

Group of International Finance Centre Supervisors

Standard on the Regulation of Trust and Corporate Service Providers (as amended)

First Round Mutual Evaluation Report

Isle of Man

Adopted 12 January 2024

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BACKGROUND

1. The Isle of Man Financial Services Authority invited the Group of International Finance Centre Supervisors (GIFCS) to undertake an evaluation of its compliance with the GIFCS Standard for the Regulation of Trust and Company Service Providers (the Standard). This document is a report on the evaluation.
2. The Group of International Finance Centre Supervisors was, in its original form, established in October 1980 at the instigation of the Basel Committee on Banking Supervision (“BCBS”), as an association of the relevant authorities concerned with the supervision of banks and related financial services primarily engaged in cross-border activities.
3. While maintaining a close working relationship with the BCBS the Group has since developed as an organisation representing the interests of member jurisdictions on the whole range of banking supervision matters, AML/CFT issues, the supervision of funds and securities activities, and the regulation of trust and company service providers (TCSPs). The Group is an observer body attending meetings of the FATF. It is also a member of the FSB Regional Consultative Group for Europe, and a member of the Basel Consultative Group.
4. There were twenty-one jurisdictions as members of GIFCS as at November 2022.
5. In 2002 the GIFCS published a paper on best practices in the regulation of TCSPs. Building on the significant experience of GIFCS members with licensing and regulating TCSPs, a new Standard for the Regulation of TCSPs was subsequently drawn up and issued in October 2014. That Standard has now developed into a full regime embracing a Multi-Lateral Memorandum of Understanding, peer group assessments of members’ compliance against the Standard, and meetings of colleges of supervisors on an as-needed basis.
6. The Standard incorporates the following objectives:
 - customers of TCSPs should receive a degree of protection equivalent to that afforded to the customers of other financial institutions.
 - TCSPs should be subject to an equivalent regulatory regime as other financial institutions.
 - to be effective, standards should be implemented consistently and internationally.
7. The Standard notes that “Regulators should view the Standard as a minimum requirement that sets out the broad framework for TCSP oversight, which can be tailored to each jurisdiction’s individual needs. Regulators should apply the Standard to all TCSPs in their jurisdiction. Jurisdictions may satisfy the Standard by adopting requirements which are of substantially similar effect and may impose higher standards

in some or all areas where national legislation requires. It is recognized that the Standard may be supplemented by other measures in individual jurisdictions designed to mitigate risks of TCSPs.”

8. Following initial self-assessments by members, in November 2016 the GIFCS agreed to commence a first round of mutual evaluations against the Standard.
9. Accordingly this report in respect of the Isle of Man evaluates:
 - technical compliance with the Standard;
 - effectiveness in applying the Standard in practice, using a broad range of measures of effectiveness appropriate to the subject matter.
10. A high level methodology for conducting evaluations and for assessing effectiveness are set out on GIFCS’ website¹.

The first round mutual evaluation process

11. The team of evaluators comprised the following persons:
 - Neill Perera (Gibraltar Financial Services Commission, team leader)
 - Margaret Tangimetua (Financial Supervisory Commission Cook Islands)
 - Arlette Houareau (Seychelles Financial Services Authority)
 - Carlie Arce-Hudson (Gibraltar Financial Services Commission)
12. The following process was adopted:
 - The Isle of Man Financial Services Authority (“IOMFSA”) submitted a technical self-assessment;
 - The IOMFSA provided information on effectiveness of implementation;
 - Assessors reviewed the information provided;
 - Assessors carried out an on-site visit from 9 – 13 May 2022. This gave an opportunity for evaluators to meet with a wide range of senior IOMFSA personnel and to see first-hand how relevant regulation and supervision are being applied in practice. The team also met with representatives of a selection of TCSP companies, the industry association, Financial Intelligence Unit, Economic Crime Unit and the Attorney General;

¹ At https://www.groupgifcs.org/letsgo/uploads/tcspmethodology_002.pdf and <https://www.groupgifcs.org/letsgo/uploads/tcspseffectiveness.pdf>

- In accordance with GIFCS agreed procedure only legislation and measures in force at the time of completion of the onsite visit have been taken into account when making judgments of compliance as part of this evaluation;
 - A draft matrix report was prepared and circulated to IOMFSA for comment, and in certain cases, additional information;
 - The material included in this report has been shared with IOMFSA to ensure factual accuracy;
 - There are no items requiring disambiguation;
 - A draft of the report has been reviewed by an independent panel, with its comments now included. The peer group panel comprised the Cayman Islands and Mauritius.
13. IOMFSA has indicated that it will publish a report on the evaluation.
14. The staff of IOMFSA gave the evaluation team full cooperation and assistance throughout the process.
15. GIFCS will invite each assessed jurisdiction to give feedback on the mutual evaluation process following its first round evaluation. The assessors believe that this should further support and benefit the development of the mutual assessment process.

Assessment philosophy and approach

16. In conducting the evaluation, the assessors took account of the following:
- GIFCS members have committed to meet the Standard;
 - Self-evaluation is an important component of the overall evaluation process. Self-evaluation should be accurate and effective – it should lead to action where necessary;
 - A mutual evaluation should take into account the extent to which the assessed jurisdiction’s self-evaluation has been accurate and has demonstrated a pro-active approach to correction of any deficiencies against the Standard which were identified;
 - The findings of other external evaluations should be taken into account in the GIFCS mutual evaluation process (having regard to the scope of such evaluations and the time elapsed since they were undertaken). The Isle of Man had been evaluated by MONEYVAL in 2016, in respect of its compliance with the FATF Recommendations, and this is referred to in paragraph 31 and 32 below.

Ratings to be used

17. The GIFCS methodology applies ratings set out below. These were applied during the review process at paragraph level in the main Standard (part 3). Ratings are not applied to the Principles (Part 2). The “1 – 4” ratings at paragraph level summarise whether action is required, and the status of such action.

Rating	Description
1	In place and being effectively applied through legislation and/or other enforceable arrangements
2	In place and largely being applied, but possibly lacking full enforceability
3	Effective measures planned with political support, with introduction and implementation in demonstrable progress
4	Requirements not planned, or not in progress as per 3 above.

18. Ratings at section level are on the widely-used basis of Compliant (“C” – no shortcomings), Largely Compliant (“LC” – only minor shortcomings), Partly Compliant (“PC” – moderate shortcomings) and Non-Compliant (“NC” – major shortcomings). These are compiled taking into account the paragraph ratings in each section as at the date of the visit. Post-visit events are reflected in the text of the report but not the ratings.

Disambiguation and guidance

19. As part of the evaluation process a number of discussions took place to deepen understanding about the supervisory regime and the provisional findings and the Authority engaged with the GIFCS assessors on a transparent and cooperative basis, and no matters arose requiring a process of disambiguation.
20. Evaluation against a Standard is an iterative process in which both the evaluated jurisdiction and the standard-setting body learns from the experience. Jurisdictions share the benefits of their experiences, and the relevant standard and methodology are refined as a result of learning points arising.

The jurisdiction

21. The Isle of Man is one of the three Crown Dependencies. It is located in The Irish Sea, between Great Britain and Ireland. Its Tynwald parliament was granted autonomy in 1866 and is responsible for passing its own legislation with the assent of the Crown granted in Privy Council. Certain types of legislation may however be signed into law by

the Lieutenant Governor without having to pass through the Privy Council. The British Government is responsible for defence and international representation.

22. The 2021 census figures show that the Isle of Man population stood at 84,069. The latest publicly available economic data from the Isle of Man Cabinet Office reveal a GDP of £5.43bn . Insurance is the largest sector, followed by eGaming, Finance and Business Services, Information and Communication Technology and Banking.

The TCSP sector in the Isle of Man

23. According to the 2021 GIFCS Summary Statement - as at 31 March 2021 there were 134 entities that held a Class 4 - Corporate Services and/or Class 5 – Trust Services Permission. Most TCSPs hold both Class 4 and 5 permissions. There are 127 Corporate Services permissions and 96 Trust Services permissions. The sector employs 1,322 people directly and 566 indirectly.
24. The majority of financial services are targeted towards persons living outside of the Isle of Man, particularly the United Kingdom. The TCSP activity is considered significant. Per statistics available from the IOMFSA website, in 2021/22 there were 12,135 trusts under management (13,318 - 2020/21, 14,046 - 2019/20). There were also 19,651 companies under management (21,550 - 2020/21, 23,656 – 2019/20), 219 partnerships (351 – 2020/21, 350 - 2019/20), 199 foundations (237 – 2020/21, 200 – 2019/20). Private Trust Companies totalled 118 (110 – 2020/21, 131 – 2019/20). These movements are not too dissimilar from other comparable jurisdictions.
25. The industry is experiencing an amount of consolidation with larger firms acquiring smaller firms. Larger TCSPs share similar characteristics in terms of number of employees, entities under management and turnover.

The Regulator

26. The IOMFSA is the primary regulator of financial services business on the Isle of Man. The financial services sector comprises of credit unions,, deposit takers, functionaries to collective investment schemes, general insurance intermediaries, insurance non-corporate entities, insurance PCCs and ICCs, investment business, life insurance, management or administration services in respect of regulated activities, money transmission services, non-life insurance (including captives), pensions, professional officers, SPVs/insurance linked securities and TCSPs.
27. The IOMFSA was established by the Transfer of Functions (Isle of Man Financial Services Authority) Order 2015. The main provisions of the order come into force on 1 November 2015. As well as establishing the IOMFSA, the order transferred the functions of the Financial Supervision Commission and the Insurance and Pensions Authority to the IOMFSA.

28. The principal objectives are: securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity; the reduction of financial crime; and the maintenance of confidence in the Island's financial services, insurance and pensions industries through effective regulation, thereby supporting the Island's economy and its development as an international financial centre.
29. The affairs of IOMFSA are overseen by a Board consisting of eight members approved and appointed by Tynwald. This does not include the CEO, who is appointed by the Board. The Board currently comprises a Non-Executive Chair and Non-Executive Deputy Chair, the Chief Executive and further Non-Executive Members.
30. The supervisory operations are divided into four teams: Insurance and Pensions, Fiduciary Services, Banking, Funds and Investments and AML/CFT. These teams are supported by a number of operational/service departments within IOMFSA including:
 - Legal and Enforcement
 - Policy and Authorisations
 - Operations
 - Supervisory Practices and Innovation
31. Per the 2021/22 Annual Report, staff increased from 79 to 86 during the reporting period.

MONEYVAL MER

32. The MONEYVAL 5th Round Mutual Evaluation took place from 25 April to 7 May 2016, with the final mutual evaluation report adopted in December 2016 and later published on 27 January 2017. Follow-up reports were published in 2018, 2019 and 2020. These assessed progress in addressing technical compliance deficiencies identified. The reports also looked at compliance with FATF Recommendations that had changed since the second enhanced follow-up report. The Isle of Man were Compliant or Largely Compliant with 39 of the 40 recommendations with only recommendation 23 rated Partially Compliant. . It was concluded at the 61st MONEYVAL Plenary Council meeting in April 2021, that the Isle of Man was no longer required to report on an annual basis. It will remain in the 'enhanced follow-up' process until an on-site review takes place. It is now only required to report to MONEYVAL every three years. The Isle of Man 4th enhanced follow up report was published in November 2022 published here: <https://rm.coe.int/0900001680a930ff>
33. Owing to the time since the 5th round Mutual Evaluation and the GIFCS evaluation, the evaluation team notes the progress the Isle of Man has made but have nevertheless

attempted to objectively evaluate areas of the Standard that might overlap with the FATF requirements. Reference is made to the Moneyval evaluation where appropriate.

Report date and post-visit events

34. The report is based on the position as at the last day of the on-site visit (13 May 2022).

35. Post-visit events are reflected if a change is in effect six weeks before the presentation of the report to the GIFCS Plenary Session for adoption. The following post events were in progress during and after the on-site visit:

- Predominantly Industry Funding Model (“PIFM”)
- Industry survey
- Update on the Authority’s new Supervisory Methodology
- Financial Services (Miscellaneous Provisions) Bill Update
- New legislation (Insolvency)
- Mock Moneyval assessment
- AML/CFT outreach update
- The Authority’s Governance Panel
- Foreign PEP Thematic Inspection findings publication
- Data Warehouse project update
- Update on Strix (AML/CFT risk analysis tool)
- TCSP Business Risk Assessment (“BRA”) Thematic Inspections

36. Post visit events relating to specific sections of the Standard are set out below:

- Re Standard 1.2 – PIFM update:

The IOMFSA has also concluded the first phase of its implementation of a new fee structure. The new fees for regulated entities and designated businesses took effect from 1 April 2023 following approval by Tynwald, the Island’s parliament. Work to develop the predominantly industry-funded model started in 2020. Extensive engagement has taken place in order to put in place a simplified, proportionate and more sustainable funding model that aligns with international best practice. The fees charged by the Authority better reflect the nature and scale of activities being carried out by firms.

- Re Standard 2.1- Industry survey

The Authority commissioned Island Global Research (“IGR”) to conduct an independent survey of all regulated entities and designated businesses in the Isle of Man earlier this year.

IGR’s online questionnaire and stakeholder interviews invited comments on the effectiveness of the Authority in relation to its role, objectives and responsibilities, approach to supervision and oversight, and engagement with industry.

On the whole, the findings are positive and demonstrate the Authority's importance to the Island's international reputation, and its contribution to the success of the finance sector. The positive comments reflect the Authority's 'proportionate and pragmatic' approach to supervision, its importance to the Island's international reputation, and its contribution to the success of the finance sector.

An action plan has been produced to address the areas where survey respondents feel there is scope for improvement. A number of work streams are already in progress and others will be rolled out in the near future as part of the Authority's commitment to continuous improvement. The survey results and action plan have been published on the Authority's [website](#).

- Re Standard 2.2 – Update on the Authority's new Supervisory Methodology:
Extensive outreach has taken place with all sectors to explain the supervisory engagement model and what firms can expect in key areas such as onsite inspections, thematic exercises, data collection and analysis, and automated exception reporting.

The Supervisory Methodology Framework has been designed to provide a structured framework and tools to promote consistency in supervisory assessment on risk across all sectors to, undertake a tailored Engagement Model, where resource and engagement is focused toward higher impact and higher risk firms which pose the greatest threat to the IOMFSA's objectives.

The Supervisory Methodology Framework provides Supervisors with a structured Engagement Model, tailored to a firm's Impact Rating, or ML/FT Risk Rating. It requires Supervisors to analyse information, challenge firms, evaluate risks and develop targeted Risk Mitigation Plans to manage those risks and requiring firms to devise and execute Remediation Plans where appropriate. An overview of the Supervisory Methodology Framework has been published on the Authority's website.

- Re Standard 2.4 - Financial Services (Miscellaneous Provisions) Bill Update:
The Authority is currently waiting for the third draft of the Bill from the drafter for review. Consultation is planned to take place between November 2023 and January 2024. It is likely that Tynwald progression will take place during 2024.

- Re Standard 2.5 – New legislation (Insolvency)
The Isle of Man Treasury has held a [public policy consultation](#) seeking stakeholder views on insolvency and related legislation.

- Re Standard 3- Mock Moneyval Assessment:

The IOMFSA participated in a mock Moneyval assessment during November 2022. This was organised by the Isle of Man Government's Cabinet Office and carried out by a third party consultancy firm. The IOMFSA has completed the drafting of an action plan and is currently working with other Government agencies to execute this Moneyval Strategic & Action Plan to address the recommendations.

- Re Standard 3- AML/CFT outreach update

The Authority publishes updates, advice and reports on a range of subjects every month, including across a range of AML CFT areas. These are set out on the FSA website and also cascaded on social media. Alongside this, the Authority attends and presents at multiple meetings and conferences throughout the year. In the post inspection period up to June 2023, this included:

- Notices to advise of the responsibilities of client entities administered by TCSPs, the requirements of the Beneficial Ownership Act (many TCSPs are BO nominated officers for client entities), an upcoming programme of thematic inspections on TCSPs, and an upcoming programme of Beneficial Ownership oversight inspections.
- 20 separate notices of changes or updates in IOM financial sanctions (as advised by IOM Customs & Excise)
- Live presentation at industry events on the new FSA structure and supervisory approach, the findings of the foreign PEP Thematic inspection programme, and the upcoming programme of inspections under the Beneficial Ownership Act (plus two individual presentations to meetings of the IOM Association of CSPs with 300+ attendees each time)

Published webinars on the revised annual AML CFT returns, findings of the PEP programme (alongside publication of the PEP project report), and Beneficial Ownership, which can be found on the FSA website and have been uploaded to YouTube.

- Re Standard 4.2 - The Authority's Governance Panel:

A healthy culture of challenge is essential for effective and consistent supervision. In order to achieve this the IOMFSA has established Governance Panels ("Panels"). The IOMFSA operate four types of panels, all of which have a purpose of facilitating cross-divisional challenge and driving consistency of approach to supervision, supporting the IOMFSA in satisfying itself that it is exercising its judgements in a fair, proportionate and consistent manner.

The specific purpose of each panel is to:

- Provide challenge in respect of appropriate usage of the supervisory toolkit on matters of material concern, the possibility and appropriateness of remediation, and, reach consensus in respect of referral recommendations (whether to escalate to enhanced supervision and/or Enforcement);
- Review and agree proposed impact ratings;
- Review and challenge the robustness and adequacy of firm risk assessments and, where applicable, risk mitigation programmes; and

- Identify and scrutinise processes that require consistency improvements

- Re Standard A.5- Foreign PEP Thematic Inspection findings publication:

The AML/CFT Division has acknowledged the importance of sharing its thematic findings with industry, and on 5 May 2023 it released its findings in a [report](#)

- Re Standard G.1.1.3 – Data Warehouse project update:

The data warehouse is currently fully operational with live data feeds. It is being utilised for one off data collection exercises and from regular ongoing returns. The Authority is continuing to make all relevant returns (for all sectors) ‘warehouse ready’ which will be transitioned over the next 2 years.

- Re Standard I.1.2.1 – Update on AML/CFT risk analysis tool “Strix”:

A new data analysis risking tool for AML CFT, developed jointly for the FSA and the IOM Gambling Supervision Commission. The tool analyses entity return data to provide control consideration and scoring, to produce a residual risk indication. The tool went live in October 2023 and returns data from 2022 is being uploaded for testing and calibration.

STRIX AML has been developed in line with recommendations set by the Financial Action Task Force (FATF), the organisation that leads global efforts to tackle money laundering, and terrorist and proliferation financing. The new system will significantly streamline data collection and analytics, offer greater automation of the risk assessment process, and hence help identify firms with an elevated ML/TF risk. The system also includes a National Risk Assessment module, which will assist in sector analysis, firm analysis and drill down in specific risk factors. The system will be implemented for the 31 December 2023 reporting cycle.

- Re Standard I.3.1.5 – TCSP BRA Thematic Inspections:

A thematic exercise commenced in January 2023 focusing on the TCSP sector and specifically the controls and documentation in place regarding business risk assessments. The Authority shared information on the analysis of phase 1 data from thematic questionnaires. It published findings in July 2023. As at October 2023, 70 desk based inspections had been undertaken, of which 64 have inspection reports finalised and signed off. The Authority has shared Phase 2 findings from the inspections with industry.

37. The IOMFSA has provided the following post-visit information on the progress of 1) The Licenceholders subject to the Audit Exception regime, and 2) FINNET referrals for 2022, as set out below:

- Re Standard G.3.1- Update on Licenceholders subject to the Audit Exception regime:

The Authority finalised the review of its Audit Exception regime in June 2023, and concluded that it was no longer appropriate to allow such exceptions for any licenceholders with turnover of less than £250,000, regardless of size. The Authority wrote to the 7 Licenceholders that were availing of such an exception to advise that the

exception will be withdrawn with effect from Q1 2024. Going forward, all licenceholders will be required to have their financial statements audited, prior to submission to the Authority as part of their annual returns.

- Re Standard J.1.6- Updated FINNET referrals for 2022:

Total referrals for 2022 are confirmed as 76.

SUMMARY AND KEY FINDINGS

Standard and Isle of Man Financial Services Authority rating									
3A	3B	3C	3D	3E	3F	3G	3H	3I	3J
C	C	C	C	C	C	LC	C	C	C

Ratings

	Compliant: "C" – no shortcomings
	Largely Compliant: "LC" – only minor shortcomings
	Partly Compliant: "PC" – moderate shortcomings
	Non-Compliant: "NC" – major shortcomings

38. The IOMFSA, as an established regulator, demonstrated a strong overall level of compliance across the majority of the key areas of the Standard, achieving the highest rating (Compliant) across nine of the 10 key areas of the Standard, and Largely Compliant in the other. This reflects its activities in licensing and in supervising TCSP business on an ongoing basis, including on prudential, conduct, AML and governance matters.

The ratings reflect the IOMFSA's commitment to international standards, and its work to enhance levels of compliance within the TCSP sector. The IOMFSA continues to work collaboratively with industry in respect of licensing and supervising TCSP business on an ongoing basis, including on prudential, conduct, AML and governance matters.

A Largely Compliant rating was awarded in relation to Prudential requirements due to an exception to a Rulebook requirement allowing annual financial statements to be audit exempt in certain circumstances where TCSPs have a turnover below £250,000. Since the on-site evaluation, the IOMFSA has confirmed that it has taken steps to address this matter. Following a review of its audit exemption regime in June 2023, the IOMFSA announced that the 7 licenceholders will have their audit exceptions revoked and therefore the licenceholders will be required to have their financial statements audited.

A couple of other areas are identified for consideration by the Authority.

Key areas for consideration are in relation to engagement with the TCSP industry, especially around AML expectations, and the move from significant funding obtained from Treasury subvention to the Predominantly Industry Funded Model, to ensure regulatory independence. Another area relates to the number of onsite inspections, with consideration for minimum periodic cycles for onsite inspections for lower impact firms or suitable alternative processes to periodically test a TCSPs systems and processes.

Glossary

38. The report follows the definitions established in the Standard and set out in Part 1 thereof for the following terms:

- Client
- Client Money
- Controller
- Key Person
- Shareholder Controller
- TCSP
- Vehicle

39. Additional terms and abbreviations used in this report include:

ARR	Annual Regulatory Return
AFR	Annual Financial Return
CAR	Clients' Assets Report
CRA	Customer Risk Assessment
IAIS	International Association of Insurance Supervisors
IOMFSA, The Authority	Isle of Man Financial Services Authority
IOSCO	International Organization of Securities Commissions
GIFCS	Group of International Finance Centre Supervisors
FSA08	The Financial Services Act 2008
MER	Mutual evaluation report

TCSP	Trust and Company Service Providers, as defined in the Standard, is used generically in this report, to cover either or both of CSP and TSP services.
The Standard	The Standard on the Regulation of Trust and Corporate Service Providers as issued by GIFCS in 2014 and revised in December 2018
UBO	Ultimate beneficial owner

PART 2 - THE PRINCIPLES FOR REGULATION

40. The first substantive section of the Standard is the Principles for Regulation (Part 2 of the Standard).
41. The Principles set out high level objectives, covering the regulator, the regulatory regime, domestic and international cooperation, enforcement, and other requirements for the jurisdiction.
42. GIFCS has agreed that the Principles are addressed as a whole rather than point by point for technical compliance and effectiveness. The Principles are supported by more detailed and granular material in the Standard itself (Part 3 of the Standard document).

Observations relating to Part 2 of the Standard - the Principles

Summary

- **The IOMFSA provided evidence of its compliance with the principles, both in law and in practice.**
- **There are however a number of areas where the IOMFSA should remain committed to in order to enhance perceived effectiveness. These are referenced below.**
- **One of these such areas is in respect of engagement with the TCSP industry. This relates to industry's impressions vis-a-vis the IOMFSA's processes which was picked up during assessor's interviews with industry stakeholders. It is therefore recommended that the IOMFSA continues to consider the feedback received from industry stakeholders. This feedback may contribute to the IOMFSA's ongoing assessment of its supervisory methodology and operating structure, ensuring its effectiveness. The post events section herein refers to an industry survey, the outcome of which has been shared with industry.**
- **Another area for the IOMFSA to be mindful of is in the context of the move from significant funding obtained from Treasury subvention to the Predominantly Industry Funded Model, and carefully managing relationships with licenceholders. The assessors captured an appreciation from the IOMFSA that the international landscape may become demanding for smaller firms as they encounter rising costs to doing business.**
- **IOMFSA fully understands the requirement for regulatory independence and works actively with Government to preserve this. It will however also be crucial for the IOMFSA to continue to manage regulatory independence during the implementation of the new funding model, which was adopted in April 2023.**

- **Whilst the use of data and analytics can also be a very useful tool to supervisors, the international Standard suggests that the IOMFSA should consider minimum periodic cycles for onsite inspections for lower impact firms or suitable alternative processes to periodically test a TCSPs systems and processes. Having considered the context of the number of onsite inspections carried out by the Authority during the period of the assessment, prior to the implementation of the Supervisory Methodology, as demonstrated by the inspection statistics against the total TCSP population, when the IOMFSA implements the Supervisory Methodology, it should consider having a baseline for onsite inspection cycles to ensure licence holders that are rated low impact or low risk will eventually be subject to an onsite inspection within its inspection cycle. The TCSP industry indicated they would welcome increased engagement with the regulator, including onsite inspections. This would also help balance the low impact approach with the medium-high supervision approaches.**

Principles for Regulation – 2.1 relating to the Regulator

43. The Isle of Man Financial Service Authority (“IOMFSA” or “the Authority”) was established by the Transfer of Functions (Isle of Man Financial Services Authority) Order 2015. This transferred the functions of the two former regulators (the Financial Supervision Commission and the Insurance and Pensions Authority) to the IOMFSA.
44. The Financial Services Act 2008 (“FSA08”) clearly sets out in statute the IOMFSA’s responsibilities. Part 1 Section 2(2) specifically sets out the objectives and Schedule 1 Paragraph 2 sets out the functions. Schedule 1 Paragraph 3 provides a list of items it must have regard to in discharging its functions.
45. In addition to being the financial services regulator and supervisor, the IOMFSA is also responsible for oversight over a number of other areas linked to financial services. This includes the Beneficial Ownership Database.
46. The IOMFSA is operationally independent and accountable to Treasury and Tynwald (The Isle of Man Parliament).
47. It operates within a budget agreed with Treasury. This is subject to external review by the Government’s internal audit department. The financial statements are published each year as part of its Annual Report.
48. The 2020/21 Annual Report provides that the IOMFSA was in receipt of £3,055,560 (2019/20-£3,101,040) by way of fee income and the higher amount of £3,353,494(£3,215,289 (2019-2020) by way of Government grant (treasury subvention). The amount of Government grant is higher than that reported for the previous year (£2,853,790). In the 2020 Budget, the Treasury Minister announced the intention to move towards a predominantly industry funded model. Whilst by no means

the only measure, this is considered important to how external stakeholders perceive the independence of the IOMFSA. The consultation paper issued on 12 May 2022 provides that it is the IOMFSA's intention to go live with PIFM on April 2023. Whilst the emphasis of the communications around the consultation process does not explicitly provide independence of the regulator as a driving factor, it will certainly assist the IOMFSA to better manage this perception.

