licenceholders is contained in **appendix 1**).

### 4. Organisation, Corporate Governance and Compliance

- 4.1. A proposed management and staff plan reflecting any proposed changes to the structure;
- 4.2. Fitness and propriety assessment forms for any new directors and key persons in Controlled Functions<sup>4</sup>;
- 4.3. Any changes to the business resumption plans;
- 4.4. Any PII implications and if so, arrangements for the extension of PII cover;
- 4.5. Proposals for management controls (rule 8.3);
- 4.6. Proposals for the compliance function (rules 8.21, 8.22 and 8.23); and
- 4.7. Identified risks and proposals for risk management (rule 8.6).

### 5. Clients

- 5.1. Details of the notification to clients under rule 7.3(5) or 7.4(4), which should include 20 business days advance notification to clients where the licenceholder is proposing to transfer those clients to another licenceholder together with the options available to those clients (including the clients right to transfer elsewhere).
- 5.2. Any changes to level of protection of clients' assets.

### 6. Proposed Group Structure

- 6.1. A structure chart showing the proposed group (the licenceholder, its subsidiaries, its parent companies and their subsidiaries)<sup>5</sup>; and

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<sup>4</sup> See Regulatory Guidance – Fitness and Propriety

<sup>5</sup> In very large groups, a selective chart showing the relevant entities can be supplied by mutual agreement

6.2. Any changes to nominee companies.

## **7. AML-CFT**

- 7.1. Proposals for AML/CFT compliance; and
- 7.2. Proposals for the achievement of equivalent AML/CFT standards if a merged or acquired business is off-Island (paragraph 37 of the MLTF Code 2015 refers). Guidance is available in the AML/CFT Handbook.

## **8. Outsourcing or Insourcing**

- 8.1. Arrangements for any outsourcing or material delegation under rule 8.16 (including if transitional arrangements are required, for example if a licenceholder is acquiring another business which itself relies on the infrastructure or systems of its group); and
- 8.2. Arrangements for the provision of services to overseas managers or administrators of schemes under rule 6.62.

## **9. Regulation**

- 9.1. Any licences to be amended or surrendered, or any new licences to be sought;
- 9.2. Details of any outstanding regulatory matters that need to be concluded; and
- 9.3. Details of any overseas regulator, who regulates some or all of the parties to the new structure. The Authority will contact the regulator.

## Appendix 1: Examples of additional information / matters in respect of class 1 licenceholders

Below are some examples of additional matters that the Authority may need to consider for class 1 licenceholder requests made under rules 7.3 to 7.8, depending on the nature and materiality of the issue:-

- For changes in ownership, how this fits in with the Authority's published licensing, particularly for class 1(1) licenceholders;
- How the proposals could impact an Isle of Man incorporated licenceholder's prudential risks, including but not limited to, its capital position (and capital planning), asset profile, and funding / liquidity profile. An updated capital plan (ICAAP or similar) may be required, together with any other changes such as liquidity contingency plans and risk policies. In some cases, audit review of plans may be considered prudent;
- How the proposals may change the Authority's view on the risk and impact of the licenceholder, including whether or not the licenceholder might become a domestic systemically important bank;
- The impact of the proposals on customers (existing, and any being taken on as part of the transaction), including any changes to their terms and conditions, and consideration of deposit protection for those customers (including compensation schemes and depositor preference);
- Liaison with overseas home / host regulators, and whether their consent is required for a transaction to proceed;
- Consideration of any change in the responsibilities of overseas regulators (including consolidated supervision) and the impact this may have on the Authority's view on the risk profile of the licenceholder. This may also include matters such as how bank resolution may change as a result of, for example, ownership changes, or redomiciliation.