49. The IOMFSA has also confirmed that good governance is another driver of independence, regardless of any fiscal support provided to the IOMFSA as - it does not wish to be an outlier with other peer jurisdictions regarding international standards relating to independence.
50. The accompanying press release to the 12 May 2022 consultation paper quotes the Treasury Minister, David Ashford MHK saying: 'The vast majority of the world's financial services regulators are funded by industry and the aim is to bring the Isle of Man into line with that model. The Authority currently receives a significant level of taxpayer funding and this is simply not sustainable, particularly as global and economic events continue to intensify the pressure on public finances. Increasing the contribution made by businesses towards the cost of their regulation and oversight is an appropriate step and will allow more of our taxpayer income to be used for essential public services.'
51. The consultation document sets out the annual fees, transaction fees and application fees that would be payable from 1 April 2023, as part of a simplified and more consistent funding structure.
52. Bettina Roth, Chief Executive Officer of the Authority, said: 'In the interests of full transparency, we are highlighting the fees that will be required to achieve the target of being predominantly funded by industry. Our focus is on implementing a structure where the fees are proportionate, competitive, and more accurately reflect the regulatory activities being carried out. The new funding model will support efforts to ensure the continued prosperity of the Island's financial services sector.'
53. It was appreciated that the landscape may become demanding for smaller firms as they encounter rising costs to doing business. It will be important for the IOMFSA to continue to manage its relationship with licensed firms and applicants to ensure speed to market does not come at the cost of robust supervision.
54. With regard to any influence Government (through Treasury particularly) might exercise over the IOMFSA, the CEO meets with Treasury at least on a monthly basis. This forum is used to advise Treasury of any issues/areas it should be made aware of, although Treasury acknowledges that there are matters that cannot be shared or discussed with them. Treasury and the Authority maintain a constructive and ongoing dialogue to ensure a sound understanding of current political thinking and regulatory philosophies. Treasury may use the forum to obtain advice regarding press statements regarding a range of matters, for instance, sanctions. Treasury might also pass on

feedback from industry. It was confirmed to the assessment team that feedback tends to be balanced. IOMFSA fully understands the requirement for regulatory independence and works actively with Government to preserve this.

55. Regarding the Board member selection process, Treasury is legally responsible for the recruitment and makes the recommendations to Tynwald and Tynwald appoints the Board member.
56. The IOMFSA has adequate powers, sufficient resources and the capacity to perform its functions and exercise its powers.
57. The FSA08 outlines the powers to inter alia; 1) grant, amend, suspend and revoke licenses; 2) Obtain information through various means such as requests, inspections, reporting accountants, directions and warrants; 3) find individuals not fit and proper; 4) intervene in regulated entities by the uses of directions, appointment of managers and receivers; 5) impose civil penalties, and; 6) take enforcement action.
58. Of the 74 full time equivalent staff members, the organisational chart indicates that there are 10 officers within the Fiduciary Services team. The Head of Fiduciary Services reports directly to the CEO.
59. The IOMFSA has an annual expenditure budget agreed with Treasury and has a degree of flexibility in how it allocates that budget. It also has the ability to seek variance of the budget through the year based on circumstances. Under normal circumstances, each year the IOMFSA manages the budget committed to staffing to retain a surplus (over and above planned permanent FTE cost) for the use of agency staff, consultancy and zero hours or term contract staff to deal with increased activity or revised priorities arising in the short term.
60. In the past 5 years, without recourse to Treasury, the IOMFSA has recruited term, agency staff and/or retained staff on a zero-hours basis to provide short-term assistance in all of the following areas of Enforcement, Legal Counsel, AML/CFT oversight and policy development, Authorisations – Fitness and Propriety (“F&P”) applications, Supervision – Non-life and Fiduciary service and HR. Over the same period the IOMFSA has also utilised a number of term and temporary resources to assist with a range of strategic and operational projects.
61. Section 33 of the FSA08 provides a statutory indemnity to the IOMFSA, its members, officers, any person acting on behalf of the IOMFSA. The indemnity does not cover acts or omissions shown to have been in bad faith.
62. The IOMFSA has measures in place to ensure conflicts of interest are avoided, eliminated, disclosed or otherwise managed.
63. The IOMFSA’s website section headed accountability-corporate-governance includes a conflicts code of conduct and a register of members’ interests. The Code sets out how interests are declared, managed and where relevant, published. Members’ interests in entities overseen by the IOMFSA are required to be published on the website.

64. All officers of the IOMFSA are also required to disclose conflicts of any nature including as a result of family members or other relationships.
65. The conflicts process for Board members and officers is built in the annual review in June. An internal log is maintained and available within the public register on the IOMFSA's website.
66. The assessment team was provided with the Disclosure of Staff Member's Interests form together with the Conflicts of Interests policy document which adequately sets out the requirements regarding conflicts.
67. The IOMFSA has measures in place to ensure that regulatory processes are transparent, clear and consistent.
68. The IOMFSA has identified applications, supervision and enforcement as three key areas which have the highest impact on firms. Guidance and information on the relevant processes can be found on the IOMFSA website.
69. Decisions which involve the use of statutory powers must be made by the Board, unless the board has formally delegated the power to officers. Tables setting out the authority delegated and retained are available to all staff and decisions made under delegated authority are recorded as such.
70. With regard to supervisory processes, guidance is provided to industry, together with presentations and recorded webinars.
71. The assessors spent some time interviewing licensed firms and the TCSP industry association, with overall positive remarks given, especially around the creation of the Fiduciary team. However, there were some inconsistencies with regard to the perception of approachability of the IOMFSA as follows:
 - example of assistance from the IOMFSA around queries especially related to the interpretation of the AML/CFT Handbook. Uncertainty over the risk-based approach.
 - Some viewed the level of engagement as appropriate, others believed industry would benefit from more onsite inspections.
 - Inconsistency with regard to perceptions of the regulatory experience of the new members of the Fiduciary team, who perhaps had not yet acquired sufficient regulatory practical experience, whilst in contrast, others expressed satisfaction that their contact person was very knowledgeable about their firm.
 - Positive comments about interviews of notifiable individuals – good opportunity to have the IOMFSA's expectations on role holders.
72. Given the industry's feedback stated above, it is recommended that the IOMFSA continues to consider the feedback received from industry stakeholders, and adjust its outreach programme. This feedback may contribute to the IOMFSA's ongoing assessment of its supervisory methodology and operating structure, ensuring its effectiveness.

73. The IOMFSA has appropriate measures in place so that its staff observe the highest professional and ethical standards, including standards of confidentiality.
74. An offence to disclose restricted information is included with the FSA08. Employment contracts also require confidentiality to be maintained. The staff handbook also specifies policies that supplement the employment contract and breaches may result in disciplinary proceedings or termination of employment. Officers are also required to sign a declaration in acknowledgment of the Official Secrets Act and are subject to compulsory annual data security training. Upon receipt of an Officer's resignation letter, HR provide a letter reminding the Officer of their confidentiality requirements. Exit procedures, which are controlled by a checklist, include updating the conflicts register.

Principles for Regulation – 2.2 relating to Regulation

75. In respect of systemic risk, the IOMFSA has determined that some banks under its supervision are systemically important banks. TCSPs have been deemed not to represent a systemic risk to the Isle of Man.
76. The consideration of the interconnectedness of TCSPs and other important institutions has been undertaken. Only one of the licensed TCSPs are owned by banking groups. The TCSP and banking relationships are predominantly customer relationships. Based on the understanding of the ownership and funding of TCSPs, there is not a systemic link back to the banks.
77. The IOMFSA undertakes the prudential and conduct supervision of TCSPs, including the prevention of financial crime, anti-money laundering and combating the financing of terrorism, and has processes to monitor and review its supervision periodically.
78. The revised supervisory approach is considered a strategic priority and has full project governance around it, including a Project Team – responsible for creating and designing the framework and supporting material, Steering Committee – executive sponsors and executive membership who are responsible for strategic direction, approval of the framework and supporting material, Programme Oversight Committee & Senior Steering Group – responsible for monitoring progress against plan, and the Board – receives project reporting.
79. It was confirmed at the time of the onsite visit that the enhanced framework was on track to be completed by October 2022 after which an implementation plan will be created for Phase 2. The implementation is now complete and the framework has been incorporated into the supervisory divisions' annual plans.
80. At a high level, the project is set to deliver the following elements:
 - An enhanced common risk assessment methodology.
 - A suite of appropriate documents (guides) to assist Authority staff to undertake risk assessments using the following risk categories:

- Client Asset – Complete
 - Conduct of Business – In progress
 - Prudential – Not Started
 - Governance/Management – In progress
 - Operational – In progress
 - Strategic – Not Started
 - Financial Crime – In progress
- A common view and assessment of impact at firm and sector level. Defined and agreed impact measurement metrics was in progress.
 - A common view and assessment of risk had been completed.
 - An enhanced agreed supervisory engagement model was in progress.
 - An enhanced common approach to supervisory inspections had been completed.
 - A governance and quality assurance process to ensure consistency of approach, including the use of supervisory tools (e.g., intervention) was in progress.
 - Issue of public information explaining the approach to supervision had not yet started.
81. The IOMFSA employs both off-site (desk-based) and on-site supervision. A number of onsite Final Inspection Reports were submitted as evidence regarding the capturing of Corporate Governance, Risk Management, Conduct and AML/CFT risks as part of its supervision of a firm. The Reports were in relation to Inspections of three different firms that took place in February 2018, March 2021 and June 2021. There were helpful examples of onsite inspections that covered a variety of supervisory areas, that in addition to the aforementioned, also captured risks relating to the security of client money and assets and record keeping arrangements.
82. With regard to general supervision, prudential risks are assessed in a variety of ways. For instance, firms are required to submit an Annual Financial Return which includes financial resources calculations in standard form and financial statements. An example of a case was reviewed where a firm was directed not to issue dividends or release any funds or loans. Also, relating more to Conduct risks, the Annual Regulatory Return is required to be completed by firms. This covers areas such as staffing numbers, key staff, structure charts, complaints, number of entities etc. The Clients' Assets Report is also required to be submitted by firms. This helps firms evaluate the effectiveness of their systems of control in relation to their control over client assets. This is supported by an auditor's confirmation.
83. With regard to post licensing inspection figures since 2017- there has been 7 new licence holders since 2017. (2018: 3, 2019: 1, 2021: 3). The Authority has completed a post-licence inspection for 6 of the newly licensed firms (2019: 3, 2020: 1, 2022: 2) with the remaining firm's inspection scheduled for later in the year. Post-licence inspections have resulted in remediation within Supervision. The IOMFSA intervened in one licence

holder by the issuing of a Section 14 direction and 23 notification. A case study was submitted in support.

84. In total, since May 2017, 104 (onsite 37, desk-based 67) TCSP inspections have been conducted:
- Event Driven –7
 - Risk Driven – 30
 - Thematic Inspection – 33
 - Thematic Questionnaire – 34
85. A number of these inspections are focussed, with the majority being full supervisory or thematic based, with a number of event-driven inspections. Full supervisory inspections would cover Corporate Governance as well as AML/CFT in the same inspection. AML/CFT requirements forms part of the review process of client files and policies & procedures. There have been no AML/CFT focus inspections, with a thematic study on foreign PEPs also performed.
86. It is noted and widely accepted that onsite inspections are a key supervisory tool. The data submitted by the IOMFSA indicates an average of just over 7 onsite inspections undertaken for each of the last 5 years since 2017. For context, the latest statistics available indicate over 100 TCSPs within the IOM. Indeed, one of the factors stated within the guidance issued by the GIFCS with regard to evidencing effectiveness, is the frequency of onsite inspections. However, it should be noted that this 5 year period included the Covid 19 pandemic that had a negative impact on the ability to conduct on site and desk based inspections due to remote working and the pressure facing industry. The IOMFSA has articulated its revised and evolving methodology, whereby a more efficient and enhanced use of data and information submitted by TCSPs is employed in the assessment of risks posed by those TCSPs. The Supervisory Methodology Framework has been designed to provide a structured framework and tools to promote consistency in supervisory judgement on risk across all sectors to undertake a tailored Engagement Model, where resource and engagement is focused toward higher impact firms. The IOMFSA have stated that they will focus on the most important risks, regardless of impact, which if crystallised would pose the greatest threat to their objective. The collection and analysis of data from returns submitted by firms is a critical aspect of the Supervisory Methodology Framework. The receipt of good quality and timely data, and the subsequent automation of validation, reporting threshold exceptions, and scoring risk assessments, and to consistently analyse and better understand the firms and sectors the IOMFSA regulate. The assessors note the more targeted risk-based approach, whereby the greater impact firms have more resources dedicated to them (higher amount of interventions and inspections) with the lower

impact firms on a more risk-driven supervisory pattern, having regard to the aforementioned observations regarding the revised approach to supervision.

87. The inclination towards a risk-driven approach is set out within the Inspection Guidance for Firms (dated October 2021 & published on FSA's website). This sets out the authority's inspection process, providing that it undertakes two broad types of inspection:
 - Firm Specific – conducted in response to a known or perceived risk within a Firm. The objective(s) of a firm specific inspection may be either broad or narrow in scope.
 - Thematic – conducted in response to a known or perceived risk at industry or sector level. Thematic inspections may be conducted in a range of ways, including by way of questionnaire or on-site inspection, or a combination of both. The objective(s) of a thematic inspection are typically narrow in scope.
88. An example of the use of data to inform and drive the supervisory approach is the use of the AML/CFT statistical return. Its objectives have been stated as to:
 - Inform the supervisory risk assessment of each firm;
 - Understand the firm in comparison to its peers and the rest of the sector;
 - Understand the sectoral risks across the whole population; and
 - Identify variances and trends.
89. The statistical return is used as tool to assist in planning inspections. The Authority checks on a risk-based approach against other returns, included on a comparative basis for the previous year return. The data is also used to identify suitable licence holders to sample, for example in the PEP thematic inspection process.
90. Whilst the use of data and analytics can also be a very useful tool to supervisors, the IOMFSA should consider minimum periodic cycles for onsite inspections for lower impact firms or suitable alternative processes to periodically test a TCSPs systems and processes. The Authority should therefore consider having a baseline for onsite inspection cycles to ensure licence holders that are rated low impact will eventually be subject to an onsite inspection within its inspection cycle. This would also align with the wishes of interviewed TCSP firms during the onsite assessment, some of whom expressed that they would welcome increased engagement with the regulator, including onsite inspections. This would also help balance the low impact approach with the medium-high supervision approaches.
91. The IOMFSA has processes to review the perimeter of regulation regularly.
92. This has been set out in two parts. The first is mainly driven by policy responses to developments in the industry and achieved via legislative amendments. Secondly, considering whether companies stray into regulated activities without a licence more commonly referred to as “policing the perimeter”.

93. In respect of non-licence holders and suspected TCSP activity, while there is no dedicated Intelligence Division, the Enforcement Division is tasked with collecting intelligence. If unlicensed activity is suspected, the full range of inspection and investigative powers available to IOMFSA may be used in order to establish whether a statutory breach may have occurred or may be occurring.
94. Information gathering and inspection powers relating to non-licensees is supported by legislation. Any person conducting a regulated activity (whether licensed or not) is defined in the FSA08 as a "permitted person". This includes those who are undertaking TCSP services but do not require a licence because they are Exempt. (Section 35 (1) of the FSA08).
95. Schedule 2 to the FSA08 (Inspection & investigation) applies to permitted persons and former permitted persons. (Schedule 2 Paragraph 1(1)). Those powers also extend to those suspected of undertaking regulated activity whilst not being a permitted person (Schedule 2 Paragraph 1(7)).
96. IOMFSA provided an example of the Regulated Activities Order 2011 being amended on multiple occasions and for various reasons such as the introduction of new classes of regulated activity and Brexit related amendments. Also provided were a number of case studies to support compliance with this area of the Standard. One example captured how through the use of desk based reviews, compliance returns and onsite inspections the IOMFSA was able to determine that a licensed firm was going beyond the permission in their licence.
97. Policing the perimeter issues are primarily handled by the IOMFSA's enforcement function. Unlicensed activity is looked at. Here, background research is initially performed. Gateways with other parties including overseas regulators, The Office of Fair Trading and the Income Tax Division will also be employed to obtain information on individuals. Formal powers of inspection may be used to obtain and inspect books and records. Example provided where this concluded with the obtaining of a High Court injunction and the winding up on public interest grounds. A number of sources can be used for this purpose - Information will be obtained from whistle-blowers, suspicious activity reports and other regulators.
98. Part of the process also involves legislative requests, gateway requests, IOSCO MOU, FINNET referrals. The IOMFSA also participates in working groups across the island. This helps to capture emerging risks and points to strong cooperation with a variety of domestic agencies, bodies and organisation. The IOMFSA also participates in quarterly meetings with the Crown Dependencies. There is a framework also in place with the Financial Intelligence Unit ("FIU"), under which it is able to share information. The FIU Act 2015 - Section 24 provides that it is able to speak about anything relevant to its function. They work on an intelligence basis on ongoing matters.

99. Legal gateways in the IOM allow sharing and exchange of relevant information and intelligence between competent authorities. Structurally, there are a number of IOM AML CFT groups and Boards who work collaboratively across agencies, including:
- The Financial Crime Strategic Board 'FCSB' (CEO level representation)
 - The AML CFT Effectiveness Group (Directors or Heads of Division representation)
 - The AML CFT Advisory Group (like the Effectiveness group but with industry representatives too).
 - The Advisory group and Effectiveness Group are chaired by the Cabinet Office 'AML CFT Office' who report to and provide secretariat to the FCSB.

The Authority are represented in these groups, and other working groups such as:

- The Sanctions Operational group (cross agency)
 - Multiple Sub working groups of the Cabinet Office AML CFT delivery project
 - The AML Group – fortnightly meeting of the FIU, Police, Proactive International Money Laundering Investigation Team
 - The Steering Group for the new Public Private Partnership (Financial Crime Partnership) led by the FIU
 - Monthly meetings with the FIU
100. The IOMFSA has the powers necessary to gather all information required to perform its functions and exercise its powers including those to supervise TCSPs by the use of onsite inspections, to obtain information from TCSPs, and, to undertake thematic reviews and other offsite supervision. Information gathering and inspection powers are set out within the FSA08 Schedule 2 paragraph 1 "inspection and investigation".
101. The powers set out in FSA08 Schedule 2 Paragraph 1 (Inspection) and Paragraph 2 (request information) are available in respect of all permitted persons and provide the IOMFSA with its vires to undertake inspections and to request information (of any person). In practice, these powers are used in relation to every inspection and every request for information.
102. A range of forms are used, all of which are available on the IOMFSA's website, to gather data for regulatory purposes. These forms include the Annual Regulatory Return, the AML/CFT Statistical Return, a Financial Resources Requirement calculation template, and a Clients' Assets Report.
103. The first draft Bill has been received from the Attorney General's Chambers, and comments made following a detailed review. The drafter is currently preparing a second draft. It is anticipated that a consultation will take place using the second draft towards the end of 2022/early 2023, then the Bill will be finalised and need to go through the

Island's legislature (Tynwald) to be made. –It is likely that Tynwald progression will be after recess 2023.

Principles for Regulation - 2.3 relating to Co-operation

104. The IOMFSA has the power to share non-public information with domestic and foreign counterparts according to Schedule 5 of the FSA08.
105. The IOMFSA has established information sharing mechanisms that set out when and how it will share both public and non-public information with their domestic and foreign counterparts. These cover information sharing on a timely and constructive basis at its own initiative and also on request. The IOMFSA is a signatory to a number of MOUs both bi-lateral and multi-lateral (IAIS, IOSCO and GIFCS). These provide the basis and the framework for the sharing of information.
106. The powers within the FSA08 allow the IOMFSA to participate in supervisory colleges. The IOMFSA has participated in 5 TCSP colleges to date where attendees have been fellow GIFCS members - two of which it co-chaired.
107. The IOMFSA has a number of MOUs and MMOUs in place, including GIFCS'. The IOMFSA's website, under its Enforcement banner, includes a section titled "International Co-operation". This helpfully sets out its approach to sharing information. The IOMFSA have provided examples by way of case studies whereby a proactive approach to information sharing with regulators from other jurisdictions was demonstrated.
108. The IOMFSA has measures in place to allow for assistance to be provided to foreign Regulators who need to make inquiries in the discharge of their functions and exercise of their powers. This provided for by Schedule 5 paragraph 2 of the FSA08. With regard to information relating to clients of a TCSP, information may be shared if the customer consents or if the IOMFSA determines it is satisfied that disclosure is appropriate having regard to its functions and regulatory objectives having regard to the confidential nature of the information and the purpose for which it is required. Practical examples of this were submitted in the form of cases where powers within the FSA08 were used to disclose information relating to individuals seeking to be assessed as to their fitness and propriety. The IOMFSA both makes and responds to such requests.

Principles for Regulation – 2.4 relating to Enforcement

109. The IOMFSA was able to evidence compliance with the requirements of this section by having comprehensive inspection, investigation and supervision powers which are in place and being effectively utilised. These are set out within Schedule 2 of the FSA08. This provides that the IOMFSA may inspect the books, accounts and documents and inspect the transactions of a permitted person or former permitted person. This includes powers of entry and access and take possession of books, accounts and documents.

110. The Rule Book, made under Sections 18 and 19 of the FSA08, provides further provisions for TCSPs to provide information in the form of periodic returns and in the form of notifications when an event of a specified types occurs.
111. The IOMFSA has further powers in relation to non-licensed entities and client companies. These are set out in the various versions of the Companies Act and the Beneficial Ownership Act.
112. The assessors were also able to evidence that the IOMFSA has comprehensive enforcement powers which are being effectively applied. These are available under the FSA08 Act, and include, the revocation or suspension of a licence, directions to do or to refrain from doing something, civil penalties, application to court for appointment of a receiver and manager, prohibitions such as those imposed on a person if deemed not fit and proper.
113. The Supervision Division and Enforcement Division provide bilateral support to each other on both a "formal referral" basis in relation to suspected regulatory unfitness, as well as on a regular and less formal collaborative basis in relation to the sharing of intelligence, specialist knowledge, and general oversight of the sector. In addition to daily ad-hoc discussions between individual team members there is a monthly meeting scheduled between representatives of both teams in order to discuss general matters of potential joint interest as well as regular formal referral meetings to discuss specific cases and agree handover from Supervisory to Enforcement. .
114. New enforcement cases originate from a number of sources, one of them being referrals from other divisions within the IOMFSA via the Referral Panel. Whilst the Panel is used to consider developing matters, more urgent matters can be referred directly to Enforcement, typically during or after a supervisory inspection. Referrals are subject to take-on protocols and prioritisation.
115. The Remediation Panel Terms of reference were submitted as part of the assessment. This document sets out the purpose, function and scope. The panel is an internal executive meeting between supervisory divisions and Enforcement. The meetings take place not less frequently than every two months with decisions recorded within a log. Statistics are maintained of the number of referrals and the decisions. All matters referred to the panel that are accepted for investigation are notified to the CEO. There is a Remediation Panel Referral Document in place which allows all referring supervisory divisions to follow a consistent format as to the nature and type of information included as part of the referral process. A number of case studies have been submitted to evidence effectiveness with this requirement of the Standard. They demonstrate the referral process to the dedicated Enforcement function. The post events section herein refers to the Governance Panel that replaced the Remediation Panel.

Principles for Regulation – 2.5 relating to other requirements on Jurisdictions

116. The assessors were satisfied that the IOMFSA demonstrated compliance with the requirements of this section.
117. Trusts, companies and foundations legislation are the responsibility of the Isle of Man Treasury and/or the Department for Enterprise. The IOMFSA is consulted on relevant changes and offers comments, mainly, but not exclusively from a regulatory perspective. The passing of legislation, as in all jurisdictions, is dependent on Government. Examples showing the IOMFSA involvement in the process have been reviewed by the assessors.
118. The Isle of Man has an insolvency regime in place and is applied to TCSPs. With regard to insolvent trust companies - The Trustee Act 1961 provides the High Court of Justice of the Isle of Man, upon application by a relevant person, with a wide range of discretionary powers in relation to the affairs of Isle of Man established trusts. The IOMFSA has asserted that should any question arise regarding “insolvent” trusts, including in respect of the primacy of creditors or beneficiaries, the High Court would be entitled to have regard to the judgment of the Jersey Court in respect of Representation of the Z Trusts [2015] JRC 196C and a similar solution would, prima facie, appear feasible.
119. Examples were reviewed by assessors where two trust companies had been subject to the liquidation process.
120. The appointment of an official receiver is provided for by the Companies Act 1931.
121. The appointment is officially made by the Isle of Man Treasury however to date no receiver as such has been nominated. The process entails the applicant of the winding up, including where the IOMFSA is an applicant, nominating a suitable person to be deemed by the Court as Official Receiver and then appointed as default provisional liquidator.
122. Section 40A of the Trustee Act 1961 provides for the appointment of a public trustee.
123. The Isle of Man does not currently have a permanently appointed Official Receiver, Public Trustee or Trustee in Bankruptcy. The Isle of Man Treasury are currently in the process of reviewing and potentially updating the Island's Insolvency Law and related matters including the potential review of these positions. Section 40A of the Trustee Act 1961 currently permits the English Public Trustee to be appointed, by application to the High Court. Updated legislation may be introduced to appoint a Public Trustee. No circumstances have arisen to date which have been hindered by the absence of a Public Trustee.
124. It is anticipated that the Isle of Man Treasury will be imminently opening a public policy consultation seeking stakeholder views on the potential future model for insolvency and related legislation (in relation to both legal and natural persons) on the Isle of Man.

The stakeholder responses to that consultation will, we understand, guide the development of proposed new legislation and consideration of related matters including, it is anticipated, the potential roles of Official Receiver, Trustee in Bankruptcy and Public Trustee (whether by that name or in some other form yet to be defined). The IOMFSA will contribute to the development of this process.

125. The IOMFSA has measures in place to promote the wider and harmonious adoption of sound and prudent principles as a basis for regulatory regimes for TCSPs. The Standard on the Regulation of Trust and Corporate Services Providers seeks to achieve this. The IOMFSA has asserted its agreement with this principle. It is a member of GIFCS and is signed up in support of the Standard on the Regulation of Trust and Corporate Services Providers. An officer of the IOMFSA also served as lead assessor in the first evaluation under the Standard.
126. The assessors are satisfied that in the event that a TCSP is wound up by the court or otherwise dissolved, the liquidators or any other person to whom custody of books and records has been given, retains such records for a period of five years thereafter. Client record retention requirements under the Rule 8.58 of the Rule Book provide that a licence holder must keep records for at least 6 years after the date on which they are made or provided. Client record retention rules are also found within AML/CFT legislation. Section 266 of the Companies Act 1931 requires a liquidator to retain records for 5 years from the date of dissolution – failure to do so is a criminal offence. There is a provision for early disposal under certain circumstances and with the consent of the High Court or of creditors.
127. IOMFSA does not consider it appropriate for a regulator to be appointed as a trust administrator as this could give rise to potential conflicts and it may not have the appropriate expertise. It may nevertheless apply to the courts to seek the appointment of a liquidator to wind up the TCSP.

PART 3 - THE STANDARD

Observations relating to Part 3A of the Standard - Licensing

Summary

- **The IOMFSA provided evidence of compliance with Part 3A, both in law and in practice and the rating for this part is Compliant.**
- **The assessors recommend that the IOMFSA should consider reaching out to industry to assess whether there is any merit to engaging further with respect to AML/CFT. This is in light of one of the areas highlighted from the assessor's meeting with TCSP industry representatives as part of the onsite visit. These conversations highlighted that they would appreciate more engagement in respect of expectations around AML/CFT requirements.**
- **The post events section herein refers to the AML/CFT outreach update.**

This framework should allow for:

The Regulator to license TCSPs that want to operate in or from within the jurisdiction

128. Overall, legislation supported by the Licensing Policy for Regulated Activities make for a comprehensive licensing regime.
129. Relevant legislative tools within the FSA08 are in place allowing for the IOMFSA to be the issuing body where licenses are concerned. Part 2 Section 3(1), (2)(d) and (2)(e) define regulated activities as including corporate services and trust services. Section 5 makes clear that every application for a licence, in respect to carrying on regulated activities is to be made to the Authority. Section 6 provides for instances whereby a licence shall not be granted. The IOMFSA pursuant to section 7 has the power to issue, issue with conditions or refuse an application for a licence.
130. The Regulated Activities Order 2011 provides for Class 4 (Corporate Services) and Class 5 (Trust Services) regulated activities which define and encapsulate what activities are permitted, as well as exclusions from the same.
131. This is supported by the Licensing Policy for Regulated activities. Cumulatively, the above allows the IOMFSA with the ability to issue licenses either exclusively or with conditions attached.
132. As at the date of the onsite assessment, the IoM have a total of the following issued licenses;

Class Category of Licence	Number of Licence Permissions
Class 4 (Corporate Services)	122

Class 5 (Trust Services)	94
Class 7 (Management or Administration Services)	8 ²

133. Section 4(1) of the FSA08 prohibits a person from carrying out or holding himself out as carrying on, in or from the IoM a regulated activity for which a licence is required.

The Regulator to assess whether a TCSP is at the time of licensing, and remains, fit and proper over the period for which it holds a TCSP licence

134. Requirement for successful issuance of a licence is that the applicant is fit and proper. Failure to satisfy the IOMFSA will result in a licence not being issued. Section 6(2) of the FSA08 deals with the initial stage i.e. the fit and proper status of an applicant, any controller, director, key person and any other person employed or to be employed by the applicant.

135. The Licensing Policy paragraph 1.1.1 expands further that the fit and propriety assessment is one that is applied to the business as a whole with the appropriate level of consideration given to the individuals themselves. The test is one that is conducted at the initial instance (at licensing) as well as having a continuing element (in the ongoing conduct of the regulated activity). The Regulatory Guidance – Fitness and Propriety, supports the primary legislation, and is a wide-ranging documentation of the consideration and requirements an applicant would be required to meet in order to satisfy the Authority’s assessment as to fit and proper status.

136. Additional Guideline (Regulatory Guidance – Fitness and Propriety) provides the rationale and method behind the need to be fit and proper. It explains that the assessment is done in consideration of the ‘role’ as opposed to the ‘post title’ of the person being assessed.

137. The Training and Competency Framework makes clear what the Authority expects in terms of competency and necessary training in order to achieve and maintain a fit and proper status. The document makes clear that the duty rests on the regulated entity to ensure that all staff meet standard and remain so. The levels ensure that the requirement remains dependant on the role and type of work undertaken by the individual and does not rest on the job title.

138. Whilst the initial assessment stage comprises of completion of a comprehensive form, this is supported by interviews, in the event that the responses are not satisfactory. Inter departmental assistance ensures that any information on the applicant is verified and true and shared with other relevant persons who may have any further additional information.

² This number include 5 professional officers

139. No statistics were provided whereby an application was minded to be rejected, seeing as such an instance has yet to arise.
140. When a licence applicant does not appear to be fit and proper, the rationale is provided to the applicant. The applicant will often make the required changes, such as recruiting additional staff or changes to its structure, or the applicant will withdraw its application.
141. Where an applicant disagrees with the opinion of the Authority, the applicant is invited to submit written representations in support of its application. The representations, alongside the opinion of the Authorisations team is considered by the CEO of the Authority. Historically, applications were heard by the Board rather than the Executive. Following a case which was heard by the board the format of the hearing was revised based on legal advice. There have been no subsequent cases requiring use of the revised format to date. In 2020 recommendations to approve a licence were heard by the CEO and recommendations to refuse an application continued to be heard by the Board. Starting in February 2022, the Board considered its delegations framework and has delegated such recommendations to the CEO. This revision eliminates the potential for the Board to instruct the granting of a licence contrary to the Authorisation team's recommendation.
142. A post-licensing review is required within 12 months of the licence having been issued.
- The Regulator to assess whether the Controllers of a TCSP are at the time of licensing, and remain, fit and proper to hold those interests and/or positions
143. FSA08 section 6(2)(b)(i) includes the assessment of the fit and proper status of an applicant's Controller. Failure to satisfy the Authority will result in no issuance of a licence. Paragraph 3.1.1. of the Licencing Policy reiterates the need to satisfy the Authority of the fit and proper status of a Controller, with paragraph 3.1.3. furthering the requirement for such a status to be continuing and not only at the point of application.
144. The IOMFSA is sufficiently empowered in the event that an individual ceases to be fit and proper, i.e. by way of removal of persons from the post. Applicants have opted to withdraw an application in the event that the Authority indicated that the individual would not meet criteria.

The Regulator to assess whether the Key Persons of a TCSP are at the time of licensing, and remain, fit and proper to hold those positions

145. IoM has a very expansive definition of who would amount to a Key Person, with consideration taken as to the level of responsibility an individual may be subject to. The Fitness and Propriety Guidance sets out the relevant criteria and points of assessment when determining whether or not such individuals are fit and proper.

146. Licences shall not be issued if Key Persons are not found to be fit and proper. Consideration is therefore required in order for the issuance of a licence, as per section 6(2)(b)(i) and (ii) of the FSA08.
147. In the event that a person ceases to be fit and proper, such an individual will be directed that they are unable to continue in such a role, rendering same a continuous requirement. Supervision undertaken, inclusive of the review of CPD hours, compliance functions, corporate governance, AML/CFT, along with corporate governance of client entities are used to determine and ensure continued adherence to the requirement. Supervision is also conducted in the event of general triggers and Rule Book notifications.
148. The Authority is sufficiently empowered to take specific action, however indicated that whilst instances have arisen whereby such action was considered, the Authority opts for alternative measures to ensure that clients are not adversely affected. Examples provided whereby third parties were appointed to ensure that business continues. The Authority may elect to engage with the licenceholder in a remediation process, prior to the issuance of more permanent enforcement action.

Withdrawal of the relevant licence in the event that a TCSP is no longer fit and proper or is in material breach of regulatory standards

149. Section 9(1) of the FSA08 empowers the Authority to revoke or suspend a licence at any time.
150. Suspensions of licences have been considered by the Authority, however, the Authority has also considered the use of other options. It has obtained court appointments of managers. The Authority has also issued directions appointing signatories to the business. Other measures such as directions requiring no new business are also used to mitigate risk. These actions are deemed equivalent for the purposes of compliance with the Standard.

The Regulator should consider the ownership, structure, control and/or management of a TCSP. The ownership structure should not hinder effective supervision or facilitate regulatory arbitrage.

151. Section 6(2)(a) of the FSA08 includes consideration being given to the structure and organisation of the applicant.
152. The Licensing Policy outlines the Authority's consideration as to the structure. Paragraph 2.2.1. states that the ownership structure is to be as simple and transparent as possible, so as not to inhibit the Authority's ability to supervise. In the event that a structure is complex or non-transparent, an explanation and justification must be provided.
153. Group structures are effectively supervised in the whole and not solely at the individual entity level.

154. The Rule Book provides for ownership structures for both Isle of Man and non-Isle of Man incorporated structures, with supervision undertaken whether at the solo level or if part of a group. The structural requirement places emphasis on ownership ensuring that at any given time; applicant, owners and even changes in ownership are made known to the Authority. Applications are accompanied by a structural plan with updated versions required, rendering the process expansive whilst catering for changes.
155. There have been no examples where the ownership structure has hindered effective supervision. The Licencing Policy limits complex structures.
156. TCSPs submit ownership structure charts pre and post licensing. Any material changes are to be disclosed and communicated to the Authority.

The Regulator should require that a TCSP demonstrates a physical presence in the jurisdiction in which it is regulated³.

157. FSA08 section 6(1)d makes clear that no licence is issued unless the applicant can satisfy the Authority that it is managed and controlled from the Island. This is supported by a real presence requirement in the Licence Policies, and not just meeting the minimum requirement of at least two resident directors.
158. The Authority agreed for the issuance of a licence on the condition that management and control be moved to the Isle of Man as opposed to the initial structural plan present as part of the application. The applicant agreed and made the necessary arrangement. The Authority would not have issued the licence unless the requirement was met. This demonstrates effectiveness at the application stage.
159. Typically, new licence holders are inspected within a 12 month period and during that inspection it would be evident if there was no physical presence. Desk-based monitoring includes an Annual Regulatory Return and an obligation under Rule 7.9 of the Rulebook to notify of the departure of and recruitment of directors and other holders of controlled function roles. Where and if the licence applicant does not meet the real presence requirement, conditions may be attached, for example with a three-month period to comply. Examples were provided, such as requiring directors to relocate to the Isle of Man.

The Regulator should require that a TCSP's affairs are conducted in a prudent and financially sound manner.

³ The Regulator may consider that physical presence is duly demonstrated by:

- those persons who represent the mind and management of the TCSP being registered in the Regulator's jurisdiction and actively involved in the governance of the business; and
- having an operational place of business in the Regulator's jurisdiction.

160. Consideration is given to the financial standing of applicants, controllers and directors as part of the fit and propriety assessment undertaken. The Licensing Policy further requires the submission of business plans and financial forecasts, as well as elaborating further as to the financial standing and solvency matters. Paragraphs 6.2 and 6.3 of the Licencing Policy respectively, address the professional indemnity insurance cover and other ongoing requirements respectively. The Rule Book prescribes the minimum share capital requirement necessary for each licence type.
161. Continuous inspection, paired with Financial Resource Requirements (FRR), with the Annual Regulatory Return affirms that the firm continues to meet its minimum share capital, liquid capital and net tangible asset requirements. Information included is then reconciled with differences, if any, drawn between the interim and the audited financial statements. The Authority then takes action, through directions to limit and/ or ensure that they continue to operate in a prudent manner.

The Regulator should require that a TCSP has appropriate policies, procedures and controls to ensure full compliance with the anti-money laundering and the combating of the financing of terrorism requirements, including the ability to accurately detail the ultimate beneficial owners of Vehicles.

162. Licensed entities must prepare and maintain compliance with policies, procedures, and controls for compliance with AML/ CFT and Beneficial Ownership laws and regulations. The Rule Book sets a clear responsibility in respect of the need for such policies etc. to be drafted, documented and implemented. Same is not part of the application process itself but the IOMFSA requires that applicants must have procedures in place prior to the licence being issued.
163. AML/CFT Code details preventative measures to be implemented by relevant entities, inclusive of TCSPs. Through the publication of the AML/CFT handbook, the supplemental information document, and the TCSP sector specific guidance, entities are aided in discharging their responsibilities vis a vis same. Paragraph 4 specifically requires procedures and controls be in place.
164. Beneficial Ownership Act 2017, creates and necessitates identification of legal owners, for which it is an ongoing obligation.
165. Statistics provided indicate that inspections are being undertaken whether risk driven, event, or thematic in nature.
166. Manuals and procedures are not reviewed or assessed as part of the application process. TCSPs are required to confirm that they have appropriate procedures in place before a licence is issued.
167. Licence holders are expected to develop their own procedures and are expected to take full responsibility for them. I Procedures are reviewed on-site within 12 months of

licencing to assess the suitability of those procedures in the practical context of the firm and real-life practices.

168. An inspection within 12 months is considered timely considering the TCSP needs time to take on new clients and assess the risks of these clients. As part of this inspection, board minutes and agendas are also reviewed. The IOMFSA will seek to ensure that the policies and procedures have been adopted by the board. The IOMFSA also checks the effectiveness of the licence holder's policies and procedures in operation.

169. In 2021 39 TCSP inspections were conducted:

- Event Driven – 2
- Risk Driven – 3
- Thematic Questionnaire - 34

In total, since May 2017 104 TCSP inspections have been conducted:

- Event Driven - 7
- Risk Driven - 30
- Thematic Inspection - 33
- Thematic Questionnaire - 34

170. The assessors met with TCSP industry representatives as part of the onsite visit. The TCSP sector has a long established industry body in the Association of Corporate Service Providers ("ACSP") who meet regularly with the Authority to raise and discuss compliance and issues, including on AML/CFT. It should be noted that these conversations highlighted that they would appreciate more engagement in respect of expectations around AML/CFT requirements. The introduction of the AML/CFT Division was however acknowledged. The IOMFSA should consider reaching out to industry to assess whether there is any merit to engaging further with respect to AML/CFT.

The Regulator should require that a TCSP is and remains resourced, structured and organised appropriately so that it can manage all Vehicles and assets it administers. This requirement should address policies, procedures and controls, staff capabilities and the numbers and types of appointments to Vehicles which are undertaken by staff, whether in their own name or through corporate directors or other indirect appointments.

171. The FSA08 and Licensing Policy both require that consideration is made regarding the financial standing of the applicant as well as prescribing the minimum paid up capital etc., prior to the issuance of a licence. Through the submission of the FRS and ARR, the Authority is able to verify and continually assess that the licence holder is sufficiently resourced to discharge its function.

172. Following the granting of a licence, licence holders are beholden to the Rule Book. Same provides for corporate governance and management controls with the need for officers

to ensure good governance, with appropriate arrangements in place in line with the size and nature of the business. Appropriate organisation and control of internal affairs are to be conducted within a responsible manner, with consideration given to officers being competent, as well as understanding of the duties and responsibilities of the relevant office held.

173. Staff and management structure charts are submitted as part of the ARRs.
174. The IoM has published further Guidance in terms of Directorships, Trusteeships and other similar responsibilities held by Directors and other individuals in controlled functions, expanding on the expectations, responsibilities and duties, which are role specific.
175. Reference is again made to the initial post licensing inspection conducted within 12 months. Scheduled inspections, and other trigger or Rule Book notifications also aid in the assessment and assurances that licence holders can discharge their functions. In the event of inappropriate structures or internal policies and procedures being insufficient - consideration is taken as to the class of licence, the client portfolio, type of services rendered. It is clear that determinations may vary based on specific information relating to one licence holder to another. The Authority was able to provide instances and scenarios if the same was held not up to the standard, with required action taken, whether in the form of directions or recommendations. It was provided that more often than not, licence holders will make the requisite changes to satisfy the Authority. The Authority, continuously monitors to ensure that such changes are made - no instances of failing to comply were indicated.

Observations relating to Part 3B of the Standard - Corporate Governance (of the TCSP)

Summary

- **The IOMFSA was able to demonstrate clear provisions and measure in place in respect of the regulatory regime for corporate governance and is therefore compliant with the Standard.**

Regulators should require that a TCSP has embedded within it a robust corporate governance culture and framework. The Regulator should have in place an approval process for the direction and management of a TCSP which requires that:

The Board collectively comprises an appropriate balance of skills, knowledge and competence considering its members' relevant experience such that the Board as a whole is able to discharge its duties and responsibilities effectively, and further that no individual or group of individuals can or does unduly dominate the Board's decision making

176. The FSA08, Rule Book and Licensing Policy provides for a robust framework, whereby in order for licences to be issued, consideration is given to the organisation of the applicant, whilst assessing the abilities and fitness and propriety of persons to serve as members of the Board and/or Directors and controllers. Board members are assessed in both an individual capacity, as well as in terms of their collective capacity. Applications are reviewed by a panel of senior staff of the Authority, with a well-rounded assessment process.

177. The Guidance on Corporate Governance provides for corporate governance including aligning the interests of shareholders and directors, management and control systems, balancing of power and responsibility within the Board as well as the distinction made for simple or complex organisational structures or larger licence holders. This document exists to assist licence holders in enhancing their corporate governance framework.

178. The IOMFSA will also consider if there is any individual who is not specified in any Controlled Function but who nevertheless is key to the entity or operating and attempting to control behind the scenes. In such cases the Authority may determine that person holds the R10 Controlled Function - Key Person, and require that person to be assessed as to fitness and propriety.

179. Onsite and desk based supervision undertaken includes reviews of the corporate governance arrangements in place, with consideration had to the size and risk appetite of the respective licence holder.

Where functions have been delegated by the Board, the Board clearly and comprehensively records the functions delegated and ultimate responsibility for the delegated functions remains with the Board

180. The Rule Book places a clear requirement that a licence holder may not delegate any material management or business function to another without the Authority's approval. In the event that same is permissible it is imposed upon licence holders to maintain records pertaining to the same, with the delegation evidence in writing defining the parameters of such a delegation.
181. The Authority does not grant approval for the delegation of core functions. It impresses upon licence holders that the delegation of any function would not absolve same of the ultimate responsibility which remains with them, as well as retaining the ability to impose such limitations onto the delegated function, ensuring discharge in a diligent and proper manner.
182. The approval process itself takes due consideration as to the nature and scale of the delegation, as well as whether or not same is retained within the group. Proper monitoring measures may be put in place, such as the requirement for quarterly reports which are enforceable through the use of section 14 or section 18, however, more often same is undertaken by way of an agreement entered into by and between the TCSP and the Authority.

The management structure should be appropriate to the size, complexity, structure and risk profile of an individual TCSP

183. Arrangements made by entities are to be established in such a manner which would allow for effective corporate governance with consideration given to the size and nature of the business undertaken. The Rule Book necessitates comprehensive policies which are appropriate for the nature and scale of the business, with consideration given if part of a group. The Rule Book paired with the Guidance on Corporate Governance, establishes clear provisions in terms of corporate governance and risk management both at the outset and post licencing.
184. Corporate governance arrangements are reviewed during the inspection processes. If any deficiencies are identified, the TCSP will be informed with appropriate remediation required. Staff structure charts must be submitted and are reviewed. Business risk assessments are a requirement, with Dear CEO letter setting out the Authority's expectations in terms of the risk appetite statement, which is to be taken into consideration when determining whether the scope of management structure is sufficient.

185.

Every Board has a minimum of two individuals to direct the business; who are sufficiently independent of each other such that each would not be unduly influenced by another Board member

186. The presence of two resident natural person directors is a Rule Book requirement; with the Licensing Policy expanding that the compliance function is to be separated from the day to day control of the business which is undertaken by specified individuals.
187. The Authority considers and may take appropriate action should it determine that an individual is more dominant within the corporate structure.
188. Same is supported by the Guidance on the responsibilities and duties of directors under the laws of the Isle of Man, which provides some indication as to the balancing of power and responsibility of the board. Larger licence holders in which a major shareholder is also a director should consider the appointment of one or more non-executive directors to provide an independent view and willingness to challenge decisions.
189. The Authority engages in active communication with relevant persons within the licensed entity, to ensure that the necessary steps are undertaken so that that the roles are appropriately separated, that no one party is dominant. This was evident through the application stage, when approving such a person. There is a requirement that the Authority be informed when there is an outgoing director and/ significant change, paired with ongoing monitoring. In the event that a director becomes dominant, the Authority has appropriate powers to address same, but starting with certain recommendations, whether restructuring or same being non-voting etc.

Directors are aware of and understand their duty to understand applicable legislation, regulation, policy, rules, instructions, guidance and codes of practice to an appropriate level to enable them to discharge their responsibilities

190. Paragraph 3.3.1 of the Licensing Policy provides for the need for directors to have a clear understanding of their statutory and common law duties, as well as the day to day supervision of the licence holder's activities. Same is reiterated and further expanded upon within the Guidance on the responsibilities and duties of directors under the laws of the Isle of Man.
191. Part of the assessment for the issuance of licence includes the assessment of whether directors are fit and proper and thus subject to the vetting process to determine same, which includes a continuing obligation to maintain this status. This includes consideration being given to their qualifications and experience. The Rule Book further imposes the duty to complete a set number of CPD hours, with evidence recorded as to completion.
192. The Code for Corporate Governance includes similar provisions, requiring board assessments whereby directors are to understand the licence holder's business, the regulatory requirement, oversight role and risk profile. Directors are advised to undertake training as to their legal and regulatory duties. Whilst not mandatory, this is encouraged.

193. The IOMFSA assesses compliance through supervision, review of ARRs and AML/CFT returns which are used to identify breaches which may occur at a director level. CPD records are reviewed with action taken if the appropriate number of hours is not met.

Boards comprise individuals that are aware of and understand the Board's collective duty to ensuring that robust arrangements for compliance with the regulatory regime are maintained

194. Board members must be assessed as fit and proper prior to a licence being granted, failing to satisfy the Authority of same results in no licence being issued. Consideration is given to the individual as well as the collective. The Licensing Policy and Fitness and Propriety Guidance provides for the areas reviewed and effectively assessed, whilst imparting the need for an individual to remain fit and proper.

195. The above is supported by the Guidance on the responsibilities and duties of directors under the laws of the Isle of Man.

196. Rule 8.2 of the Rule Book enshrines the need for responsible officers to ensure good governance and compliance with the regulatory requirement, including risk management.

197. The Authority has the ability to appoint managers, and have done so in certain situations, demonstrating the ability to take appropriate action in the event of concerns regarding the capabilities of the Board. Examples within case studies provided further clarity as to the duration of appointments, with same being subject to conditions dependent on the purpose of the appointment.

Boards establish, implement, document and maintain an effective conflicts of interest policy for both the Board and the TCSP, which sets out the standards of expected behaviour including, amongst other matters, the treatment of any non-compliance with the policy

198. Conflict of Interest policies are required to be in writing, whilst being in line and appropriate as to the size, organisation, nature, scale and complexity of the business in question. Rules 8.9 and 8.10 of the Rule Book satisfactorily establish the need for an effective policy and the maintenance of a register (inclusive of what is to feature on such a register), respectively.

199. Paragraph 4.3 of the Guidance for Corporate Governance additionally provides that directors should understand the potential for conflicts of interest to arise.

200. Rules 6.2, 6.8 and 6.11 of the Rule Book caters for licence holder and client relationships, with obligations to ensure that there are no presumptions of independence if not the case, as well as ensuring that clients are notified in the event of a conflict.

201. Such policies and registers are reviewed by the Authority in the course of supervision. In the event of any deficiencies the licence holder is required to go through appropriate remediation.

Boards ensure that they formulate and implement a suitable risk framework for the TCSP, including the production of a statement of risk appetite so that the types of business the firm is prepared to take on and risk tolerance are clear

202. Objective 2 under the Guidance for Corporate Governance include the Management of Risk whereby “each licence holder must have appropriate mechanism to identify and address the risks that are relevant to its business”.
203. Pursuant to the rule 8.6 of the Rule Book, responsible officers are mandated to establish and maintain comprehensive policies with consideration to the nature, size and assessed risk appetite of the business. The Rule Book defines the clear responsibility as to what is to be covered by the policy with the added requirement that same undergoes review. This is furthered by the duty to ensure that such policies and procedures are in fact complied with.
204. The law provides for a licence holder’s need to appropriate procedures and controls for the purpose of identifying, measuring, monitoring and controlling risks. The duty is placed on the licence holder to ensure that the policies as established are complied with; that they are properly maintained and that the risks are monitored on a frequent and timely basis.
205. The Authority has not identified a licence holder that did not have the necessary policies in place. The Authority has however identified deficiencies in polices and registers, and has placed several licence holders in remediation, requiring them to self- remediate deficiencies.
206. To further support effectiveness, the IOMFSA publishes a Dear CEO letter setting out the Authority’s expectation where the risk appetite statements are concerned.

Boards undertake a periodic self-assessment of their effectiveness

207. Rule 8.3(3) of the Rule Book obligates a licence holder to review its controls annually or more frequently, if necessary, with same effectively recorded. This duty is furthered by the Guidance on Corporate Governance, whereby paragraph 4.3 sets out the expectations that the Board evaluate the performance of its members, so as to determine its level of effectiveness and any inadequacies with appropriate follow up action, should same be identified.
208. As part of the inspection regime, the IOMFSA will review corporate governance arrangements to include any of these review reports. Also, as part of the Annual Regulatory Return, the directors attest to the fact they have operated in compliance with the Rule Book.

The Board retains ultimate responsibility for the compliance function, and should ensure:

That it approves and regularly reviews a compliance policy and establishes a defined and resourced compliance function

209. The Rule Book contains the obligation for the appointment of Head of Compliance (“HoC”), MLRO and DMLRO with the role of oversight for a licence holder’s regulatory requirements. It further provides that the HoC is to have direct access to the licensee’s responsible officers as well as, they themselves having sufficient status within the entity to ensure that the responsible officer undertakes the appropriate actions following the recommendations made. The HoC is not a delegable function, with certain instances where the HoC is a member of the Board. Regardless of the latter, the Board remain ultimately responsible for decisions made. Same is a point reiterated in guidance and Dear CEO letters.
210. Guidance on Corporate Governance recommends the quarterly meeting of Boards, unless more frequently required based on the entity itself, with a structured agenda which would allow the Board to adopt and review policies so as to ensure the compliance with statutory and regulatory requirements.
211. Annual or risk-based supervision allows the Authority to assess and identify areas of non-compliance with remedial actions made a requirement if necessary. The Authority holds the Board ultimately responsible for the compliance of the licenceholder. Board meetings are to be minuted with consideration to HoC reports presented to the Board and any subsequent decisions to form part of such a record.

There is periodic verification of adherence with established applicable standards

212. Rule 8.6 of the Rule Book makes clear that beyond the need for the responsible officers of a licence holder being expected to establish and maintain comprehensive policies etc. there is the added duty that the policies are reviewed annually and evidence of such a review is generated. It is further required that the policies include appropriate independent internal audit and compliance procedures to test adherence to the regulatory requirements (8.6(4)(iv)).
213. Rule 8.23 of the Rule Book also provides that the Head of Compliance is responsible as to the regulatory requirement for ensuring that the licence holder has robust and documented arrangements appropriate to the nature and size of the business for compliance with those requirements; the operational performance of those arrangements is suitably monitored; prompt action is taken to remedy any deficiencies in arrangements; and the registers required by rules 8.10, 8.17 and 8.32 are maintained.
214. It was confirmed to the assessors that this forms part of the inspection process, and the “Dear CEO” thematic will specifically address this area.

There is periodic verification of adherence with all regulatory and other legal requirements

215. Rule 8.3 and 8.23 of the Rule Book respectively requires that the licence holder annually or when appropriate, more frequently, reviews its management controls, with the relevant records maintained to evidence same. An appropriate independent internal audit and compliance procedure exists to test adherence to regulatory requirements.

216. Part and parcel of the ARR submission includes a signed declaration, confirming that business is conducted in accordance with the legislative framework as well as any directions which may have been issued by the Authority. Compliance with these requirements are captured as part of the IOMFSA inspection process.

That necessary remedial actions to rectify any shortcomings in the TCSP's operations are taken promptly

217. The Rule Book provides for prompt remedial action to be undertaken in the event of deficiencies being identified in an entity's arrangements. This is furthered by a list of matters which must be notified to the Authority, paired with the steps commenced by a licence holder, and may be subject to deadlines. Lower-level breaches are often times satisfied by assurances from the licence holder as to completion, with more formal verification required in situations concerning more severe breaches.

218. The Authority adopts a risk based approach to supervision, therefore taking into account the impact and severity of the issue, which ultimately dictates the level of supervision to ensure that remedial actions are in fact undertaken and completed.

219. Further to the above, third party appointments may be permissible, with the licence holders consent, to assess the level of effectiveness of the remedial steps/ plan, with a copy of the report submitted to the Authority.

That there are regular reports on the performance of the TCSP's compliance function

220. The Rule Book houses the functions to be undertaken by the head of compliance; this includes the legal responsibility to ensure that the licence holder has a robust and documented arrangements appropriate to the nature and size of the business for compliance with those requirements. In order to effectively discharge its functions for monitoring and where necessary, remedial action, HoCs are to have appropriate independence with direct access to responsible officers, unfettered access to all business lines and departments and to have the status within the entity to ensure that responsible officers react appropriately to recommendations made.

221. The supervisory process has revealed that there have been instances of no formal reporting, predominantly in low impact licence holders. However, compliance matters are found to have been discussed with the Board and minuted accordingly.

222. The Authority has published guidance that directors meetings must be held quarterly at a minimum. It expects the compliance/ MLROs report to be the same frequency at least.

In assessing the quality and strength of the Board of a TCSP, the Regulator should have the power to require the amendment of the composition and size of the Board

223. The Licensing Policy does require that the Board of each licence holder be comprised of individuals that have (collectively) a skill set, experience and track record that is appropriate to the regulated activities undertaken.

224. Section 10 of the FSA08 allows the Authority to issue a direction where it is of the opinion that a person proposed as a controller, director or key person is not fit and proper. The issuance of a 'not fit and proper' direction has the effect of preventing an individual from continuing in a specified role, whilst also prohibiting the appointment or confirmation of such a person into post.
225. Whilst the Authority has the power to remove or cause for amendments to be made to a board's composition, licence holders have normally initiated changes where recommendations have been made or where the Authority may have issued such a direction.
226. None the less, where instances of concern arise, appointments of receiver and managers have been made with periods ranging from three to twenty-six months.

Regulators shall not permit a corporate director to be on the Board of a TCSP

227. Rule 8.24 of the Rule Book and paragraph 3.1.3 of the Licencing Policy make it clear that the licence holder must have two directors who are natural persons. The TCSPs licensed by the Authority have only natural persons as directors.

Observations relating to Part 3C of the Standard - Controllers of TCSPs

Summary

- The IOMFSA provided evidence of compliance with Part 3C, both in law and in practice.

Fit and proper standards

The Regulator should ensure that:

the Controllers of a TCSP must be, and must remain, fit and proper

228. The Authority determines the fitness and propriety of Controllers at the application stage with same being an ongoing requirement. The FSA08 contains clear provisions that should a controller be found to not be fit and proper, no licence shall be issued. The FSA08 provides a clear and concise definition of who would amount to a controller, with the clear requirement that such person be fit and proper.
229. The Licensing Policy provides for the ongoing nature of the fit and proper requirements, in that consideration is given at the application stage, with the fitness and propriety assessment applying to the business as a whole and persons inhibiting a Controlled Function; paragraph 1.1.1 provides that the fitness and propriety assessment is two-fold; at the initial stages and continuing.
230. Paragraph 3.1. of the Licensing Policy, makes provision specifically for Directors, Controllers and Key Persons; effectively reiterating the need for such personnel to be found and retain their fit and proper status.
231. Fitness and propriety assessments provided for at application stage and is an ongoing obligation. Whilst it is possible for licences to be issued with conditions, it was apparent that failing to meet the fitness and propriety criteria would result in a non-issuance of licence. In terms of the determination, interviews proved fruitful and indicative in assessing the role, and extent of involvement within the entity. A common theme revolved around the fact that the Authority has not had to ultimately refuse an F&P application due to the proactive nature of the industry. The meetings the assessors had with licence holders was helpful to obtain an appreciation for the Authority's 'open door' policy which was conducive to the open and frank conversations around fitness and propriety.
232. If a firm proposes an individual that the Authority considers will not meet requirements (usually this will be on the basis of lack of competence / experience), then the Authority will contact the firm, often by telephone, and discuss the matter. That may result in a meeting with the individual and the firm, but where the outcome of that is the Authority still considers an individual to not have sufficient competence etc., the Authority will explain the basis of its concerns in writing and state that it is minded to not permit the person's appointment offering the firm and the person a final opportunity to supply

additional evidence in support of their application - this is often referred to as a 'minded to object' letter. This typically results in the withdrawal of the application for the individual to be considered F&P, but if that were not the case the Authority would move forward with formal objection.

it understands the relationship created by any debt, option, equity or beneficial interest holding in the TCSP⁴ which would make the holder of that interest a shareholder controller

233. The definition of a controller under Section 48 of the FSA08 is broad enough so as to encapsulate persons being:

- a. A managing director of a body corporate of which the licence holder is a subsidiary;
- b. A chief executive of a body corporate of which the licence holder is a subsidiary;
- c. A person in accordance with whose directions or instructions one or more of the directors of a body corporate of which the licence holder is a subsidiary are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
- d. A person who either alone or with an associate is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the licence holder or of another body corporate of which it is a subsidiary.

234. Consideration is further given as to the role i.e., CEO, person on whose instructions action must be undertaken and the exercise or control over 15% or more of the voting power.

235. Ownership and structure matters for IoM incorporated entities are effectively catered for under the Rule Book whereby changes in issued share capital or loan capital must be consented to and approved. Upon licensing the ownership structure chart must be included and is in fact considered during the licencing process, with updated filings required as part of the ARR.

236. The Authority has published guidance on requirements for a change of controller, including documents required. There have been unauthorised changes identified either by a licence holder that is part of a group, or during an annual review of an ownership structure chart. As a result, the licence holder incur a breach, and are required to submit an application. To date, these cases have obtained retrospective consent.

The appointment of, or change in, a Controller may only take place after the Regulator has been notified and has positively confirmed its approval of, or no objection to, the appointment via a separate vetting process

⁴ Both the existence of debt and options can give the holder effective control.

237. The FSA08 Section 10(1)(b) establishes clear provisions that in the event that a person fails to meet the fitness and propriety standards, the Authority retains the ability to direct that such an individual be unable to become a controller without the written consent of the Authority.
238. Appendix 2 of the Regulatory Guidance Fitness and Propriety provides there are two main categories – notify only and those that require notification and acceptance by the Authority, of which controllers are within the category. Same contains that if an individual takes up a ‘notified and accepted’ control functions without the Authority’s prior acceptance. It is important to note that this will not prevent the Authority subsequently objecting to the appointment.
239. The Licensing Policy provides that all persons with responsibility for management and control of the business, and key persons holding controlled functions, must satisfy the Authority that they are fit and proper persons. Where the controlled function is a notified and accepted one a licence holder should consider avoiding appointing an individual to such function unless it has received the written acceptance of the Authority to the appointment to that Controlled function. If such a position is taken up, this will not prevent the Authority from objecting to the appointment if it is deemed necessary.
240. Rule 7.3 of the Rule Book provides that a licence holders must obtain the prior consent of the Authority before any person acquires a controlling interest in the licence holder, or any change takes place to an existing controlling interest in the licence holder which would take that controlling interest from 50% or less to over 50% or from 75% or less to over 75%. A licence holder must notify the Authority of any change to an existing controlling interest in the licence holder which is not covered; the sale or disposal of, or an agreement to sell or dispose of, the whole or any part of the licence holder’s business. Appendix 1 of the Rule Book defines a “controlling interest” should be interpreted by reference to the definition of “controller” in the FSA08..
241. There have been several changes in recent years to change of control requiring the Authority’s consent, and to instances where minor changes in respect of an existing controlling interest are treated as notifiable-only events. There have also been instances where consent has not been granted. This was supported by a case study.

where a Controller exercises a Key Person function within the TCSP, they undergo a separate approval process specific to that role

242. Definition for key person lists encompasses Directors, Partners, Money Laundering Reporting Officers or Money Laundering Compliance Officer and Compliance Officers of a TCSP, to the exclusion of partners as the IoM does not licence partnerships. The FSA08 and Licensing Policy both provide for definitions with the latter expanding further to provide that typically a key person is in a controlled function.

243. Section 6 of the FSA08 provides that a licence will not be issued unless the Authority is satisfied that such other persons as appear to the Authority to be key persons are fit and proper persons to act as such. Subsection (2) goes further to provide for the assessment criteria to have regard for the integrity, competence and financial standing of key persons in relation to the applicant.
244. The approval process only differs for controllers in that they do not need to have role-competence (i.e., have qualifications, experience etc.) if their only role is 'owning' of shares. If the controller has any other role in the TCSP or holds any other controlled functions, they must be competent to hold those other functions and will undergo the appropriate process specific to that role.
245. The Regulatory Guidance - Fitness and Propriety lists all Controlled Function roles which are all various key person roles. The IOMFSA's Atlas data system includes the additional input points for specific information relevant to the undertaking of a key person function, with the procedure differentiated mainly by the active involvement of the individual in the TCSP.

it has powers to refuse approval and remove existing Controllers

246. The Authority is empowered to refuse an approval under Section 10(1) of the FSA08. The Authority has the ability to direct that no appointment be permitted without written consent. Section 10(2) of the FSA08 further provides that if a person is no longer fit and proper to continue in such a role, the Authority may direct that such individual not continue in the role of controller.
247. The IOMFSA provided that removal of such controllers may raise issues in terms of the proprietary rights to shares, however revocation of a licence in its entirety is possible (section 9 FSA08).
248. The IOMFSA is sufficiently empowered in the event that an individual ceases to be fit and proper, i.e. by way of removal of persons from the post. Applicants will invariably withdraw their application before a decision is made. This is typically when the IOMFSA communicates to the applicant that it is minded to refuse and explains its rationale for doing so.

Where a Controller is associated with a jurisdiction that is assessed as higher risk by the Regulator, the Regulator should require the TCSP to demonstrate that it can manage any such risks arising

249. Within the assessment processes and forms that must be completed, the Fitness and Propriety forms requires information as to the jurisdiction with which the individual controller is associated, whether by place of birth, nationality held, previous work history and other relevant information which allows for a conducive fitness and propriety assessment to be undertaken.

250. Supervision undertaken, ensures that the pre-required policies and procedures in place are sufficient and appropriate to the licence holders risk appetite (rule 8.4 and 8.6 of the Rule Book). Paired with the Licensing Policy, the Authority has the reach to assess the fitness and propriety of not only the individuals themselves but of the business as a whole. Consideration is taken to whether a person's holding of a particular role or interest would expose the applicant to undue risk, whether same would hinder supervision and whether interest of customers or potential customers themselves are likely to be prejudiced.
251. The areas under assessment are broad enough for the Authority to identify the extent of possible risks to the licence applicant or holder as the case may be. Information submitted in the initial stages may raise flags resulting in greater scrutiny.
252. A duty is placed on the licence holder to ensure that any risk identified is addressed, but same does not prevent the Authority from making relevant recommendations or such other determinations as it may deem fit.

Integrity

The Regulator should require that any Controller acts with integrity at all times

253. Section 6(2) of the FSA08 includes the requirement for applicants and persons to be assessed, as part of the fitness and propriety assessment, as to their integrity. The Licensing Policy extends same, providing for these elements to be taken into consideration.
254. Continuous supervision, paired with Rule Book requirements whereby the Licence holder must inform the Authority of any trigger events that may occur, for example the notification of a professional sanction against a member of their body.
255. The Authority retains the power under the FSA08 to direct that such a person requires written consent for an appointment or direct that such a person cannot continue in the role of controller should they cease to be fit and proper.

Competence

Controllers who exert an influence over the day to day affairs of a TCSP should be competent

256. All controllers are subject to the Authority's fitness and propriety assessment as outlined above for which their competence is also assessable.
257. Paragraph 3.3.3 of the Licensing Policy specifies further for the controllers exercising influence over the day to day affairs or the applicant, the controller needs to demonstrate competency. The Fitness and Propriety Guidance does provide that competency standards may not need to be met if the controller undertakes no other controlled functions.
258. At application stage a business plan is required, as well as discussions relating to the entity and its controllers and key persons. This will clarify who the controllers are and

whether they are involved and have influence in the management of the licence holder. For existing licence holders changing control, the documents requested (such as structure charts) and discussions with the Licence holder will clarify whether a controller is involved and has influence over day-to-day matters.

Financial soundness

If the TCSP is part of a group, the Regulator should assess the financial strength of the group insofar as it may impact the TCSP. Accordingly, the Regulator may require copies of the parent company financial statements and other relevant information to be submitted to it.

259. The Licensing Policy includes provisions in the event that applicants are part of groups. The Authority can supervise on both a solo or consolidated basis, with the ability to assess the whole group. The assessment is dependent on the licence holders specific group dynamics/ structure.

260. The Rule Book rule 2.10 ensures that where a licence holder is a subsidiary it must submit to the Authority unconsolidated (if consolidated is not available) audited financial statements and (if a trust or foundation) other confirmations of the entity's financial position.

261. Licence holders are required to submit annual structure charts together with the ARR. The Regulator should assess the solvency of Controllers and the impact on the TCSP where any Controller has been or is likely to be declared bankrupt or insolvent or has been the subject of a money judgement

262. The fitness and propriety assessment set out within the FSA08 (section 6(2)) includes the financial standing of the applicant, as well as that of the controller or director of the applicant and key persons in relation to same.

263. The assessment extends to the entity's business activities (its financial standing) if the controller is not an individual. There is an annual requirement that copies of audited parent accounts are to be submitted and reviewed.

264. Fitness and Propriety assessment forms require disclosure pertaining to financial soundness, inclusive of bankruptcy declaration. Part of the licencing process includes the IOMFSA cross checking the national bankrupt registers.

The Regulator should require that Controllers demonstrate clearly their sources of wealth and source of funds

265. Licensing Policy requires application to be accompanied by information as to the source of wealth and source of funds of prospective controllers. In addition, question C31 of the fitness and propriety Controller Questionnaire requests full details as to source of funds and wealth pertaining to the purchase of the controlling interest, which are often supported through submission of copies of bank statements as evidence for share capital etc.

Conflicts of interest

The Regulator should assess whether Controllers of TCSPs have any existing or potential conflicts of interest and should any conflicts exist, the Regulator should ensure that these are addressed appropriately

266. The Rule Book requires a licence holder not to claim independence or impartiality where it does not exist. Where conflicts of interests arise, with the distinction between the licence holder or any relevant person and its clients or between one client and another, must notify the concerning client.
267. The Rule Book further imposes the requirement of a conflicts of interest policy being established, implemented and maintained. Instances whereby the licence holder is part of a group, any conflict of interest arising as a result of the structure and business activities of the other members of the groups are also recorded. Delegated duties which may give rise to conflict are also to be recorded. Same continues to require the delineation and identification of specific activities which would be deemed to be a conflict with procedures and measures to be adopted to manage same (rule 8.9).
268. The policy prepared and adopted by Licence Holders are reviewed during the inspection process.
269. In recent cases where a potential conflict was identified the Authority (inter alia) obtained a Section 23 FSA08 Report in relation to that and other issues. A public statement on the outcome and measures taken as a result was issued. The Section 23 report identified a number of concerns regarding how a TCSP had identified and mitigated conflicts of interest within its existing customer base. The Investigation identified a number of conflicts of interest, personally related to each of the directors of the TCSP, which were not recorded on its conflicts of interest register. Such failure to record these conflicts of interest was contrary to the requirements of the Rule Book and contrary to the TCSP's own internal policies and procedures. The nature, extent and type of unrecorded conflicts of interest were of such a nature and frequency as to cause the Authority to conclude that a Civil Penalty was necessary.

Observations relating to Part 3D of the Standard - Key Persons and Other Employees

Summary

- **The IOMFSA provided evidence of compliance with Part 3D, both in law and in practice.**

Key Persons

The Regulator should assess the fit and proper standards and ensure that the appointment of, or change in, a Key Person may only take place after the Regulator has been notified and has positively confirmed its approval of, or no objection to, the appointment via a separate vetting process. The Regulator should require that all Key Persons of a TCSP are fit and proper for their roles on an ongoing basis.

270. Key persons are defined within the Licensing Policy as a person who has, or who appears to the IOMFSA to have, significant powers and responsibility in relation to any regulated activity. A full definition is provided within Section 48 of the FSA08. Typically, a key person will be in one of the Controlled Functions.
271. Appendix 2 of the Fitness and Propriety Guidance provides clearly for key functions which would require notification only, as well as those requiring notification approval. The table also includes a category of other key person whereby the Authority retains the discretion if the individual does not appear to fall into the typical controlled function but still has significant powers and responsibilities. These positions are subject to notification and potential acceptance, but this is dependent on the role undertaken by the individual.
272. Section 6 of the FSA08 makes clear that a licence will not be issued unless the Authority is satisfied that such other persons as appear to the Authority to be key persons are fit and proper persons to act as such. Part of the assessment requires the Authority to have regard to the information before it as to key persons in relation to the applicant.
273. The Licencing Policy provides further guidance on Section 6 of the FSA Act providing that, before a licence can be granted, the IOMFSA must be satisfied that the applicant is fit and proper to undertake the regulated activity. The test is applied to the business as a whole and the persons responsible for the management and control of the business and key persons (persons in Controlled Functions). The policy makes clear that the fitness and propriety assessment is an initial test (at licensing) and a continuing test (in the ongoing conduct of the regulated activities. The Authority can take regulatory action including the suspension or revocation of a licence if a licence holder does not continue to satisfy the fit and proper criteria (1.1.1).

274. The Licencing Policy also addresses key persons. It makes clear that all persons with responsibility for management and control of the business, and key persons must satisfy the Authority that they are fit and proper persons. If an individual takes up a notified and accepted controlled function without the required acceptance, it is important to note that this will not prevent the IOMFSA objecting to the appointment should that be necessary (3.1.3).
275. Rule 7.9 of the Rule Book states that a licence holder must provide the Authority with 20 business days' notice before the appointment of a controller, director or key person. The Authority then has 20 business days to assess the person and consider their F&P before making a decision to prevent the appointment (or not).
276. There are limited exceptions to this notice requirement outlined under Rule 7.10 of the Rule Book where an appointment is made under exceptional circumstances - these are time limited to a maximum of 12 weeks and are used where a key person (such as director, head of compliance or MLRO) is suddenly unavailable, and the post must be filled immediately.
277. Rule 7.12 of the Rule Book provides that a licence holder must take reasonable steps to ensure that all individuals who perform any regulated activity in the course of their employment, or under contract, with the licence holder are fit and proper for the tasks they perform. A licence holder must notify the Authority promptly if it becomes aware of any significant matters that may affect an assessment of the fitness or propriety of any of its directors, controllers or key persons.
278. The IOMFSA has confirmed that there have been no instances where appointments have taken place when the Authority has not accepted an individual in a controlled function.

The Regulator should have the power to refuse approval to and remove a person from a Key Person role

279. Section 10 of the FSA08 provides that if an individual does not appear fit and proper the Authority may direct that such a person not be appointed save with the written consent of the Authority. In the alternative, if an appointment has been made for which the key person fails to continue to maintain its fit and proper status, the Authority may direct that such a person, not continue in the relevant role. The Licensing Policy makes it clear that the fitness and propriety assessment is not simply an initial one but one that is continuing in nature.
280. The assessors note that whilst such powers are available, the Authority has taken preliminary steps, however, where the Authority has been minded to object to an application, the applicant and/or licence holder has withdrawn the application. In making a fit and proper determination, the Regulator should consider integrity, competence and financial soundness

281. The FSA08 section 6(2) makes clear that the fitness and propriety assessment includes regard as to the integrity, competence, financial standing, structure and organisation of the applicant as well as the integrity, competence and financial standing of key persons in relation to the applicant.
282. Licensing Policy and Fitness and Proprietary Guidance provides further direction as to the assessment of the respective elements when determining a person's fit and proper status.
283. Competence is assessed against the Training and Competence Framework, and it is assessed by the Supervision teams against the regulated entity in question. The Regulatory Guidance – Fitness and Propriety makes it clear that competence must be considered for the regulated entity in question.

Prior to appointing a Key Person, the Regulator should assess the outcome of the following checks in respect of a proposed Key Person:

Criminal records;

284. The IOMFSA requires that the licence holder first complete its own checks followed by a declaration that it is in fact satisfied by the proposed individuals' fitness and propriety. Criminal record checks are expected to have been carried out within 12 months of the Fitness and Propriety form being submitted. The form to be submitted includes current convictions and spent convictions.
285. The Rule Book provides a requirement that the Authority is to be notified if it becomes aware of criminal proceedings or convictions lodged against the licence holder or associated company, officer or employee of the licence holder or associated company.
286. Where convictions are found, the Authority may conduct further assessments and interviews so as to establish the circumstances, and relevance to the role to be undertaken.
287. The Authority has considered a number of F&P applications where a person has a criminal record. Often this will be minor or old and not material to current integrity (such as a speeding offence from numerous years ago).
288. The Authority is required to be provided with a criminal records check and has an exemption from the Rehabilitation of Offenders legislation, which means individuals must inform even about 'spent' convictions, cautions, warnings and reprimands that they do not need to inform others (including their employer) about.
289. The assessors are satisfied as to the Standard being met.

regulatory sanctions;

290. The assessors are satisfied that the declarations and information required within the Fitness and Propriety Individual Questionnaire, specifically questions 29, 36 and 39 satisfy the criteria for disclosure on regulatory sanctions.

291. Further to same, the IOMFSA undertakes checks in the form of Gateways, regulator to regulator and jurisdictional checks etc.

professional reprimands;

292. The Fitness and Propriety questionnaire provides for the need for an applicant to provide responses as to whether a censure, disciplinary action, criticism or barring of entry of any professional body or trade association or court or official enquiry been launched. Whether any practising certificate has been suspended or revoked. Whether the applicant in whatever form, has been faced with a fine, reprimanded by governmental, professional or regulatory body or has been the subject of an investigation. And/or whether or not the applicant in any capacity received a formal warning or has been censured, disciplined or publicly criticised or been subjected to a regulatory order or direction.

293. Consideration is given to reprimands which may have been handed down outside the jurisdiction. Routine gateway enquiries are often used to determine materiality of same.

294. All TCSPs are required by Rules 7.12 - 7.14 and Rules 8.18 and 8.19 of the Rule Book to disclose any matters which may affect the assessment of a person's F&P explicitly including staff disciplinary matters, fraud, dishonesty, action by professional bodies and disqualification by a competent authority.

295. The IOMFSA has explained that it has rarely seen reprimands of this nature. The reason for the reprimand is key to determining whether it is relevant to the Authority. To simply use the fact of a reprimand against an individual would not be fair or proportionate.

other formal censure, discipline or public criticism;

296. Reference is again made to the Fitness and Propriety questionnaire. This provides for the need for an applicant to provide responses as to whether a censure, disciplinary action, criticism or barring of entry of any professional body or trade association or court or official enquiry has been launched.

297. The questions are deemed broad enough to provide a wide enough scope for assessment, with same being subject to checks, whether through inter regulatory checks, world checks, SIS checks, insolvency searches etc.

refusal of the right to carry on a trade, business or profession for which a specific licence, registration or other authority is required;

refusal of entry to a trade organisation that imposes a fit and proper test (where applicable);

298. The Fitness and propriety forms for Individuals, including question 40 of the Individual Questionnaire, caters for the disclosure of any other matter which same would believe to be material to the application. The IOMFSA submitted a case to help demonstrate

effectiveness in this area. It provided an example of a matter which should have been disclosed under question 40 but was not.

declaration of bankruptcy (or similar);

299. Rule 7.12 places onus on the licenceholder to notify the Authority if it becomes aware of any significant matters that may affect an assessment of the fitness or propriety of any of its directors, controllers or key persons. Financial standing forms an explicit part of a person's fitness and propriety under section 6(2) of the FSA08, this means that a licenceholder is required by law to promptly inform the Authority if it becomes aware of any significant matters affecting the financial standing of a director, controller or key person – including bankruptcy or other creditors arrangements.
300. The Fitness and Propriety form includes disclosure on matters pertaining to the financial soundness of an individual, inclusive of bankruptcy. The IOMFSA cross references and checks with national bankruptcy registers; with the Fitness and Propriety Guidance extending further to provide for consideration of bankruptcy declaration, current undischarged bankrupt status, and compromise arrangements with creditors, subject to judgement debts that are not satisfied in full, or was a member of a governing body of an entity which has been the subject of insolvency proceedings.
301. The IOMFSA confirmed that no one in recent years has come forward for F&P assessment with a bankruptcy record.

civil action;

302. The Fitness and Propriety Individual Questionnaire provides for a need to declare whether or not there are any outstanding civil litigation against the applicant or any body corporate of which the applicant is associated with, inclusive or current proceedings.
303. As part of the Authorisations procedure, civil litigation disclosures have been recorded on the Authority's Atlas system since October 2020. Three civil action disclosures have been disclosed in relation to individuals and seven in relation to corporates.
304. The Authorisations procedure includes non-public checks such as SIS requests, world-checks and gateway letters to other regulators. The IOMFSA submitted an Appendix to the evaluation submission documents setting out the Authorisations procedure specifically in relation to the assessment of an individual's disclosures.
305. The Authority would seek further information to determine whether the matter is material to the determination of an individual's fitness and propriety.
306. In some cases, those in controlled functions may disclose litigation against client companies which they were a director of at the time. This is normally something the Authority will be aware of, and the matters are considered on a case-by-case basis.

307. Further checks performed by the IOMFSA have picked up non-disclosure indicating an effective system in place. Again the interdepartmental cooperation and cross agency communication assists and further aids the Authority in the discharge of their regulatory function.

whether the person is subject to any investigation personally or in relation to any associated corporation;

308. Questions 26, 29 and 38 of the Fitness and Propriety Individual Questionnaire requires the submission of information pertaining to whether or not the applicant is at the present time the subject of criminal proceedings or investigations, or whether they have been involved in an entity or legal arrangement which has been subject to same. An applicant must further provide whether or not they have been subject of an internal investigation by or on behalf of an employer. Further checks and measure in place, including the interview process, have allowed the Authority to effectively uncover and/or flag pertinent issues which may impact on an individual's fitness and propriety assessment.

professional or other relevant qualifications; and

309. The Fitness and Propriety Individual Questionnaire makes a clear requirement for an applicant to provide details of academic qualifications, professional qualifications and membership of professional or trade bodies.

310. The Training and Competence Framework helps in discerning what qualifications would be relevant to a controlled function, including academic or professional qualifications that are in fact appropriate to the proposed role to be undertaken. Professional or other relevant qualifications form part of the competency assessment within the fitness and propriety assessment.

311. It is possible for the Authority to allow the appointment of a key person not meeting the professional/ relevant qualifications requirement provided that a training plan is put in place. Failure to satisfy or adhere to such a plan, will result in appropriate action being undertaken.

312. The IOMFSA shared a case study with the assessors which demonstrated the assessment of qualifications and including a requirement for the obtaining of relevant qualifications and same being followed up.

knowledge and/or experience relevant to the business concerned.

313. The assessors are satisfied as to the consideration given to the knowledge and experience relevant to the business being part of the fitness and propriety assessment. The Fitness and Proprietary Guidance establishes clearly the need for controlled functions to be filled by persons with sound knowledge of the business of the regulated entity as a whole, as well as their specific functions and responsibilities.

314. Applicants are expected to provide previous employment history for the past 10 years as part of the Fitness and Propriety Individual Forms to be completed.
315. The applicant signs a formal declaration that they will maintain their fitness and propriety, in terms of integrity, financial standing and competence at all times. The licenceholder countersigns the declaration upon submission to the Authority.

Other employees

The Regulator should require a TCSP to implement controls in respect of the recruitment and ongoing assessment of all employees including directors. The Regulator should require that the TCSP:

has recruitment procedures to ensure it employs employees who are competent to perform their roles

316. The Training and Competence Framework 2020 includes provisions relevant to all employees of TCSPs stating “A regulated entity should ensure that all individuals providing services to the regulated entity are competent for the tasks they perform and the entity should have a documented policy which sets out its commitment to employee training and competence”. The onus rests on the regulated entity to ensure that persons employed are competent and remain so, with the appropriate supervision with a review of their competence in line with the nature of the business undertaken.
317. The Licensing Policy further provides that consideration is given to the persons employed or to be employed by the applicant for the purposes of its business. Along with the Rule Book instilling certain management controls on the licence holders’ staff (rule 8.3).
318. During the inspections process, the Authority reviews CPD records and AML/CFT training records. It does not routinely inspect recruitment records or training plans. In general, as long as staff are suitably qualified and experienced, and the inspection process does not reveal issues that indicate a lack of competence, the Authority will assess matters according to the outcomes.

appropriately supervises its employees

319. The Licensing Policy provides that persons responsible for the management and control of an applicant’s business should ensure that, by their conduct and by providing appropriate supervision and training to others within the organisation, the applicant’s business is conducted with integrity.
320. The Training and Competency Framework also provides that individuals working towards achieving the required level of competence, should be supervised by a person who is fully competent until that individual can demonstrate the appropriate level of competence. Responsibility is on the regulated entity to ensure that arrangements are in place and working successfully.

321. The IOMFSA shared a copy of a Dear CEO letter which helps to demonstrate acknowledgement of the importance that affairs are conducted in an appropriate manner, with the board bearing responsibility to ensure that comprehensive policies, which are appropriate to the nature and scale of the business are in fact in place and maintained and adhered to.

regularly reviews the competence of its employees, and that the level of competence is appropriate to the nature and size of the business, and

322. This is covered by Rule 8.3 of the Rule Book which provides that where staff are employed or responsible for regulated activities are conducted by other, the licence holder must ensure that adequate measures are made so that those persons are suitable, adequately trained, properly supervised and do not exceed the licence holders permission of limitations. The roles and responsibilities as well as imposed limitations must be documented; with individual not providing financial advice unless that individual holds a relevant qualification to do so. Licence holders must ensure that duties are carried out diligently and in the proper manner. The rule applies to key persons and any other individual, whether or not employed by the licence holder.

323. Additionally, the Training and Competence Framework provides that a regulated entity should have appropriate measure to ensure that an employee who has been assessed as competent remains so.

324. The IOMFSA's inspection process includes a review of any 'gaps' with regard to competence and findings will be communicated to the licence holder.

ensures all employees remain competent for the role they undertake by undertaking appropriate training or professional development

325. Rule 8.5 of the Rule Book requires the licence holder to ensure that all directors and key persons complete the required amount of CPD Hours annually with records maintained of same. The Licensing Policy also establishes employees must remain competent and not just pass the initial test.

326. The IOMFSA reviews ongoing adherence in the course of its supervision. Breaches must be recorded with the licence holder made to remediate short comings. The introduction of the Atlas system proved effective in appropriately capturing breaches. Therefore, the assessors deem the regime in line with the Standard.

The Regulator should require TCSPs to have procedures in place to control recruitment practices in regard to all individuals including Key Persons. The Regulator should require the TCSP to, prior to hiring an employee, give due consideration to an applicant's:

criminal records; regulatory censure; professional reprimands; other formal censure, discipline or public criticism.

327. Disclosure as to criminal records, regulatory censure, professional reprimands, other censure, discipline or public disclosure are required at the application stage as part of the Fitness and Propriety Individual Form submission.
328. Whilst not prescriptive to include criminal records, regulatory censures, or professional reprimands, Part 8 of the AML/CFT Code – provides that a relevant person must establish, record, maintain and operate appropriate procedures and controls to enable the relevant person to satisfy itself of the integrity of new officers of the relevant person and of all new appropriate employees and workers.
329. The IOMFSA confirmed that there is an expectation on the licence holder to satisfy themselves that individuals are fit for the role. The IOMFSA also indicated that firms have in place their own measures to assess and ensure that persons are appropriate.

Training and development

The Regulator should require that a TCSP establishes and implements policies and procedures that require its employees, including Key Persons, to undertake an annual programme of training and professional development

330. Rule 8.5. of the Rule Book addresses the number of CPD Hours to be completed in respect of a licence holders directors and key persons, including the duty to record same.
331. The Training and Competence Framework paragraph 1.2.2 imposes the need for a regulated entity to have appropriate arrangements in place to ensure that employees who have been assessed as competent remain so. This includes determining individual training needs at relevant intervals.
332. Inspections conducted include a review of the training and CPD records.

Observations relating to Part 3E of the Standard – Control Over Vehicles

Summary

- The IOMFSA was able to demonstrate a strong technical compliance in the regulation of TCSPs and the vehicles they administer. The regulatory regime relating to this part of the Standard is Compliant.

E.1 Professional Duties

Regulators should require that TCSPs have adequate written policies and procedures to ensure the professional performance of their duties.

333. The IOMFSA Rule Book, rules 8.3, 8.6, 8.8, 8.9, 2.30, 6.2, 6.3, 8.23, 8.27, 8.32, , 8.14, 8.15 and the AML/CFT Code, paragraph 4 requires TCSPs to ensure they have policies and procedures in place to ensure the professional performance of their duties.
334. The assessors observed that licence applicants are not required to provide manuals and procedures at the licensing stage but to confirm that there are appropriate procedures in place before a licence is issued by the Authority. The IOMFSA may also, on a risk-based approach, request sight of certain procedures before a licence is issued, where these procedures may be instrumental in mitigating a heightened risk.
335. The assessors confirmed from the data and pre-onsite materials provided that the IOMFSA reviews the TCSPs policies and procedures as part of its on-site inspection process, within 12 months of licensing for all new licence holders and thereafter in future on-site(s), to assess the suitability of the procedures in the practical context of the firm and in real-life practices.
336. Overall, the IOMFSA was able to demonstrate from a TCSP Inspection Report, examples where the Authority reviewed a TCSP's policies and procedures prior to an inspection with exceptions noted. The IOMFSA obtains copies of the Board Minutes which show that the relevant policies and procedures have been adopted referencing the relevant legal basis where appropriate. An example of such a board minute was submitted to support effectiveness.
337. The IOMFSA statistics table below shows the number of new licence-holders since 2017 and the completed post-licence inspections:

	Total	2017	2018	2019	2020	2021	2022
New Licence-holders	7		3	1		3	
Post-Licensing Inspection	6			3	1		2

All post-licence inspections have resulted in remediation within Supervision. The Authority has intervened in one licence-holder by issuing a direction and notification.

338. The IOMFSA statistics table below show the number of completed inspections since 2017 versus the TCSP population each year:

LICENCE-HOLDERS	Total	2017	2018	2019	2020	2021	Nov-2022
Inspections since May 2017	101	17	13	11	3	39	18
High Risk	12	3	2	3	1	3	0
Medium Risk	67	9	8	5	2	8	16
Low Risk	22	5	3	3	0	28	2
TCSP Population		114	115	112	110	107	108
High Impact	27	3	2	1	1	17	3
Medium Impact	58	11	5	6	2	3	15
Low Impact	16	3	6	4	0	19	0
Inspections as a % of TCSP Population		15%	11%	10%	3%	36%	17%

Regulators should ensure that in order to meet the requirements and obligations under the FATF Recommendations relating to money laundering and terrorist financing risk that in respect of any Vehicle which a TCSP may incorporate, create, administer, manage or provide services to, the TCSP:

Documents, verifies and keeps updated the beneficial ownership of those Vehicles as a component of its policies, procedures and controls on a customer's due diligence;

339. The IOMFSA AML/CFT Code, Paragraph 3, defines a beneficial owner and a customer. Paragraphs 8 (new business relationship) and 11 (for occasional transactions) require TCSPs to establish, record, maintain and operate procedures and controls to identify and verify a customer before a business relationship is entered into or during the formation of the relationship. The specific requirements of beneficial ownership and control for customers that are not natural persons are set out at Paragraph 12 of the AML/CFT Code except as provided in Part 6, where the requirements of this paragraph are not met within a reasonable timeframe, the procedures and controls must provide that –

- the business relationship must proceed no further,
- the relevant person must consider terminating the business relationship, and
- the relevant person must consider making an internal disclosure.

Paragraph 13 sets out the requirements for ongoing and effective monitoring of any business relationship or occasional transaction.

340. The Beneficial Ownership Act 2017 (the Act) also places obligations upon legal owners and nominated officers (Including Class 4 TCSP licenceholders) of all companies and foundations on the Isle of Man to ascertain and verify who the beneficial owner is. Section 4 of the Act defines a beneficial owner and beneficial ownership, and Section 5 includes details of the legal entities to which this requirement applies to. The requirements of the Act are ongoing and must be kept up-to-date.
341. The IOMFSA Rule Book, rule 6.65 requires a licence holder that acts or arranges for another person to act as a nominee shareholder or nominee member of a company to ensure that in all such cases a written nominee agreement or such other trust instrument as may be appropriate exists, and to retain a copy of the agreement or instrument in its records.
342. The IOMFSA undertakes testing to assess the effectiveness of the policies and procedures and how well they have been implemented and adhered to historically. The vast majority of the IOMFSA inspections have included an AML/CFT component. The creation of a dedicated AML/CFT division is likely to mean AML/ CFT inspections will be clearly distinct from other supervisory inspections.
343. The IOMFSA annual AML/CFT Statistical Return collects data on the residency of beneficial owners.
344. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.
345. Typically, a client or customer list is obtained by the Authority from the TCSP and a sample of files is put together for review on-site to test and assess that the appropriate beneficial ownership information has been obtained for TCSP customers.

Knows the beneficial ownership of the source of funds being vested in those Vehicles;

346. The IOMFSA AML/CFT Code, Paragraph 8(3)(e) requires that TCSPs procedures and controls are taking reasonable measures to establish the source of funds including, where the funds are received from an account not in the name of the customer. This requirement is ongoing throughout the relationship in which services are provided to the vehicle as set out in Paragraph 13 of the AML/CFT Code.
347. The IOMFSA AML/CFT Code, Paragraphs 14 and 15 require TCSPs to obtain details of source of wealth and source of funds, if a customer is a PEP or higher risk.
348. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

349. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that the appropriate information on the beneficial ownership of the source of the funds being vested in vehicles has been obtained.

Has policies and procedures to ensure that full documentation is held evidencing the nature of business to be engaged in, as well as the powers of any Vehicle; and

350. The IOMFSA AML/CFT Code, Paragraph 6(2) requires TCSPs to carry out a customer risk assessment prior to the establishment of a business relationship or the carrying out of an occasional transaction with or for that customer, it must be recorded in order to demonstrate its basis and regularly reviewed and, if appropriate, amended so as to keep the assessment up-to-date. Paragraph 6(3)(b) require that customer risk assessments must have regard to all relevant risk factors including the nature, scale, complexity and location of the customer's activities.

351. TCSPs must also have procedures and controls on obtaining information on the nature and intended purpose of the business relationship for new business relationships as required by Paragraph 8(3)(d) of the IOMFSA AML/CFT Code, and is an ongoing requirement in accordance with Paragraph 13 of the Code.

352. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

353. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that the appropriate information and documentation evidencing the nature of business to be engaged in, as well as the constitutional documents such as Memorandum and Articles of Association of any vehicle has been obtained.

Has policies and procedures to establish, access in a timely manner and retain documentation of beneficial ownership information for all Vehicles.

354. The IOMFSA AML/CFT Code, Paragraph 4(1), require TCSPs not to enter into or carry on a business relationship, or carry out an occasional transaction, with or for a customer or another person unless it establishes, records, operates and maintains procedures and controls in order to comply with Paragraphs 12, 33, 34, and 35. Paragraphs 12 & 13 require TCSPs to identify and take reasonable measures to verify the beneficial owners of customers which are not natural persons and must undertake ongoing monitoring to ensure these information & documents held for the purposes of CDD and ECDD are up to date, accurate and appropriate.

355. A TCSP must keep a copy of documents obtained or produced under Paragraphs 12, 37 and 39, of the IOMFSA AML/CFT Code including identification information, account files, business correspondence records and the results of any analysis undertaken (or

information that enables a copy of such documents to be obtained) and the records must be kept for a period of 5 years from the date of completion of the transaction as set out in Paragraphs 33 and 34 of the Code.

356. Records required to be established and maintained under the IOMFSA AML/CFT Code must be capable of retrieval without undue delay, if the records are hard copies kept on the island or electronic and readily accessible in or from the island, otherwise hard copies kept outside of the island is made available within 7 working days. The obligations of Paragraph 35 of the IOMFSA AML/CFT Code on record format and retrieval continues to apply for a period of 5 years, after a person ceases to be a TCSP.
357. The Beneficial Ownership Act, Section 13 also contains requirements for the preservation of required details and verifying information on beneficial ownership for a minimum of 5 years from the end of period to which the information relates.
358. The IOMFSA Rule Book, rule 8.27 requires a licence holder to establish and maintain procedures to ensure sufficient information is recorded and retained about the conduct of its business and its compliance with the regulatory requirements. These records must be kept for at least 6 years after it ceases to hold a licence.
359. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.
360. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess timely access of beneficial ownership information including compliance with requirements on record retention.

Regulators should also require that TCSPs:

Have a robust system in place to establish beneficial ownership information in accordance with the FATF Recommendations;

Paragraph 3 of the IOMFSA AML/CFT Codes defines a beneficial owner as a natural person who ultimately owns or controls the customer, or on whose behalf a transaction or activity is being conducted, includes a natural person who ultimately owns or control, either direct or indirect ownership of 25% or more of the shares or voting rights in the legal person or exercises ultimate effective control or significant influence.

Section 4 of the Beneficial Ownership act defines beneficial ownership as a natural person who ultimately owns or controls a legal entity to which this Act applies, in whole or in part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in that entity, or who exercises control via other means, and “beneficial ownership” is to be construed accordingly. It is wider in scope than the AML/CFT Code and not restricted to ownership or voting rights, or 25%.

361.

362. The IOMFSA AML/CFT Code, Paragraph 12, requires TCSPs to identify and take reasonable measure to identify and verify the beneficial owners of customers which are not natural persons (refer also to E.1.2.1 above).

363. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

364. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess the system in place to establish beneficial ownership information.

Document the rationale for the establishment of any Vehicle;

365. The AML/CFT Code, Paragraph 8 requires TCSPs to establish, maintain and operate procedures and controls for each new business relationship to obtain information on the nature and intended purpose of the business relationship. The nature, scale, complexity and location of the customer's activities must also be factored into the customer risk assessment as required in Paragraph 6 of the Code. And Paragraph 13 requires TCSPs to perform ongoing and effective monitoring of any business relationship or occasional transaction, including a review of information and documents held for the purpose of CDD and EDD to ensure they are up-to-date, accurate and appropriate, in particular where the transaction or relationship poses a higher risk of ML/FT.

366. The IOMFSA annual AML/CFT Statistical Return collects high level information relating to the principal activity of client entities. This is broken down into Trading, Asset Holding, Charitable activities, and Other.

367. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

368. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that appropriate information and documentation on the rationale for the establishment of any vehicle has been obtained.

Undertake a risk-based approach to the establishment of and monitoring of a complex structure and that they hold adequate, accurate and timely information on the rationale for its use;

369. The IOMFSA AML/CFT Code, Paragraph 4, requires TCSPs to have policies and procedures in place for the performance of their professional duties. These procedures

and controls must have regard to the materiality and risk of ML/FT; enable TCSPs to manage and mitigate the risks of ML/FT, and be approved by the senior management of the TCSPs. Paragraph 6 requires TCSPs to carry out an assessment that estimates the risk of ML/FT posed by its customer. And the customer risk assessment must have regard to the nature, scale, complexity and location of the customer's activities. Paragraph 13 requires TCSPs to perform ongoing and effective monitoring of any business relationship or occasional transaction, including a review of information and documents held for the purpose of CDD and EDD to ensure they are up-to-date, accurate and appropriate, in particular where the transaction or relationship poses a higher risk of ML/FT.

370. The IOMFSA annual AML/CFT Statistical Return collects details on the frequency of ongoing monitoring and screening.
371. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.
372. The frequency and robustness of ongoing monitoring is reviewed during inspections. The Dear CEO letter issued in March 2020 contained reference to deficiencies identified in respect of customer risk assessments or CRAs. The observations made by the IOMFSA included deficiencies with regards to:
 - information contained in the CRAs and used to assess the risk rating was inconsistent with information retained on file and did not always accurately reflect the reason for establishing the structure, the underlying activity and customer associated risks, and
 - limited or no documented consideration of complex structures.

Undertake enhanced due diligence in respect of all high risk Vehicles;

373. The IOMFSA AML/CFT Code, Paragraph 6, requires TCSPs to ensure their customer risk assessments have regard to the risk factors included in Paragraph 15(5) on matters that pose a higher risk of ML/FT and 15(7) matters that may pose a higher risk of ML/FT. Paragraph 15 requires TCSPs to establish, record, maintain and operate appropriate procedures and controls in relation to undertaking customer enhanced due diligence (EDD). And Paragraph 15(3) requires TCSPs to conduct EDD where a customer poses a higher risk of ML/FT as assessed by the customer risk assessment, in the event of any unusual activity, and in the event of any suspicious activity, unless the relevant person reasonably believes conducting EDD will tip off the customer. Where the requirements of Paragraph 15 are not met within a reasonable timeframe (except as provided in Part 6), the procedures and controls must provide that:
 - the business relationship or occasional transaction must proceed no further,

- the relevant person must consider terminating the relationship, and
- the relevant person must consider making an internal disclosure.

374. The IOMFSA annual AML/CFT Statistical Return collects details on EDD which are analysed and all higher risk client entity relationships (including higher risk PEPs) are reviewed at least annually.

375. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

376. The frequency and robustness of EDD are reviewed during inspections. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that appropriate EDD has been undertaken by the TCSPs in respect of all high-risk vehicles.

377. The IOMFSA Dear CEO letter issued in March 2020 contained reference to deficiencies identified in respect of EDD which stated:

- *In some instances where licence holders had identified customers as being higher risk and therefore subject to enhanced due diligence there was a lack of clarity to what this entailed and the consistency of the application. Enhanced Due Diligence should be undertaken at the time of on-boarding the customer.*

Undertake enhanced due diligence in respect of all Politically Exposed Persons;

378. The IOMFSA AML/CFT Code, Paragraph 14 requires TCSPs to establish, record, maintain and operate appropriate procedures and controls for the purpose of determining whether any customer, or natural person or beneficial owner or known beneficiary is, or subsequently becomes, a PEP and to require senior management approval. Paragraphs 14(3), (4), and (5) require TCSPs to take reasonable measure to establish the source of wealth; perform ongoing and effective enhanced monitoring of any business relationship; and perform EDD as required under Paragraph 15 of the Code for PEPs posing a higher risk of ML/FT. The Code also provides for the definition of a domestic PEP and a foreign PEP. And where the requirements of Paragraph 14 are not met within a reasonable timeframe, the procedures and controls must provide that:

- the business relationship or occasional transaction must proceed no further,
- the relevant person must consider terminating the relationship, and
- the relevant person must consider making an internal disclosure.

379. The IOMFSA annual AML/CFT Statistical Return collects details on PEPs. This data was used by the IOMFSA in the sampling process for its thematic exercise. The exercise identified 96 TCSPs where the number of foreign PEPs as customers appeared to be particularly prevalent. The foreign PEP thematic project commenced in 2021 which

required the 96 TCSPs to undertake a detailed questionnaire (phase 1). And phase 2 of the project involved obtaining policies, procedures and training materials on foreign PEPs from 9 of the 96 TCSPs. This was followed by review of the documents with a number of entities selected for an on-site inspection. In respect of the overall outputs of the project, this includes a thematic report detailing what the phase 1 data demonstrated. There will be a further report setting out some of the generic findings from phase 2 including highlighting areas of good and poor practice. Each firm subjected to an inspection will also receive an inspection report in the usual manner. The post events section herein refers to the report that has been published on the website and the subsequent AML/CFT outreach.

380. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.
381. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that appropriate EDD on all PEP has been undertaken by the TCSPs.

Ensure there is adequate, accurate and current information on the ultimate beneficial ownership and control of Vehicles that can be obtained or accessed in a timely fashion by competent authorities; and

382. The IOMFSA AML/CFT Code, Paragraph 13, requires TCSPs to perform ongoing and effective monitoring of any business relationship or occasional transaction, including a review of information and documents held for the purpose of CDD and EDD to ensure they are up-to-date, accurate and appropriate, in particular where the transaction or relationship poses a higher risk of ML/FT. The extent and frequency of any monitoring under this paragraph must be determined:
- on the basis of materiality and risk ML/FT,
 - in accordance with the risk assessments carried out under Part 3, and
 - having particular regard to whether a customer poses a higher risk of ML/FT.

TCSPs must record the date when each review of the business relationship takes place and details of any examination, steps, measures or determination made or taken under this paragraph.

383. Records required to be established and maintained under the IOMFSA AML/CFT Code must be capable of retrieval without undue delay, if the records are hard copies kept on the island or electronic and readily accessible in or from the island, otherwise hard copies kept outside of the island are to be made available within 7 working days. Record format and retrieval continues to apply even after a firm ceases to be a TCSP (Paragraph 35).

384. TCSPs are licensed under the FSA08 (the Act) and Schedules 1 and 2 of the Act give the IOMFSA power to inspect, investigate, request or require information, and to request and execute search warrants in respect of entities or TCSPs licensed under it. The powers are covered in detail under Part 2 of the Code on Principles of Enforcement.
385. Section 15 of the Beneficial Ownership Act, require the nominated officer to disclose, in accordance with the notice by a competent authority, any information the officer holds in respect of the beneficial ownership of the legal entity specified/referred to in the notice. This section also lists competent authorities and what is required to be stated on the notice.
386. The requirement to obtain beneficial ownership information must be included in a TCSPs AML/CFT procedures, as well as the requirement to record this information in terms of the AML/CFT Code. The IOMFSA is currently reviewing the effectiveness of the disclosure requirements of all regulated entities, not just TCSPs, in relation to the beneficial ownership register.
387. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.
388. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that information on the ultimate beneficial owner can be obtained or accessed in a timely fashion by competent authorities.

Retain accurate evidence of all decisions made in the course of acting as a director or other controlling party of a Vehicle.

389. The IOMFSA Rule Book, rule 8.28, requires TCSPs to keep and maintain proper records to show and explain transactions effected by it on behalf of its clients. Those records must be in kept in English, up-to-date, in such form as to demonstrate compliance with the regulatory requirements, and is kept for at least 6 years after the transaction. The guidance highlights that rule 8.28 in respect of clients' records extends beyond records of the transactions, to records which explain transactions.
390. The above rule was referred to by His Honour Deemster Khamisa's judgment in IOMFSA v Montpelier (October 2019) judgement:
- "190. I have concluded that a Manager should be appointed pursuant to section 22 of the FSA08. I am satisfied that the evidence of FSA supports that there has been a serious failure by the relevant person (the Defendant) to maintain proper records; (schedule 1(c)). This has to be read along with Rule 8.28(1) of the Rule Book which, again is broadly and clearly drawn and provides that "A licence-holder must keep and maintain records to show and explain transactions affected by it on

behalf of its clients". Again, the extent of record keeping is one aspect but the ability to explain what the record shows is another aspect..."

391. A TCSP must keep a copy of documents obtained or produced under Paragraphs 12, 37 and 39, of the IOMFSA AML/CFT Code including identification information, account files, business correspondence records and the results of any analysis undertaken (or information that enables a copy of such documents to be obtained) and the records must be kept for a period of 5 years from the date of completion of the transaction as set out in Paragraphs 33 and 34 of the Code.
392. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the IOMFSA Rule Book and the AML/CFT Code.
393. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that accurate evidence of all decisions made in the course of acting as a director or controlling party of a vehicle are recorded and retained.

The Regulator should require that TCSPs remain responsible for obtaining and documenting beneficial ownership information, even when reliance is placed on a third party.

394. The IOMFSA AML/CFT Code states at Paragraph 4(3) that the ultimate responsibility for ensuring compliance with the Code is that of the TCSP, regardless of any outsourcing or reliance placed on third parties during the process. This includes TCSPs responsibilities regarding the beneficial ownership of its customers. And rule 8.16 of the IOMFSA Rule Book states that a TCSP may not, without the consent in writing of the Authority - delegate any material management or business function to another person (whether or not that person is another company within the same group as the TCSP) or make any material change to any such delegation. Such delegation shall not affect the ultimate responsibility of the TCSP for the delegated functions and it must be evidenced by a written agreement between the parties. A TCSP may accept and rely on records supplied by a third party as long as those records are capable of being supplied in a timely manner and for at least 6 years after the transaction, and are capable of being, and are reconciled with records created by the TCSP.
395. This is reviewed during inspections and will include any eligible introducers or acceptable applicant arrangements. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code. A recent inspection identified material concerns with a TCSPs monitoring of an eligible introducer arrangement and this was addressed in the report.

396. Data quality in the Beneficial Ownership register was reviewed in a 2021 project. Following this, the Department for Enterprise led, with involvement from the IOMFSA and the FIU, on a project to improve the quality and accuracy of the data on the Beneficial Ownership register. The Authority has drafted and consulted on new Beneficial Ownership Civil Penalty regulations to allow appropriate sanctions to be applied for relevant contraventions of the Beneficial Ownership Act for those cases which do not meet the threshold for criminal prosecution.
397. Inspections since 2017 under the Beneficial Ownership Act have included 13 TCSPs and a review of 100 corporate entities. The IoM made a commitment to enhance agreements with the UK on sharing of information with respect to the beneficial ownership of legal persons which came into force on 1 July 2017. Details of the Beneficial Ownership Oversight Developments 2016 to 2021 timeline was provided.
398. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that TCSPs remain responsible for obtaining and documenting beneficial ownership information, even when relying on a third party.

Where TCSPs place reliance on third parties, the TCSP should ensure that contractual agreements with all third parties are sufficiently robust to ensure that they can fulfil the requirements set out above.

399. The IOMFSA Rule Book, rule 8.16, states that a TCSP may not, without the consent in writing of the Authority, delegate any material management or business function to another person (whether or not that person is another company within the same group as the TCSP) or make any material change to any such delegation. Such delegation shall not affect the ultimate responsibility of the TCSP for the delegated functions and it must be evidenced by a written agreement between the parties setting out clearly:
- their respective responsibilities and duties, including the monitoring of the delegated or outsourced function by the licence-holder, and
 - the provisions of terminating the delegation or outsourcing arrangement.
400. Paragraph 19 of the IOMFSA AML/CFT Code requires TCSPs not to enter into a business relationship with a customer that is introduced by an eligible introducer unless written terms of business are in place between the TCSP and the eligible introducer. The terms of business are set out under paragraph 19(7).
401. A TCSP may accept and rely on records supplied by a third party as long as those records are capable of being supplied in a timely manner and for at least 6 years after the transaction, and are capable of being, and are reconciled with records created by the TCSP as required rule 8.29 of the IOMFSA Rule Book.
402. This is reviewed during inspections and will include any eligible introducers or acceptable applicant arrangements. The assessors viewed samples of pre/post on-site

materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code. A recent inspection identified material concerns with a TCSPs monitoring of an eligible introducer arrangement and this was addressed in the report.

403. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that TCSPs have robust contractual agreements in place with third parties to meet the requirements of the IOMFSA Rule Book and AML/CFT Code.

Where TCSPs rely on third parties, the Regulator should require TCSPs to test the ability of all third parties to provide adequate beneficial ownership information upon request by the TCSP and without delay, which should also be supported by a contractual agreement.

404. The IOMFSA AML/CFT Code, Paragraph 19, requires TCSPs not to enter into a business relationship with a customer that is introduced by an eligible introducer unless written terms of business are in place between the TCSP and the eligible introducer. Those terms of business must include a requirement for the eligible introducer to supply to the TCSP immediately, or on request, copies of the documents, data or information used to verify the identity of the customer and any beneficial owner and all other CDD information held by the eligible introducer in any case. And the ultimate responsibility for ensuring the procedures comply with the Code remains with the TCSP and not with the eligible introducer.
405. Paragraph 30 of the Code requires TCSPs to establish, record, maintain and operate procedures and controls for monitoring and testing compliance with the AML/CFT legislation, so as to ensure it has robust and recorded arrangements for managing the risk identified by the business risk assessment carried out in accordance with Paragraph 5.
406. The IOMFSA annual AML/CFT Statistical Return also collects information about the extent of use of eligible introducers.
407. This is reviewed during inspections and will include any eligible introducers or acceptable applicant arrangements. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.
408. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that TCSPs test the ability of all third parties to provide adequate beneficial ownership information upon

request by the TCSP and without delay, which should also be supported by a contractual agreement.

In cases where a TCSP cannot obtain beneficial ownership information from a third party, the Regulator should require such relationships should be terminated.

409. The IOMFSA AML/CFT Code, Paragraph 19, requires TCSPs not to enter into a business relationship with a customer that is introduced by an eligible introducer unless written terms of business are in place between the TCSP and the eligible introducer. And those terms of business include a requirement for the eligible introducer to inform the TCSP specifically of each case where the eligible introducer is not required or has been unable to verify the identify of the customer or any beneficial owner within a reasonable timeframe, and in such case:

- the business relationship or occasional transaction must proceed no further,
- the relevant person must consider terminating the business relationship, and
- the relevant person must consider making an internal disclosure in relation to that business relationship or occasional transaction.

Additionally, paragraph 19(11) of the AML/CFT Code mandates that where the requirements of this paragraph are not met within a reasonable timeframe, the procedures must provide that:

- the business relationship or occasional transaction must proceed no further,
- the relevant person must consider terminating the business relationship, and
- the relevant person must consider making an internal disclosure.

410. Rule 8.16 of the IOMFSA Rule Book, requires a TCSP to ensure that in the event of a breakdown of a delegation or outsourcing arrangement, the TCSP is able to carry out or assume control of the relevant functions.

411. The IOMFSA annual AML/CFT Statistical Return collects details of declined or terminated relationships.

412. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

413. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that in cases where a TCSP cannot obtain beneficial ownership information from the third party the business relationship is terminated.

E.2 Vehicle Assets

This Standard is not intended to interfere with trust law; trust law is the responsibility of the Courts. It is the responsibility of the TCSP to ensure that, in carrying out its duties as a trustee, fiduciary and/or administrator it fully complies with that law in all aspects of safeguarding the assets of the trusts and acts in accordance with the trust deed and always in the best interests of beneficiaries.

414. The IOMFSA guidelines on expected practice for Trust Service Providers (TSP) set out in detail the expectations of the Authority on TCSPs to ensure at the outset of the business relationship that the terms of the trust instrument (and any other subsidiary documents) setting out the terms of the trust have been identified, read and fully understood as far as necessary to administer the trust and the trustees are familiar with the trust property and have made all appropriate arrangements for its management and security.
415. Responsibility for complying with the terms of the trust rests solely with the trustees and regulators are not expected to second-guess the trustees' decisions. However, during inspections the IOMFSA scrutinises the decision-making processes in sampled files, for example, in checking that decisions are properly made and recorded. If a payment was made which was not linked to the beneficiaries, there should be a properly recorded justification. If not, the Authority would be asking for a full explanation, but initially at least a focus on establishing and recording the rationale for the decision, rather than whether there was a breach of trust.
416. Supervisory staff are aware of the risk of abuse of vehicles' money or assets and the IOMFSA provided a case study of potential abuse which was identified during an inspection, and the steps taken to appoint a receiver and manager, and subsequently liquidators.
417. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that appropriate information and documentation are obtained in relation to the trust.

The Regulator should require TCSPs to establish and document clear policies and procedures that ensure:

They act with professional skill care and diligence with regard to the administration of Vehicle assets;

418. The IOMFSA Rule Book, rule 6.1, requires a TCSP to act with due skill, care and diligence in carrying out regulated activities, and rule 8.3, places an obligation on the responsible officers of a TCSP to establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure effective communication with clients, fair treatment of clients, and safeguarding of assets belonging to clients. Where a TCSP carries out regulated activity falling within

Paragraph 8 of Class 4 (providing officer of company) it must take reasonable steps to ensure that person concerned is a suitable and competent person to undertake the office in question and understands the duties and responsibilities of the office. Where the person concerned is an officer of or employed by the TCSP, the TCSP must take reasonable steps to ensure that the person concerned undertakes the office in a diligent and proper manner.

419. There are also published materials by the IOMFSA for Guidance on Directorship, Trusteeships and similar responsibilities held by Directors and individuals in 'controlled functions'.

420. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

421. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that TCSPs act with professional skill care and diligence with regard to the administration of Vehicle assets.

There is a segregation of Vehicle assets from those of the TCSP; and

422. The IOMFSA Rule Book, rule 8.3, requires responsible officers of a TCSP to establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure appropriate segregation of key duties and functions and the safeguarding of assets belonging to clients which the TCSP is responsible. Rules 3.28, 3.32, 3.5 and 3.31 require TCSP to pay client company money into either a client company bank account or a client bank account (if circumstances make it impractical to set up a separate account for the client company in question). The title of a trust bank account must clearly show that it is held by the trustee in its capacity as trustee and identify the trust to which it relates. The trust bank account must also be subject to dual signatures. A TCSP must pay all client money into either a client bank account or a bank account in the name of the client and the client money must be held on trust for the clients entitled to it. Where the TCSP administers a trust or trusts which has a corporate trustee or private trust company as trustee, the TCSP must ensure that any trust money of that corporate trustee or private trust company is paid into either:

- A trust bank account in the name of the corporate trustee or private trust company as trustee of the trust in question.

423. This is further covered in the Client Asset Reporting which is a published material, including feedback to the wider financial services industry and is applicable to the TCSP sector. Clients' Assets Reports are checked by the IOMFSA and any queries or inconsistencies are taken up with the TCSP.

424. The aim of the Clients' Assets Reporting regime is 1) to improve the consistency and provide transparency regarding the scope of testing on clients' assets; 2) to adequately support and challenge licence holders to test their compliance in the protection of clients' assets in accordance with the Rule Book; 3) to support the objectives of the Authority regarding the effective safekeeping of clients' assets; and 4) to manage the expectations of the Authority and the responsible officers of those licence holders holding clients' assets, as to the scope of the clients' assets testing.
425. The Rule Book includes a definition on 'client company bank account' which is a bank account in the name of a client company and does not constitute a client bank account.
426. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code. In addition, the results of the compliance testing performed by undertaking the Clients' Assets Report and Procedures provides the Authority with industry trends (risk areas, breaches); and enables the Authority to make regulatory interventions in relation to client assets on a timely, firm-specific or thematic basis.
427. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess that there is segregation of vehicle assets from those of the TCSP.

There is a reconciliation and monitoring of any receipt or movement of assets of a Vehicle administered by a TCSP.

428. The IOMFSA Rule Book, rule 8.28, requires TCSPs to keep and maintain proper records to show and explain transactions effected by it on behalf of its clients.
429. Paragraph 13 of the AML.CFT Code of the IOMFSA requires TCSPs to perform ongoing and effective monitoring of any business relationship or occasional transaction, where the transaction or relationship poses a higher risk of ML/FT and appropriate scrutiny of transactions and other activities to ensure that they are consistent with the customer's business and risk profile and source of funds of the transactions.
430. The TCSPs are expected to reconcile assets of a Vehicle they administer as part of the preparation of their financial statements or financial record. The financial accounts of the TCSP are subject to audit. In addition to the Client Asset Reporting, TCSPs are required to periodically review the clients.
431. Changes to audit requirements in Part 5 (and to a corresponding requirement in Part 8) of the Rule Book came into effect on 1 January 2017 to address risks facing the security of clients' assets by revising requirements for reporting on the monitoring of clients' assets. The aim of the Clients' Assets Reporting regime is:

- To improve the consistency and provide transparency regarding the scope of testing on clients' assets,
- To adequately support and challenge licence-holders to test their compliance in the protection of clients' assets in accordance with the Rule Book,
- To support the objectives of the Authority regarding the effective safekeeping of clients' assets, and
- To manage the expectations of the Authority and the responsible officers of those licence-holders holding clients' assets, as to the scope of the clients' assets testing.

432. The IOMFSA statistics below show the number of Clients' Assets Reports submitted to the Authority by the TCSP for each year since 2017.

LICENCE-HOLDERS	2017	2018	2019	2020	2021
Clients' Assets Report submitted per year	117	22	83	44	73
High Risk	11	7	12	5	9
Medium Risk	77	11	61	23	57
Low Risk	29	4	10	16	7
TCSP Population	114	115	112	110	107
High Impact	39	11	27	18	23
Medium Impact	43	10	37	14	32
Low Impact	35	1	19	12	18
CAR submitted as a % of TCSP Population	103%	19%	74%	40%	68%

433. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

434. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess financial records of vehicles.

E.3 Client Money Rules

The Regulator should put in place rules for the administering of and holding of Client monies which at a minimum address:

Segregation of the Client monies from the monies of the TCSP;

435. The IOMFSA Rule Book, rule 3.2, provides for the definition of 'client bank account' as an account held by the TCSP at a recognised bank, especially created by the TCSP for

the purpose of holding client money, and segregated from any account holding money which is not client money. Rule 3.5 requires TCSPs to pay all client money into either a client bank account or a bank account in the name of the client. TCSP must obtain from the bank at which the account is held an acknowledgement in writing that:

- It understands that all money standing to the credit of all client bank accounts maintained by the TCSP is held by the TCSP as trustee and that the bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any debt owed to it by the TCSP.

436. This is further covered in the IOMFSA Client Asset Report published on their website and reviewed during inspections.

437. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

438. The Clients' Assets Report includes sample testing of client bank accounts and trust money including reconciliations and trustees' minutes. The Clients' Assets Report is submitted to the Authority on a risk-based approach and is subject to periodic audit.

The requirement to hold Client monies in clearly separate and distinct accounts from any accounts of the TCSP's own monies;

439. The IOMFSA Rule Book, rules 3.28 and 3.32 (Class 5 only) require a TCSP to pay client company money into either a 'client company' bank account, or a client bank account (if circumstances make it impractical to set up a separate account for the client company in question). The title of a trust bank account must clearly show it is held by the trustee in its capacity as trustee and identify the trust to which it relates. And the operation of all trust bank accounts is subject to dual signatures.

440. This is further covered in the IOMFSA Client Asset Report published on their website and reviewed during inspections.

The disclosure to Clients of the terms upon which Client money is held;

441. The IOMFSA Rule Book, rule 3.6, require that prior to accepting any client money into a client bank account a TCSP must provide the client with information, as specified by the FSA08, on the nature and types of client bank accounts and must retain evidence to show that it has complied with this rule. Rule 3.13 requires a disclosure of whether and how interest is paid on client money balances. This rule is supported by rule 6.64 on terms of business with regards to how interest received on client money and relevant funds is to be dealt with, in accordance with rule 3.13.

442. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures

requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

443. During a typical inspection a sample of client files will be reviewed, this will include review of the terms of business to ensure compliance with these requirements.

The requirement for Client money accounts to be reconciled promptly by the TCSP;

444. The IOMFSA Rule Book, rules 3.12 and 3.34, require a TCSP to reconcile the balances of each client bank account and nominee bank account with its records at least annually. For avoidance of doubt in respect of reconciliation (reconciliation requirements also apply to trust bank accounts):

- the reconciliation must be between the TCSPs' records and the banks' statements,
- all reconciliation must be as at the same date,
- the reconciliation must be complete within 20 business days,
- the reconciliation must be checked promptly by a different individual,
- the reconciler and checker must evidence their work,
- any discrepancies discovered must be corrected within 5 business days, unless they result solely from normal timing differences,
- there must be a minimum of 15 business days between each reconciliation,
- the Authority must be notified promptly if the reconciliation has not been undertaken as prescribed, and
- the Authority must be notified within 15 business days of discovering that a reconciliation cannot be corrected.

445. This forms part of the IOMFSA Clients' Assets Reports that are submitted to the Authority and are reviewed during inspections.

The requirement for the payment away of Client monies to be subject to a dual signature regime; and

446. The IOMFSA Rule Book, rules 3.9 and 3.32 require the operations of all client bank accounts, nominee bank accounts, and trust bank accounts to be subject to dual signatures.

447. This forms part of the reviews undertaken by the Authority during inspections

The establishment of policies, procedures and controls to prevent the inappropriate use of Client monies for the settlement of TCSP fees and disbursements.

448. The IOMFSA Rule Book, rules 3.11 and 6.64, require that TCSPs must account properly and promptly for client money, in particular, the TCSP must ensure that:

- Client money and other money do not become intermingled, except in certain circumstances,
 - It can at all times be sure how much client money stands to the credit of each client,
 - Money belonging to one client is not used for another (with the exception of accounts maintained under specific rules), and
 - Client money is not included within the TCSP's Statement of Financial Position
- A TCSP must not carry on any regulated activity for a client unless either it has entered into a written agreement (client agreement) with the client relating to the services it provides, or it has notified the client in writing of its terms of business relating to those services. The rule also sets out what the client agreement or terms of business should contain.

449. This forms part of the reviews undertaken during inspections and the Client Asset Reporting ().

The Regulator should require a TCSP to implement an independent, competent, appropriately qualified, review of the controls over Client money, on a risk-based approach.

450. The IOMFSA Rule Book, rule 8.23 stipulates that in situations where the TCSP controls clients' assets, the Head of Compliance is responsible for ensuring that:

- A Clients' Assets Report is prepared annually, in accordance with the procedures specified by the Authority, and
- The Clients' Assets Report is prepared by a different individual to the person responsible for undertaking reconciliations required by Part 3 and 4 of the Rule Book.
- The Clients' Assets Report includes client money and trust money (not client company bank accounts).

451. Rule 5.18 requires that the Clients' Assets Report is reviewed by the TCSP's auditor annually or at a lesser frequency as specified by the Authority. The IOMFSA decides the frequency of auditor review (annually, every two years, or every three years) according to risk and impact factors, as explained in the Risk-Based Approach to Client Assets Reporting.

452. Clients' Assets Reports are checked by the Authority and any queries or inconsistencies are taken up with the TCSP .

Observations relating to Part 3F of the Standard - Conduct

Summary

- **The IOMFSA has provided evidence of compliance with Part 3F, both in law and in practice.**

Integrity

The Regulator should require that a TCSP acts with integrity and fair dealing in the conduct of its business.

453. The IOMFSA has legislation in place to ensure that the business carried out is in line with principles that ensure that systems, controls and resources are adequate and that it is honest and fair in its dealings with clients and others. This is captured under its Fitness and Propriety Criteria and Integrity sections of the Rule Book.
454. Licence holders are required to submit an annual return which is confirmation on how the licensee has conducted business in accordance with the regulatory requirements. Annual returns are submitted and reviewed by supervisors. Any outliers within the information received will be questioned by the supervisory teams.
455. The onsite inspection reports did show that training was reviewed as part of the inspection process and that competency was reviewed at the interview stage based on the individual's competency.
456. The IOMFSA has provided several examples of supervisory and enforcement cases whereby action has been taken against licence holders who have not adhered to the requirements set out in the rulebook.

Conflicts of Interests

The Regulator should require that a TCSP's policies and procedures reflect its duty to Clients over the referrers of those Clients and maintain the highest standards of ethical behaviour in order to avoid conflicts of interest so as to always act in the best interests of the Client.

457. The IOMFSA has regulations in place that cover integrity and fairness and conflicts of interest which outline how licence holders are required to act in the case of a conflict arising. These regulations cover both 'relevant persons' and clients and between clients to client conflicts. A 'relevant person' is defined within the IOMFSAs rulebook. The authority provided sufficient examples to demonstrate the action taken when unmanaged conflicts have arisen. Out of the examples the Authority provided one was made public and new management was appointed to remedy the situation, in the other case, another director was appointed to the board to manage the conflicts effectively.

The Regulator should require that a TCSP has clearly established policies and documented procedures to either avoid any conflict of interest arising or, where a conflict arises, to keep

adequate records of such conflicts and ensure fair treatment to its Clients by disclosure of the conflict, internal rules of confidentiality, declining to act, or otherwise

458. The IOMFSA has clearly defined regulations under Section 8.9 of its Rule Book which sets out that licence holders are required to implement and maintain an effective conflicts of interest policy. The policy must be in writing and attaches several other requirements to ensure groups, delegated functions and covers how conflicts of interest should be mitigated. This is further documented in Section 6.11 which sets out how licence holders must act when a conflict of interest arises. Section 8.10 covers the conflict of interest register which outlines what information licence holders are required to maintain within the register. This is subject to a retention period of 6 years. The IOMFSA also has a Guidance note on the conflicts of interest policy and related rules.
459. By way of evidence to support effectiveness, the IOMFSA provided the assessors with an Inspection Report where the licence holder was not compliant with rule 8.9(4) of the Rule Book. The licence holder was also non-compliant with Rule 8.9 as the conflicts of interest register did not disclose any potential conflicts of interest by the NEDs. The Authority provided an example of conflicts of interest documentation which highlights the requirements of licence holders and how they are required to act when a conflict of interest arises. The Authority reviews this as part of its inspection process and any issues are addressed with the licence holder.

Interaction with clients

The Regulator should require that TCSPs adopt and maintain prudent standards in its interactions with Clients, and further require that, inter alia, a TCSP should:

ensure that, where appropriate, there is a full understanding of the duties arising under the laws relevant to the administration and affairs of Clients for which they are acting in the jurisdictions in which they are carrying on business and in which the assets being managed are held.

460. The IOMFSA as part of its Licensing Policy outlines under Section 1.1.5 that serious breaches of legislation or codes of conduct will suggest a lack of competence and/or integrity.
461. The Rule Book under Section 6.67 references that all licence holders must take reasonable steps to ensure that any company, foundation or partnership for which it carries on any regulated activity is compliant with applicable statutory obligations. Section 6.2 outlines how firms must ensure policies are in place to deal with conflicts of interest, disclosure of conflicts, compliance with applicable legislation in jurisdictions where business is carried out and that regulated activities are carried on openly and fairly. The regulations under 8.3 (2) and (3) state how management controls should be implemented to ensure that responsible officers of a licence holder have effective policies in place covering all aspects of the business to ensure firms have effective

systems and controls to deal with the risk profiles of all clients including higher risk jurisdictions. The policies are required to be reviewed at least annually and a documented record kept of said reviews.

462. Section 8.5 covers that all directors, key persons of a licence holder undertake a minimum of 25 hours relevant CPD requirements per annum, or where individuals are members of professional bodies they comply to the CPD requirements of that body if it is over 25 hours. As part of the training and competency framework it is a requirement that employees who have been assessed as competent remain so.
463. As part of the effectiveness, the IOMFSA reviews CPD training during supervisory inspections, this has resulted in the identification of deficiencies requiring licence holders to undertake remedial actions to ensure compliance.
464. The Authority also shared the Fitness and Propriety form with assessors during the onsite visit. The information provided is extensive and it captures relevant qualifications individuals hold and the previous positions held. This ensures the Authority is able to conduct a thorough review of the individual's competency prior to the appointment. The Authority also has published a training and competency framework which outlines the requirements.

ensure that all decisions taken or transactions entered into by or on behalf of Clients are actioned in a timely manner appropriately authorised and handled by persons with an appropriate level of knowledge, experience and status

465. Rule 8.62 of the Rule Book sets out the provision of officers, including how they are required to be competent to undertake the applicable duties. Further guidance relative to this section is available on the IOMFSA website which outlines the competencies required that would deem an individual 'competent.' The guidance states how it is a requirement to have up to date and accurate information concerning the vehicles business, governance and financial position including, having the relevant experience and necessary knowledge of the vehicle in question.
466. The IOMFSA takes into consideration the F&P of individuals required for regulated positions at application stage. CPD is also an ongoing requirement for firms and is reviewed as part of the inspection process. Any individual who does not have the relevant skills to undertake a function will either be required to undertake relevant CPD or appoint a suitable individual.
467. Complaints do form part of the inspection process with the complaints register being reviewed as part of the onsite inspection process. Complaints also were a focus of one of the enforcement cases. This is reviewed as part of the client file review during the onsite inspections. Inspection reports were provided to assessors which highlighted this.

468. The Authority has several clauses within its Rule Book which dictate how officers are required to hold the relevant qualifications and necessary experience before being appointed. In addition, the Authority will ensure that any individual who is responsible for carrying out a regulated activity has the requisite knowledge to be able to undertake the specific function. The Authority has demonstrated this to the assessment team by showing how the fitness and propriety of an individual is assessed and by the ongoing CPD requirements the Authority imposes on an officer. As part of its assessment to ensure that the individuals have sufficient knowledge the authority reviews the complaints log during the inspection process.

ensure that all reasonable steps are taken to ensure that it obtains sufficient information about the Client in order to exercise a relevant discretion or other power in a proper manner and that such discretion or power is only exercised for a proper purpose;

469. The Authority has a Licensing Policy which is issued in accordance with the FSA08, and which outlines that all applicants must be competent to undertake the relevant regulated activities.”

470. Part 3.3.4. of the AML/CFT Handbook provides that relevant persons should consider and understand the characteristics of the products and services they are providing to their customer and the manner in which they are being provided. Additionally, consideration should be made as to the rationale of the customer requesting a particular product or service and whether this is consistent with their business profile / customer risk assessment. that the rationale of the customer requesting a particular product or service should be taken into consideration and documented within the business profile/risk assessment. Nominee shareholders are also captured within this section to ensure appropriate documentation is collated and retained.

471. The Authority was able to demonstrate during the onsite visit that it has a robust Authorisations and vetting of an individual’s F&P before they are able to undertake a regulated function. This ensures that individuals who carry out regulated activities are fully competent and qualified to do so. This in turn ensures that information requested on the potential applicant for business is as per the requirements.

inform the Client in writing of the agreed terms between the TCSP and the Client, including the instructions received and the capacity and scope of discretion, if any, within which the TCSP will act for the Client;

472. The IOMFSA’s Rule Book maps out the client agreement and terms of business which outline that the licence holder is unable to act for any clients until it has entered into a written agreement with the client and, in addition has notified the client in writing of the terms of business.

473. Client agreements are checked as part of the review of client files during some supervisory inspections and the effectiveness was demonstrated within the risk assessments of licence holders.

Establish and maintain policies, procedures and controls to monitor and ensure it always has the requisite capacity and resources to provide the services agreed with its clients.

474. The Authority captures the requirements around policies as part of its Rule Book which outlines that responsible officers of a licence holder must establish and maintain appropriate internal and operational controls, systems, policies, and procedures relating to all aspects of its business. Furthermore, it also captures the requirements to ensure that the firm is adequate resources to adequately deal with the risk profile of all clients. The Authority was able to demonstrate the effectiveness of this point by providing copies of inspection reports which highlighted corporate governance issues that had been picked up by the Authority.

Advertising and Communication

The Regulator should require that a TCSP adopts advertising and communication practices that:

do not violate local and international laws; do not violate standards of prudence and fairness; are clear and ethical; do not contain any element that is in breach of laws or promotes the breach of other legislation; and as far as possible, do not place the jurisdiction at risk of being brought into disrepute

475. The IOMFSA references within its Rule Book the provision which sets out 'Responsible behaviour in dealings'. This captures the procedures for acting openly and fairly and in compliance with any applicable legislation relating to that activity in the country or territory in which it is carried on.

476. The IOMFSA also has specific guidance notes for the Advertising, Distribution and Promotion of Financial Products or Services. This is a general section of rules which are applicable to licence holders. The Authority provided examples to how it meets the criteria in respect of advertising. It provided examples whereby it had located advertisements that were not in line with the local/international requirements. The Authority has been able to demonstrate that as part of its effective supervision that these are reviewed, and any action taken should it be required.

The Regulator should require a TCSP to enter into written terms of business with Clients for whom the TCSP has agreed to act. The terms should provide:

477. The IOMFSA Rule Book states that licence holders must not carry on any regulated activity for a client unless it has entered into a written agreement with the client relating to the services it provides. The Authority was able to demonstrate it reviews client management agreements as part of the inspection process.

a description of the services to be provided;

478. The IOMFSA Rule Book that licence holders must not carry on any regulated activity for a client unless it has entered into a written agreement, with the client relating to the

services it provides. The Authority was able to demonstrate it reviews client management agreements as part of the inspection process.

the fees to be charged and the basis of the calculation of those fees;

479. The Authority's Rule Book specifies that a client agreement or terms of business must be set out to include any fees to be charged on the basis of calculation of any fees to be charged, or both. The Authority was able to demonstrate it reviews client management agreements as part of the inspection process.

any exit fee and the basis upon which it is calculated;

480. The IOMFSA mandates that a client agreement or terms of business must be set out including the conditions for the termination of services by the licence holder, including, if applicable, the provisions for the refund of any fees due to the client as a result of the termination of services. The Authority was able to demonstrate it reviews client management agreements as part of the inspection process.

the means by which complaints about the TCSP's services can be made;

481. The Authority has a dedicated section within its Rule Book in reference to complaint handling, this covers how licence holders are required to have documented procedures which are compliant with the relevant sections contained within its Rule Book. As part of the onsite inspection process, licence holders must have these readily available on request.

the Regulator should require that a TCSP's written terms of business provide that termination of a relationship be on reasonable notice, unless a good reason can be given.

482. The IOMFSA has documented sections within its Rule Book in relation to termination of services. These sections outline that client agreements or terms of business must set out the conditions for the termination of services by the licence holder, including, if applicable, the provisions for the refund of any fees due to the client as a result of the termination of services which extends to both client termination and if the licence holder were to wind down.

Complaint Handling

The Regulator should require that a TCSP:

483. The IOMFSA Rule Book covers the requirements for complaint handling.

has an effective documented complaints handling mechanism which is fair and timely;

484. The Authority has documented requirements which requires licence holders to comply with certain provisions in respect of dealing with complaints. More specifically this includes acknowledgement of the complaint must be provided to the complainant within 7 days of receipt. The Authority reviews complaints as part of its onsite inspection work, including the annual return data. Cases were provided to the assessment team in respect of complaints.

provides advice to Clients about the TCSP's complaints handling mechanism;

485. The Authority's Rule Book states that complainants must be informed as to how their complaint will be handled by the TCSP. The acknowledgement of complaints must include the points such as a summary of the complaint, details of the licence holder's complaint handling procedures and any other information relevant to the handling of the complaint. Where an investigation has not been completed the licence holder must notify the Authority of the reason.

Maintains a log of all complaints and their current status.

486. The Authority requires that the complaints register must record a variety of information including name of complainant, date received and reported onwards, nature, whether involves a breach of regulatory requirements, how and when investigated, action taken to resolve, date considered closed, and whether PI insurers were informed. Complaints logs are reviewed as part of the onsite inspection process and the Authority was able to demonstrate one specific case in relation to complaints being the focus of an inspection.

Observations relating to Part 3G of the Standard – Prudential

Summary

- The IOMFSA is regarded as Largely Compliant in respect of prudential requirements.
- A Compliant rating was not achieved owing to an exception to a Rule Book requirement allowing the submission of financial statements by licenceholders to be exempt from audit in certain circumstances.
- The post events section herein refers to the update on licence holders subject to the Audit Exception regime.

Capital and Liquidity Requirements of a TCSP

The Regulator should undertake an analysis of the capital and liquidity of a TCSP, based on an analysis of financial information.

487. The IOMFSA requires that licence holders submit an annual financial return which includes financial resources calculations in standard form and financial statements. In addition to this, licence holders are required to submit an annual return which outlines the prudential requirements TCSPs are subjected to. These are required to be produced within 4 months from the date of the year end of the TCSP. The financial resource calculations are required to be verified by an auditor for completeness and accuracy. TCSPs are also required to calculate the resource calculations on a monthly basis. The Authority provided examples of the annual return and financial resource calculations completed by licence holders which the Authority reviews upon submission to check for any anomalies. The Authority has a team of analysts that are able to review more complex cases should it be required.

The Regulator should implement regulatory capital and liquidity requirements that:

488. The IOMFSA's Rule Book sets the Financial Resources Requirements for firms.

set out minimum standards of net assets and liquidity that TCSPs must maintain, so as to reduce the risk of financial failure;

489. The Rule Book stipulates the following requirements for net assets and liquidity of a TCSP. The issued share capital of a TCSP (including any paid-up share premium) must not be less than £10,000 for a company service provider and £25,000 for a trust provider. The Rule Book also sets out how the TCSP is required to calculate the financial resources requirements taking into consideration its assets, liquid capital, expenditure, capital requirements. The Authority was able to furnish the assessors with copies of the annual return highlighting the above requirements, in addition, if any anomalies are

picked up these are raised by the supervisory teams. The Authority also has dedicated financial analysts who are able to deal with more complex matters.

set out minimum standards of surplus liquid assets to be retained in the business, sufficient to meet the TCSP's expenditure for a specific period in the event of the need to have an orderly wind up of the TCSP;

490. The minimum standards imposed by the Authority is 25% of the previous year's annual audited expenditure plus the PII excess. This is reviewed as part of the annual review process. The Authority is deemed as compliant in this section.

require TCSPs to notify the Regulator when they fall below the minimum capital and/or liquidity requirements established by the Regulator.

491. The Authority requires all licence holders to notify the regulator of an actual, or potential breach.

consider whether to apply restrictions on what assets may be included in regulatory capital and liquidity requirements.

492. The Authority requires licence holders to undertake the calculations as per the requirements set out in the Rule Book. This was demonstrated by reviewing the returns issued to licence holders. The Authority has had previous cases whereby it has implemented restrictions to ensure the licence holder continues to meet the minimum requirements set out in legislation.

take into account any deductible and claims payable for any insurance policies in force.

493. Part D of Appendix 3 of the Rule Book captures PI cover excess being taken into consideration for the calculation of liquid capital requirements.

support prudential regulation by allowing peer group comparison;

494. The IOMFSA receives data which allows for peer comparison. It is currently in the process of building a data warehouse which will allow for the comparisons to be done on a more in depth and automated level. The warehouse is integrated with the back-office system and will create automated alerts to direct supervisors to deviations and trends on receipt of the return data. Workshops have commenced to review the existing returns and identify additional data to be included for collection in 2023. It will enable the automation of data comparisons which had been performed manually.

define a mechanism for intervention, including triggers, where a TCSP is at risk of falling below acceptable minimums.

495. The IOMFSA defines the threshold trigger level at 110% for both Net Tangible Assets and Liquid Capital. The Rule Book requires that when licence holders give a potential or actual notification of a breach of liquid capital or, net tangible assets the licence holders must also provide the Authority with a full explanation of the circumstances; and details of the steps that the licence holder is taking, or has taken to prevent a breach occurring

or to remedy the breach. The Authority provided an enforcement case in which it imposed a buffer level higher than the minimum to stop TCSPs from failing operationally or falling under the acceptable thresholds.

The Regulator may choose exceptionally to grant a modification to the capital and liquidity requirement to reflect particular circumstances.

Where a modification is granted, the Regulator may apply additional requirements to compensate for any increased risk.

496. The Authority has legislative provisions which state that a licence holder must, if required by the Authority, or may, if agreed with the Authority, adjust its relevant annual expenditure. An example of whereby the IOMFSA had exercised the power to modify the requirements was submitted to support effectiveness.

Maintenance of Adequate Accounting and other Records of a TCSP

The Regulator should require a TCSP to produce and retain financial records that accurately reflect its affairs.

Such records must be available to the Regulator immediately upon request.

497. The Authority requires a licence holder to produce accounting records within the jurisdiction and be able to demonstrate at any given time the financial position of the licence holder's business; and whether the licence holder complies with any applicable provisions relating to its financial resources. A licence holder must preserve its accounting records for at least 6 years beginning with the date on which they are made. Where a licence is surrendered or revoked, the licence holder must preserve its accounting records for at least 6 years beginning with the date of surrender or revocation. A licence holder must notify the Authority of the method of storage and location of any records required by this rule to be preserved for at least 20 business days prior to the surrender of its licence. The Authority routinely gathers financial information, and it is reviewed on a periodic basis. The Authority has the powers to request additional information in respect of the financial affairs should it be necessary. There is a heightened scrutiny of financial information where there is perceived to be an increased risk.

Regulators should implement rules wherein a TCSP should retain sufficient accounting and financial data with regard to any financial transaction in which it played a part, to ensure the preservation of an audit trail for a minimum period of five years.

498. The IOMFSA has contained within its legislative provisions the requirements to keep client accounting records, the minimum requirement is that the records are kept for at least five years after the transaction took place. Client files are reviewed as part of the full inspection process and also during a focused inspection if in scope. The Authority has a number of cases whereby licence holders have fallen behind in producing the

records and therefore the Authority adopted enhanced oversight of the remediation, including monitoring the position through regular reporting.

Regulators should implement controls to require a TCSP to maintain accounting records in a manner that is accessible and promotes inspection by the Regulator.

499. Part 2.12 and 8.28 of the Rule Book cover the requirements for TCSPs to maintain accounting records and for these to be available for inspection. Part 2.12 covers the requirements for Accounting records and 8.28 covers the Clients' records to be held by TCSPs.

500. IOMFSA indicated that this is reviewed and tested during on-site inspections. It also submitted a case study to demonstrate the use of powers to request accounting records

Requirement to have accounts audited

The Regulator should require a TCSP to produce financial statements, in line with the accounting standards applicable in its home jurisdiction, and to have them audited

501. The IOMFSA's Rule Book covers the requirement relating to licence holders producing Audited Financial Statements. There is a departure from the Standard with regard to smaller TCSPs with a turnover below £250,000. These are permitted to request an exception from the requirement to prepare audited financial statements. Where such an exception is granted, the licence holder is still required to submit an annual financial statement which is signed by two directors. The IOMFSA have confirmed within their effectiveness submission that there are 7 out of the 100+ TCSPs, operating under the exception and therefore do not have their financial statements audited. This issue was further explored at the onsite, whereby the IOMFSA explained that this exception is not granted during a TCSP's first year of trading and requires the assessment of the Authority prior to the exception being granted. Nevertheless, the Standard is unequivocal with regard to the requirement to have financial statements audited.

This issue has been addressed as outlined in the post onsite update

The scope of the audit should include a review of controls over Clients' money and Clients' assets.

502. The Authority requires licence holders to complete the Clients' Assets Report ("CAR") on an annual basis. The Head of Compliance is responsible for ensuring that the report is prepared annually, it is prepared by a different individual to the one who is responsible for reconciling. As part of the effectiveness, the Auditor's letter is reviewed and checked for confirmations in respect of the preparation of the CAR. The review also extends to ensure the answers are appropriate and any exceptions were identified by the licence holder or auditor and a review of the reconciliation log is undertaken. The Authority was able to demonstrate the use of its CAR during the onsite and copies were submitted to the assessment team.

A time limit for the provision of audited financial statements to the Regulator should be enforced.

503. The Authority has legislative provisions in respect of the audited financial statements. This provides that the licence holder must submit its audited annual financial statements to the Authority no later than 4 months after its annual reporting date. The Authority has not had any issues with non-compliance and there is an administrative civil penalty regime relating to submission of returns.

A copy of the Auditor's management letter and the management response should be presented to the Regulator.

504. The Authority has provisions for management letters and any relevant management response to be submitted for both Isle of Man and Non-Isle of Man incorporated licence holders. There are however currently zero within the latter category.

A TCSP should be required to notify the Regulator on a timely basis of any decision by its Auditor to qualify its audit report or to raise an emphasis of matter.

505. The Authority requires licence holders to notify the Authority immediately where its auditor has qualified its report or has included an emphasis of matter paragraph in relation to the annual financial statements of the licence holder; or if it has reason to believe that its auditor is likely to qualify or include an emphasis of matter paragraph in relation to that report. Audits are performed on a retrospective basis, within six months after the end of the financial year. Qualifications and emphasis of matter typically arise from going concern issues such as surrender of the licence, regulatory intervention or major litigation. In practice therefore, the regulatory regime has meant that the Authority was already be aware of the issue, and typically was checking the financial statements to ensure that a suitable emphasis of matter or qualification was present.

The Regulator should require the Auditor to be suitably qualified to undertake the audit.

506. The IOMFSA stipulates that a licence holder must have at all times an auditor that is qualified, and is not ineligible, to act as such. The Rule Book lists factors which must be complied with by the licence holder to ensure the auditor is qualified and recognised by the IOMFSA.

The Regulator should be empowered to refuse a proposed Auditor and to remove Auditors.

507. The Authority has the power to remove auditors if it reasonably believes that a person does not have sufficient resources, knowledge, experience or competence to perform the duties of the auditor, is otherwise incapable of performing those duties; or is otherwise unsuitable to be the auditor of the licence holder, the Authority may decide that that person is ineligible to act as an auditor of the licence holder.

The Regulatory framework should include provisions for gateways between the Regulator and the Auditor. These should include an obligation for the Auditor to report to the Regulator on

significant breaches of regulatory requirements by the TCSP, and protection from civil liability for an Auditor in respect of any such information supplied to the Regulator.

508. The FSA08 sets out the circumstances which impose the obligation to report. Additionally, within the Rule Book, it covers the rights of auditors and states that licence holders must permit and require its auditor to provide to the Authority such information and opinions as the Authority requests. Evidence of this provision being utilised was provided as part of one of the Authority's enforcement cases.

The Regulatory framework should enable the Regulator to require copies of financial records, including audited financial statements of parent and ultimate parent entities, particularly where the TCSP is dependent on support from its parent or group, or otherwise has significant financial exposure to the parent or group.

509. The Authority has documented the requirement within its Rule Book relating to requirements of annual financial statements of parent and holding companies, trusts, or foundations. The part in question covers that licence holders who are subsidiaries of another company, must provide to the Authority unconsolidated (if consolidated are not available) audited financial statements and in the case of a trust or foundation other confirmations of that entity's financial position. This framework is in operation as part of the technical compliance and the Authority actively requests these if necessary.

The Regulator should require a TCSP to maintain Professional Indemnity Insurance ("PII") cover which is commensurate with the size and nature of its business.

510. The Authority has this documented under its Rule Book. Although the IOMFSA has set maximum amounts, the threshold can be higher than the maximum to ensure that the insurance is commensurate to the nature and scale of the business carried out. The Authority was able to demonstrate that it captures this information via the PII confirmation form which is required to be signed by the licence holder and the insurance broker.

The Regulator should require notification to itself and insurers concerned of any potential claim on a timely basis.

511. This requirement is captured under Part 2.28 of the Rule Book under "Claims." Licence holders are required to notify the Authority as soon as it becomes aware of any claim made against the licence holder where any amount claimed or disputed is likely to exceed the lower of £10,000 or where applicable 10% of the licence holder's minimum net tangible asset requirement. TCSPs do inform the Authority of potential claims as outlined within the requirements. Authority staff then proceed to ask whether the PII insurer has been notified if this has not already been completed.

The Regulator should give consideration to imposing requirements for the TCSP to have in place run-off PII where a licence is surrendered or revoked.

512. The Authority may require a licence holder that intends to cease carrying on any or all regulated activities or sell or otherwise transfer the business or the company to a third party to hold “run-off” PII cover in respect of past acts or omissions. The Authority generally requests run-off PII that is appropriate to the circumstances of the licenceholder.

Liquidations and Receiverships

The Regulator should have the power to apply to the Court to appoint a Manager, Administrator, Receiver or Liquidator (“insolvency practitioner”) to a TCSP.

513. The Authority may, by order, prescribe circumstances in which the Authority may apply to the High Court for the appointment by the Court of a person as manager to manage the affairs of persons in so far as those affairs relate to the carrying on of a regulated order. There are various legislative provisions set out under various acts which allow for the Authority to petition the high court for an appointment of a receiver and manager, a liquidator to be appointed or an inspector. The Authority evidenced under various enforcement cases the use of these powers.

The regulatory framework should establish whether insolvency practitioners:

are required to be licensed;

514. The IoM framework does not require insolvency practitioners to be licensed. During the liquidation of a TCSP, the Authority’s view is that an insolvency practitioner is not in the business of being a TCSP, they are in the business of being an insolvency practitioner however, the TCSP in liquidation is still conducting regulated activities. The framework that supports the exemption of insolvency practitioners requiring to be licensed is set out in the Financial Services (Exemptions) Regulations 2011. The exemptions only apply to liquidators who meet the criteria set out certain conditions. The IOMFSA submitted that there is no statutory differentiation between a liquidator appointed voluntarily and a liquidator appointed compulsorily. In a compulsory liquidation, the Court first appoints the Official Receiver as Provisional Liquidator with limited powers who must hold a first meeting of Creditors and Contributories to decide who to appoint as Liquidator. The statutory exemption provisions, including notification requirements, then take effect. The Authority has considered the requirement and has sufficient framework in place that it deems insolvency practitioners are not required to be licensed.

are subject to rules or regulations of the Regulator;

515. The Authority has legislative requirements which applies to licence holders in liquidation unless modifications are granted. This is at the discretion of the Authority. There is no departure from the Standard, as the Standard requires the regulatory framework to establish whether IPs are subject to rules or regulations of the regulator.

are subject to other regulatory powers;

516. The FSA08 still applies to TCSPs who are in liquidation. However, it ceases to apply once the entity has been dissolved.

can be required to submit reports to the Regulator.

517. Section 14 of the FSA08 applies, and the Authority could direct a licence holder to provide copies of its liquidators' reports. The Authority has confirmed that liquidators have supplied information voluntarily. The Authority is deemed as compliant in respect of this point.

Observations relating to Part 3H of the Standard – Administration

Summary

- **The IOMFSA provided evidence of compliance in respect of Part 3H both in law and in practice.**

Recording Keeping Requirements

The Regulator should ensure that it has the statutory power to access the records of a TCSP, and to take copies of such records to undertake its regulatory functions.

518. The FSA08 sets out the provisions in which the Authority has the power to inspect and take copies of all books, accounts, documents and transactions. This applies to both the entity and permitted persons, former permitted persons or recognised auditors. The powers used also extend to individuals where the Authority has reasonable grounds to suspect that a person is carrying on a regulated activity when not a permitted person, or a person who is auditing accounts that are required to be audited by a recognised auditor. In addition, the powers also extend to the Authority having the power of entry and access. The Authority exercises these powers during onsite inspections where files and information are made available to the authority. Copy documents are obtained both in advance and whilst-onsite. Where IT functions have been outsourced the Authority has received confirmation that outsourcing arrangement will not hinder access to records.

The Regulator should require that TCSPs have in place robust record keeping policies and procedures that deliver effective information and document management systems.

519. The Authority's Rule Book stipulates that TCSPs must keep robust record keeping policies and procedures. This is reviewed as part of onsite inspections.

maintains all records so that they are accessible and up to date at all times as far as is reasonable;

520. The Authority has guidelines relating to how systems and controls for record keeping are required to be kept. This is reviewed as part of onsite inspections.

arranges files and indexes all records so as to permit prompt access to any particular record;

521. Section 8.3 of the Rule Book outlines that the responsible officers of the licence holder are responsible for ensuring that appropriate internal, operational controls, systems, policies and procedures relating to all aspects of its business are established to ensure the effective maintenance of accounting and other records and the reliability of the information held. Record keeping is reviewed as part of onsite inspections. Inspections have also identified instances where information, such as client lists, were incomplete which required corrective action.

records information in such a way as to enable a particular transaction to be identified at any time and traced through the accounting systems of the TCSP, in particular in such manner as to enable early identification of balances and of the particular items which make up those balances;

522. This is documented in Section 3.10 of the Rule Book and takes into consideration the Records to be kept by a licence holder.

523. The types of records required, refer specifically to client monies and extend to keeping adequate records of all client transactions undertaken on client accounts which include balances of the client accounts and itemisation of the account. Additionally, there are separate legislative provisions for the use of accounting records. The Authority provided examples of an enforcement case whereby the failure to properly record information was one of the grounds upon which a manager was appointed to the licence holder.

ensures any records it maintains in an electronic format are stored in such a way as to be and remain admissible in evidence before a relevant Court;

524. The FSA08 outlines how documents are classified in legislation. There are requirements listed for the production of documents and the non-recognition of paper-based records in the Isle of Man is governed by the Electronic Transactions Act 2000. The requirements do not extend to specifically requiring admissibility in court, largely because it would not be in a position to determine compliance. As part of onsite inspections, the IOMFSA conducts inspections via the TCSPs in house system and is able to determine if relevant records are kept in line with the requirements.

maintains adequate policies and procedures for the maintenance, security, privacy and preservation of records, working papers and documents of title belonging to the TCSP and/or its clients or others so that they are admissible before a relevant Court and reasonably safeguarded against loss, unauthorised access, alteration or destruction;

525. This is captured in section 8.3 of the IOMFSA Rule Book which outlines under paragraph (2) that responsible officers of a licence holder must establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure – appropriate safeguards to protect data from loss or misuse.

526. The Isle of Man has equivalent legislation to the EU General Data Protection Regulations (“GDPR”) and Law Enforcement Directive (“LED”) which is applicable to all licence holders under the Data Protection Act 2018. As above, the requirements do not extend to specifically requiring admissibility in court, largely because it would not be in a position to determine compliance. During an inspection the inspection team are typically logged into the licence holder's CRM systems, however the Authority does not routinely conduct a general review of the data security systems of a licence holder. A licence holder is required to notify the Authority when it becomes aware of the loss of

consumer or other data. Such a loss represents a serious risk to customers and to the viability of the licence holder and is addressed urgently by the Authority with the licence holder. A licence holder is required to observe data protection procedures as required by the IOM Information Commissioner.

maintains adequate records identifying relevant financial transactions following the closing of an account, the end of a transaction or the cessation of the business relationship for a minimum period of five years from the last of these events; or for as long as the law requires.

527. The Authority has set legislative provisions for retaining data following the cessation for a business relationship or transaction. For the majority of records the retention period is six years, however in some instances, such as AML/CFT records this is five years. If required, the Authority can impose additional requirements to the retention periods. The Authority demonstrated that record keeping is reviewed as part of onsite inspections. As part of the surrender process, a licence holder confirms where these records will be held. For active files this is covered by the inspection process. However, the Authority does not routinely inspect closed files.

Accounting Requirements for Vehicles administered by TCSPs.

Regulators should require that a TCSP with responsibility for maintaining accounting records of a Vehicle does so with sufficient particularity to show and explain the transactions and commitments (whether effected on its own behalf or on behalf of others).

528. The Authority has in place requirements as to how clients' records should be kept. The relevant sections of the Rule Book require that a licence holder keeps and maintains proper records to show and explain transactions effected by it on behalf of its clients. Additionally, there is further information as to how the records should be kept. Licence holders are required to submit Annual Regulatory Returns.

529. The Authority has identified issues with the preparation of client entity accounts requiring remedial action. The relevance of the requirement to explain transactions was reinforced by the High Court and cites the judge's comments in relation to not keeping adequate records.

Outsourcing of Key Functions

The Regulator should define the functions of a TCSP which should not be outsourced, giving careful consideration to ensure that a TCSP does not delegate so many of its functions as would leave an inadequate presence in the jurisdiction.

530. The Authority's Licensing Policy outlines that a licence holder must establish a real presence in the Isle of Man and one which is sufficient to undertake the regulated activity. Applicants are required to demonstrate real presence by satisfying the IOMFSA that the business centre activity, as well as the undertaking of the activity will be located in the Isle of Man. The IOMFSA is unable to issue licences to any potential applicant unless the applicant is managed and controlled in the Island. The Authority would not

consent to any proposal for a delegation of functions which would leave the licence holder in breach of the requirements. As part of this, it is a requirement that at least two directors of a licence holder must be resident in the Isle of Man. The IOMFSA provided examples for outsourcing arrangements to demonstrate its effectiveness of reviewing outsourcing agreements. The Authority must formally agree in writing the acceptance of any outsourcing proposals.

Outsourcing must not hamper supervision of a TCSP by the Regulator. The terms of the outsourcing agreement must include a contractual requirement for the provider of the outsourcing services to give the Regulator the right to direct access to material which it holds in relation to the business of a TCSP.

531. The IOMFSA's Rule Book outlines the requirements for "Delegations of Functions including outsourcing". These regulations outline that consent is required from the Authority in order to delegate functions to a third party, this also includes any changes to any prior agreements. Any functions which are delegated or outsourced are still the ultimate responsibility of the licence holder. Licence holders are required to ensure that it notifies the Authority 20 days before the agreement is due to become operational, that it maintains records relating to all delegated or outsourced functions and that the Authority has access to all records. The outsourcing guidance notes produced by the IOMFSA state that licence holders should be able to provide access to documents and accounting records in relation to the outsourced activities during the review process. The IOMFSA submitted that where material IT functions have been outsourced, the Authority has obtained confirmation that this would not hinder access to information.

In any instance of proposed outsourcing, the Regulator should require a TCSP to:
assess the risk of the proposal;

532. The Authority's Rule Book under the Risk Management section states that policies are required to have clear arrangements for delegating. The outsourcing guidance note states that "responsible officers" should consider and document the risks of the outsourcing and any mitigating factors. The Authority is notified and considers any proposal for outsourcing. A licence holders outsourcing arrangement is regularly reviewed during onsite inspections with the details being obtained in advance.

document the capability and suitability of the proposed provider of the outsourced services;

533. The Authority's Rule Book covers the delegation of functions, including outsourcing. It captures the capability and suitability of the proposed provider of the outsourced services. Examples of the outsourcing process was reviewed as part of documentation submitted to support effectiveness. The Authority reviews the outsourcing proposals and requests additional information should it be required.

establish a clear responsibility within the TCSP for monitoring the conduct of the outsourced services, and for reporting to the Board;

534. The Authority imposes the requirement that any delegation or outsourcing must be evidenced by a written agreement setting out their respective responsibilities and duties, including the monitoring of the delegated or outsourced function by the licence holder and the provisions for terminating the delegation or outsourcing arrangements.

consider the risks which could arise from the failure of the provider of outsourced services or other breakdown in the provision of services;

535. The IOMFSA has stipulated within its Rule Book under the heading delegation of function including outsourcing, where failure of the outsourced service provider would represent a breakdown of the outsourcing.

have in place a contingency plan in case of the failure of the provider of outsourced services or other breakdown in the provision of services.

536. The IOMFSA has stipulated within its Rule Book under the heading Delegation of function including outsourcing that in the event of a breakdown of a delegation or outsourcing agreement, the licence holder is able to carry out or assume control of the relevant functions.

a TCSP notify it before outsourcing functions which are relevant to its management, compliance or the delivery of TCSP services;

537. The Authority mandates that TCSPs are required to notify the Authority of any material delegation or outsourcing arrangement at least 20 business days before it becomes operational. The Authority was able to demonstrate it had reviewed outsourcing agreements before these were agreed. The IOMFSA has confirmed it will take action on any outsourcing which is being conducted without approval of the Authority to ensure compliance with the requirements.

there is an outsourcing agreement in writing between a TCSP and the provider of the outsourcing services;

538. The Authority has provisions in place which capture that any delegation or outsourcing arrangement must be evidenced by a written agreement between the parties. Copies of outsourcing agreements are received by the Authority as part of the consent process.

if the outsourcing is of a regulated activity, then the provider of the outsourcing services should normally itself be regulated;

539. The outsourcing guidance notes highlight that outsourced regulated activities should be conducted by regulated entities. The IoM also has provisions within the outsourcing guidance notes which state that consent to outsourcing outside of the jurisdiction will in general only be granted where the outsourcing is to a regulated entity with a standard of regulation or supervision with equivalence to the IoM standards. The Authority currently has 7 Class 7 licence holders who are able to manage and administer other regulated entities. A Class 7 licence permits a licence holder to manage the business of another licence holder. As such this activity is more comprehensive than an

outsourcing arrangement. This is why the activity needs to be licensed as a Class 7 licence, because the manager essentially runs the whole business, including all regulated activity. These businesses are subjected to direct supervision by the Authority. The Authority furnished the assessment team with copies of agreements as part of the evaluation process.

there is no sub-outsourcing without the explicit approval of the Regulator.

540. The IOMFSA has a specific section within its Rule Book “delegation of function.” The Authority stipulates requirements that licence holders are unable to delegate any material management or business function to another person (whether or not that person is another company within the same group as the licence holder) or make any material change to any such delegation without the consent in writing of the Authority. Sub-contraction is also referenced within the outsourcing guidance notes highlighting the above requirements. The IOMFSA have confirmed that it is not aware of any such cases and that there have been no arrangements of this nature approved to date.

The Regulator should require a TCSP which maintains its accounting records of Vehicles and other records with a provider of outsourced services (whether or not in a location outside the jurisdiction), to ensure that:

the records are kept secure and pose no operational risk;

541. The Authority’s Rule Book states that the responsible officers of a licence holder must establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure appropriate safeguards to protect data from loss or misuse.

the records are maintained so as to be readily accessible;

542. The Authority requires that the TCSP must maintain records relating to all delegated or outsourced functions (whether or not material) and that the Authority has access to such records.

all regulatory and confidentiality laws are complied with;

543. The Authority requires that the TCSP must maintain records relating to all delegated or outsourced functions (whether or not material) and that the Authority has access to such records to ensure it meets the requirements.

the Regulator has ready and reasonable access to the records at all times.

544. The Authority has several legislative provisions which it can rely on in reference to requests for Information. The Authority may request any person whom it reasonably believes may hold information that it reasonably requires for the performance of its functions under this Act to provide that information. In respect of outsourcing, it is a requirement to maintain records relating to all delegated or outsourced functions (whether or not material) and that the Authority has access to all such records. The powers above do not impose an obligation and if an occasion arises where a person

refuses to comply, which may simply be because they owe a common law duty of confidentiality to the subject of the record, other mandatory powers are available which includes an inherent direction power.

Data Security

The Regulator should require that data (whether in a physical or digital format) is held in a secure manner. This should include reasonable steps to ensure:

security against theft or unauthorised access; security against loss or destruction; compliance with the statutory requirements which apply to the TCSP; and suitable backup and disaster recovery arrangements.

545. The Authority has a specific section within its Rule Book in respect of Management Controls where data security is covered.
546. The Authority requires that the responsible officers of a licence holder must establish and maintain appropriate internal and operational controls, systems, policies and procedures relating to all aspects of its business to ensure appropriate safeguards to protect data from loss of misuse.
547. Section 8.15 of the Rule Book references business continuity and outlines that a licence holder must establish and maintain arrangements for safeguarding the interests of its clients, appropriate to the size and organisation and the nature, scale and complexity of its business in the event of – the death, incapacity or sickness and; holidays and other periods of absence of the individuals responsible for controlling or carrying on its activities. This also covers the arrangements referred to above with a disaster recovery plan, which may include a locum in accordance with requirements.

Data Protection

The data protection principles framework for holding data about individuals varies slightly between jurisdictions, but the principles can be summarized as below. Personal data must be:

used fairly and lawfully; used for specific and lawful purposes, in a manner that is compatible with those purposes; adequate, relevant and not excessive; accurate and where necessary kept up to date; kept for no longer than necessary; used in accordance with the rights of individuals; and kept secure to avoid unauthorised or unlawful use, accidental loss, or damage.

548. The Isle of Man is not a member of the EU but maintains equivalence in data protection via the Data Protection Act 2018 and Data Protection (Application of GDPR) Order 2018 which are both in force. Whilst not specific to the IOMFSA, the Data Protection Act 2018 is a matter of general law of IoM. In addition to the legislation, the Isle of Man Information Commissioner has enforcement powers. The IOMFSA is not directly responsible for Data Protection in respect of its licence holders however, the Authority as an entity in the Isle of Man is subject to the data protection legislation. The Authority

is registered with the Isle of Man Information Commissioner as a data controller for the purposes of Isle of Man data protection legislation. It has a Data Protection Officer and Deputy Data Protection Officer. The individuals are also members of the Information Governance Group, which is an internal group that considers information governance as a whole, of which data protection (personal data) is a part. The Authority also has a record retention schedule which covers all types of records held including those containing personal data. The schedule sets out the types of records held, how long it will be kept secure to avoid unauthorised or unlawful use, loss or damage.

Regulators should require a TCSP to follow the above data protection principles and to: not transfer data to another jurisdiction unless that jurisdiction subscribes to the above principles or an agreement exists between the TCSP and transferee providing an equivalent level of protection;

549. The IOMFSA has data references contained within the FSA08 and the Rule Book which should be construed in the context of GDPR. Compliance with general law matters is regarded as a matter of competency for licence holders. The example given to support effectiveness relates to where an IT function for a group was transferred to another group entity which was located within the European Union. The licence holders terms and conditions permitted the transfer of data outside the Isle of Man. The group company was ISO27001 accredited. As the company was situated within the EU it was subject to GDPR.

document the capability and suitability of the proposed provider of outsourced services;

550. This is outlined within Section 8.16 of the Rule Book under Delegation of Function. Licence holders under this requirement need to ensure that any delegation or outsourcing agreement must be evidenced by a written agreement. As part of the Outsourcing Guidance Notes, the Authority will require sight of the draft agreement and the final agreement once it has been signed. The example given to support effectiveness relates to where an IT function for a group was transferred to another group entity which was located within the European Union. The licence holders terms and conditions permitted the transfer of data outside the Isle of Man. The group company was ISO27001 accredited. As the company was situated within the EU it was subject to GDPR.

establish a clear responsibility within the TCSP for monitoring the conduct of the outsourced services, and for reporting to the Board;

551. The Authority's Rule Book in relation to Delegation of Outsourcing states the following – Any delegation or outsourcing arrangement must be evidenced by a written agreement between the parties setting out clearly their respective responsibilities and duties, including the monitoring of the delegated or outsourced function by the licence holder. In addition, there are specific sections which outline that a licence holder may accept and rely on records supplied by a third party subject to the records being capable

of supplied in a timely manner and kept for at least 6 years after the transactions and are capable of being and are reconciled with records created by the licence holder. A review of Board minutes covering this area is typically conducted as part of the on-site inspection process.

consider the risks which could arise from the failure of the provider of outsourced services or other breakdown in the provision of services;

552. The Authority reviews all outsourcing proposals and the risks are assessed, which includes availability and suitability of the outsourced provider, conflicts of interest, IT security and dispute resolution. The Authority was able to demonstrate it had reviewed and provided feedback in relation to outsourcing providers.

have in place a contingency plan in case of the failure of the provider of outsourced services or other breakdown in the provision of services.

553. The Authority's Rule Book has the relevant framework to ensure that in the event of a breakdown of a delegation or outsourcing agreement, the licence holder is able to carry out, or assume control of the relevant functions. The Authority also takes into consideration within its guidance notes that certain risks may not apply if it outsourcing is being conducted within the same group.

Observations relating to Part 3I of the Standard – Financial Crime and International Sanctions

Summary

- The IOMFSA was able to demonstrate a strong technical compliance in the regulation of TCSPs to ensure that their business is protected from the threats of money laundering, financing terrorism and other financial crime. The overall regulatory regime relating to this part of the Standard is compliant.
- Refer to post events regarding Standard 3- AML/CFT outreach update.

I.1 AML/CFT Policies

The Regulator should require that TCSPs assess risks and apply a risk-based approach to discharging their AML/CFT obligations. The Regulator should require TCSPs to:

Identify, assess, and understand the money laundering and terrorist financing risks for their jurisdiction and the TCSP sector, and apply resources aimed at ensuring those risks are mitigated effectively;

554. The IOMFSA AML/CFT Code, Paragraph 4, requires TCSP procedures and controls to have regard to materiality and risk of ML/FT including whether a customer, beneficial owner, beneficiary, introducer or eligible introducer poses a higher risk of ML/FT and enable TCSPs to manage and mitigate the risks of ML/FT that have been identified. Paragraph 5 requires TCSP to carry out an assessment that estimates the risk of ML/FT posed by the TCSP's business and customers and the business risk assessment must have regard to all relevant risk factors including relating to the Isle of Man.
555. The Authority's Inspection Guidance, requires policies and procedures of TCSPs to be requested and reviewed prior to an inspection to assess compliance with the AML/CFT Code. The extent to which the information is requested are limited to the scope of the inspection.
556. To create a scope specific to the intended inspection in order to identify and mitigate ML/FT risks, the Authority uses regulatory return data, intelligence gathered either from external agencies or supervisory activities. Typically, these include business risk assessment, technology risk assessment, customer risk assessment, customer due diligence or CDD and enhanced customer due diligence or EDD, ongoing monitoring and transactional monitoring. TCSPs are assisted in reviewing risk under the IOM National Risk Assessment, which would be reviewed as part of the inspection process.

Identify, assess and document a ML/FT risk assessment relevant to their business, based on their business plans and risk profiles (for example, customer base, markets, distribution channels and products and services offered)

557. The IOMFSA AML/CFT Code, Paragraph 5, requires a TCSP to undertake a business risk assessment which must have regard to all relevant risk factors. Paragraphs 6 and 7 require a TCSP to carry out an assessment that estimates the risk of ML/FT posed by its customers and by any technology to its business. There is also a TCSP AML/CFT Sector Guidance which includes a number of suggested higher risk indicators or factors application to the sector.

558. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

559. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess customers, products and services offered.

Ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified; and

560. Part 4 of the AML/CFT Handbook sets out the expectations concerning CDD and EDD to be undertaken. A varying CDD is required depending on the assessed risk, further detail is included in the Code. A standard risk customer would undergo standard CDD (Paragraphs 8 and 12) whereas higher risk customers require EDD (Paragraphs 8, 12, and 15) and further measures are necessary for PEPs (Paragraph 14). The Code also requires that the frequency of monitoring is determined depending on the risk (Paragraph 13). And Paragraph 15 requires a TCSP to establish, record, maintain and operate appropriate procedures and controls in relation to undertaking EDD. Screening in respect of sanctions is also required for all customers and relationships.

561. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which includes a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.

562. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess CDD, EDD, and screening of customers.

Implement a suitable AML/CFT programme with effective oversight over the Vehicles for which they act. The programme should include the implementation of adequate controls to mitigate any identified money laundering and terrorist financing risks.

563. IOMFSA AML/CFT Code, Paragraph 30, require TCSP to establish, record, maintain and operate appropriate procedures and controls for monitoring and testing compliance with the AML/CFT legislation and to ensure that there is a robust and recorded arrangement for managing the risks identified by the business risk assessment; the operational performance of those arrangements is suitably monitored; and prompt action is taken to remedy any deficiencies in arrangements. A report must be submitted to senior management of the TCSP annually. This requirement was tested as part of the Foreign PEP Thematic review, where the Authority requested that firms provide a summary from the previous 2 years where they have identified deficiencies.
564. The assessors observe that the reports are not required to be submitted to the Authority on an annual basis. These are provided during on-site inspection which have an AML/CFT element, including the foreign PEP thematic.
565. The assessors viewed samples of pre/post on-site materials the IOMFSA produce as part of its onsite inspection of TCSPs which include a list of policies and procedures requested, that are relevant to matters covered under the onsite scope to ensure compliance with the relevant requirements of the Rule Book and the AML/CFT Code.
566. Typically, a client or customer list is obtained by the IOMFSA from the TCSP and a sample of files is put together for review on-site to test and assess the implementation of customer risk assessments.

I.2 National Co-operation and Co-ordination

The Regulator should ensure that it has legal authority and effective mechanisms in place which enable it to co-operate, and, where appropriate, coordinate domestically with policymakers, the financial intelligence unit (FIU), law enforcement Authorities, Regulators and other relevant competent Authorities concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

567. The non-public information that the IOMFSA obtains is defined as 'restricted information' in its legislation (Section 31 of the FSA08 brings Schedule 5 of the same Act into effect). Paragraph 2 of Schedule 5 provides for various important exceptions from the restrictions on disclosure of restricted information (often described as gateways). These gateways permit the sharing of information with domestic and foreign counterparts, as well as other relevant bodies.
568. And although MOUs are not pre-requisites, the Authority is supported by many multilateral MOUs with regulatory bodies, and other bodies domestically and world-wide. The IOMFSA is represented well on the Isle of Man's AML/CFT policy and co-ordinating groups. Details of the national policy and coordination groups, their members, key functions and reporting framework can be found on the Isle of Man National Risk Assessment 2020.

569. The AML/CFT Advisory Group of which the Authority is a member of, is chaired by the AML/CFT Office and meets quarterly. The aim is to strengthen communications, the exchange of financial intelligence and to facilitate cooperation between government, regulators and industry. The minutes of meetings are published online. The AML/CFT Advisory Group reports to the Financial Crime Strategic Board (FCSB) who are responsible to the Council of Ministers for making recommendations on AML/CFT policy and for the delivery of the Isle of Man Financial Crime Strategy 2021-2023.
570. The IOMFSA and the FIU have a close working relationship which includes regular formal meetings between the AML Division and the FIU on a quarterly basis. The Authority has had 58 meetings with the FIU in the last 18 months and AML Team meets with the FIU 3 times per year on a formal basis.
571. The Authority's Enforcement Division and the FIU have more informal communication on an ad-hoc basis. For example, the FIU will disclose information to the Authority regarding entities that the Authority supervises or oversees, where it is of use for the Authority to have that intelligence; likewise, the Authority will disclose matters to the FIU. When necessary, the Authority and FIU will meet to discuss such matters.
572. The IOMFSA and the FIU will be utilising a risk analysis tool called STRIX to further facilitate and improve data sharing. Funding to purchase and utilise the software was approved by the FIU Board on 27 June 2022 and the procurement process has commenced. The system is built specifically for AML/CFT supervision, it will enable the Island's supervisors to:
- Improve the consistency and quality of AML/CFT data obtained from supervised entities;
 - Improve efficiency of collection, analysis and use of AML/CFT data;
 - Better understand supervised entities, sectors and their AML/CFT risks and make risk based supervisory plans in line with this enhanced understanding;
 - Improve interaction and data sharing in line with the KPMG Big Picture Report⁵;
 - Support the Island plan, which envisages "we continually and consistently meet global standards, maintaining and enhancing our reputation as an internationally responsible and increasingly sustainable jurisdiction".
573. Prior to undertaking an inspection of a TCSP the Authority contacts the FIU to seek any intelligence they hold which may assist. The Authority shares the data they receive from the Isle of Man banking sector on a quarterly basis regarding payment flows with the FIU.

⁵ The report can be found at <https://www.gov.im/media/1377116/our-big-picture-phase-3-report-final-public.pdf>

I.3 Regulation and Supervision

The Regulator should ensure that TCSPs are subject to regulation and supervision and have policies, procedures and controls which effectively implement the FATF Recommendations by undertaking on-site inspections. The Regulator should:

Require that TCSPs be licensed or registered and adequately regulated, and subject to supervision or monitoring for AML/CFT purposes, having regard to the risk of money laundering or terrorist financing in the trust company business sector. This requirement is in addition to the requirement for the TCSP to be licensed to conduct trust and company business as provided for in Section A;

574. The Trust and Corporate Service Provider (TCSP) services is a regulated activity and are licensed and supervised by the IOMFSA under FSA08. CSPs have been regulated since 2000 and TSPs since 2005. Policies, procedures and controls of TCSPs are requested and reviewed for compliance with the AML/CFT Code and the Rule Book as part the Authority's post-licensing inspections and ongoing risk-based inspections.
575. Schedule 4 of the Proceeds of Crime Act 2008 set out those business sectors subject to the AML/CFT Code which includes all TCSPs. The Code also details the preventative measures required to be implemented in order to combat ML/FT risks.
576. In its MONEYVAL Evaluation the Isle of Man was rated largely compliant for R26 on regulation and supervision of financial institution, and also for R27 on powers of supervisors. The Evaluation assessed the Isle of Man as having moderate levels of effectiveness in relation to IO3 on supervision and IO4 on preventative measures.
577. Please refer to paragraph 338 for the IOMFSA statistics table showing the number of new licence-holders since 2017 and the completed post-licence inspections (all post-licence inspections have resulted in remediation within Supervision.).
578. Please refer to paragraph 339 for the IOMFSA statistics table showing the number of completed inspections since 2017 versus the TCSP population each year.

Have adequate powers to supervise or monitor, and ensure compliance by, TCSPs with regard to combatting money laundering and terrorist financing;

579. The IOMFSA FSA08, Schedule 1, Paragraph 2, sets out the functions of the Authority are to regulate and supervise persons undertaking regulated activities, and the maintenance and development of the regulatory regime for regulated activities, including the investigation into any potential liability arising from breach of AML/CFT legislation by persons undertaking regulated activities. This includes the power to supervise, monitor and ensure compliance with the AML/CFT Code. The full Inspection or investigation powers are detailed in Schedule 2 of the FSA08.

Require that TCSPs provide an explanation of any recorded information or state where it may be found;

580. The IOMFSA AML/CFT Code requires TCSPs to have record keeping obligations under Part 8 of the Code (Paragraphs 33 to 35).

Verify the TCSPs' compliance with AML/CFT requirements by undertaking regular on-site inspections;

581. The IOMFSA conducts a risk-based approach to supervision where TCSPs selected for on-site inspections are driven by the IOMFSA engagement model. Where higher risk or higher impact Firms have more engagement.

582. The IOMFSA conducts a risk-based approach to supervision where TCSPs selected for on-site or other inspections are driven by the IOMFSA engagement model. Where higher risk or higher impact Firms have more engagement.

The assessors observe that under the IOMFSA historic model there were generally less inspections and formal business meetings, but that the Authority is now transitioning to a new supervisory model. The AML/CFT Supervision Engagement Model is separate and distinct from the impact-led Supervision Engagement Model; rather than being driven by impact, engagement is driven by a licenceholders ML/FT Risk Rating. This is because the reduction of financial crime is a primary objective of the Authority; therefore the IOMFSA will focus AML/CFT Supervision resources on licence holders assessed as High and Medium-High ML/FT risk. This means that higher intensity supervisory engagement is used to monitor firms that are higher risk. Other less intensive supervisory measures such as greater use of automation and exception reporting, and AML/CFT Thematic Questionnaires and outreach activities (e.g. presentations and seminars), are also used as part of the AML/CFT supervisory programme across the whole cohort of licence holders.

Information gathered in the execution of the Engagement Model will inform Supervisors' judgement when assessing risk and inspection findings will inform 'evidence' based elements added back into the Strix AML CFT risk analysis tool. Both the Impact driven Supervision Engagement Model and the AML/CFT Supervision Engagement Model are supplemented by additional targeted supervision where risks arise. The IOMFSA envisions lower risk firms to be supervised through the use of thematic reviews and sample follow up inspections that it will continue to assess the behaviour of these certain firms through intelligence received such as formal notifications in order to determine future inspections.

583. Refer also to IOMFSA statistics table above on completed inspections since 2017 versus TCSPs population each year.

Be authorised to compel production of any information from TCSPs that is relevant to monitoring such compliance;

584. The FSA08 gives the Authority powers to request or direct TCSPs to provide information and to hold compelled interviews.

585. The full inspection or investigation powers are detailed in Schedule 2 of the FSA08. Examples include powers to conduct compelled interviews, and seize documents.

Have the legal powers and internal procedures to impose sanctions on TCSPs for failing to comply with the AML/CFT regulatory framework established by the Regulator or failing to provide information requested by the Regulator; and

586. This is covered by the AML/CFT (Civil Penalties) Regulation 2019, the Proceeds of Crime Act 2008, the Terrorism and Other Crime (Financial Restrictions) Act 2014. The legislation provides for a level 1 (up to 5% of Income) or level 2 (up to 8% of income) civil penalty to be imposed in relation to identified contravention(s) of the AML/CFT Code 2019.

587. Since January 2017 the Authority has:

- Obtained the disqualification from acting as a company officer, for reasons of corporate unfitness, of 14 individuals of whom 7 were previously principally employed in the TCSP sector,
- Imposed 9 Civil Penalties upon regulated entities of whom 2 held, inter alia, TCSP licenses,
- Imposed 9 (Section 10A) Prohibitions from carrying on activities within the regulated sector, against individuals in relation to regulatory unfitness, of whom 5 had been principally employed in the regulated TCSP Sector.

Details of all of these actions are publicly available on the IOMFSA website.

588. The Authority has made public statements (or published on the IOMFSA website) of TCSPs that were required to pay a discretionary civil penalty under the Financial Services (Civil Penalties) Regulations 2015.

Have the ability, supported by legislation, to impose a range of disciplinary and financial sanctions, including the power to withdraw, revoke, restrict or suspend the financial institution's licence, where applicable and to issue directions to TCSPs.

589. Powers to revoke, impose conditions on or suspend licences and to impose directions all exist under the FSA08 and are itemised in more detail in other sections, including 2.4 and 3A. See I.3.1.6 above for further details regarding sanctions.

590. The IOMFSA also published statistics of remedial and other regulatory actions taken under the FSA08 in their 2021 Annual Report. These actions are not isolated to TCSPs.

I.4 Bribery and Corruption

Regulators should require TCSPs to have systems and policies, procedures and controls in place to ensure that they or entities that they control and administer do not become engaged directly or indirectly in bribery or corruption.

591. This requirement is covered by the Bribery Act 2013 which applies to all sectors of the economy. The IOMFSA Rule Book does not duplicate the requirements of the Bribery Act. It does however include specific provisions about offering or receipt of gifts (Paragraph 6.9)
592. All licence-holders are subject to the Bribery Act 2013, and compliance with this would be reviewed on an inspection considering the TCSP's policies and procedures and a sample of client files would be reviewed which would consider the customer's risk assessment, the ongoing monitoring of the customer and what actions are taken if bribery or corruption was identified.

The Regulator should prohibit TCSPs from:

Soliciting, receiving or accepting bribes or gifts, inducements, rewards or advantage that is likely to conflict with the TCSPs' duty to any Client, to facilitate breach of the regulatory framework or to facilitate the commission of an offence under any law applicable to the TCSPs or to the person offering the bribe, gift, inducement, reward or advantage;

593. The IOMFSA Rule Book, Paragraph 6.9, states that TCSPs must not offer or receive, or permit any employee or agent to offer or receive, any gift or other direct or indirect benefit, if to do so might adversely influence the giving of advice by, or the exercise of discretion on the part of, the licence holder, employee or agent.
594. The Bribery Act 2013 creates the offence of bribery. The AML legislation has requirements in relation to all predicate crime including bribery and corruption.
595. The IOM was running an Anti-Bribery and Corruption ("ABC") project to develop a strategy and operational implementation of ABC which commenced in July 2021. Members of the IOMFSA are present on this multi-agency project. The project was established to co-ordinate activities in the Isle of Man that specifically address bribery and corruption whether domestic or international, identify where there may be potential gaps in their response and provide recommendations to public and private sector entities on managing the risks posed by bribery and corruption. The Project aims to deliver:
- A strategy setting out national priorities, against which activities can be developed, delivered and measured.
 - A method of recording and monitoring activities.
 - Advice and guidance to all relevant stakeholders.
 - Accessible resources and information that cover the Island's ongoing response to bribery and corruption, relevant policies, procedures and legislation, and how concerns can be reported.
596. The Strategy was unanimously approved by Tynwald in July 2022 and a new Anti-Bribery and Corruption website and alternative reporting pathway for reporting concerns

under the Bribery Act 2013 are to be launched imminently. The website contains guidance and resources for the general public; private sector; the public sector and local authorities and regulated businesses along with an accessible reporting tool to make reports of bribery/corruption in line with the relevant provisions of the Bribery legislation. The guidance notes under the legislation have also been updated and will be published.

597. Multi-agency work continues to implement the strategic objectives, which includes the delivery of a long-term and sustainable model for addressing the ongoing risk to the Island from domestic and international bribery and corruption. Currently suspected internal bribery within a regulated entity is reported to the FIU. The ABC project will create a new mechanism for direct reporting under the Bribery Act 2013.

598. Gift registers have formed part of supervisory inspections when they are reviewed. Being involved or offering services to corrupt entities or individuals. In this context "entities" includes any entity, whether incorporated or not offering, promising or giving a bribe, gift, inducement or other benefit to a public official as consideration for co-operation, assistance, exercise of influence or act of omission in connection with any transaction or business relating to a governmental matter or a claim, advantage, approval or exemption that the government is entitled to bestow, whether or not the public official is willing or able to render such assistance; and

599. The IOMFSA Rule Book, Paragraph 6.9, states that TCSPs must not offer or receive, or permit any employee or agent to offer or receive, any gift or other direct or indirect benefit, if to do so might adversely influence the giving of advice by, or the exercise of discretion on the part of, the licence holder, employee or agent.

600. The Bribery Act 2013 creates the offence of bribery and the AML legislation has requirements in relation to all predicate crime including bribery and corruption. directly or indirectly, offering, promising, giving, or demanding a bribe or other undue advantage to obtain or retain business, to facilitate a breach of any law or other improper advantage.

601. The IOMFSA Rule Book, Paragraph 6.9, states that TCSPs must not offer or receive, or permit any employee or agent to offer or receive, any gift or other direct or indirect benefit, if to do so might adversely influence the giving of advice by, or the exercise of discretion on the part of, the licence holder, employee or agent.

602. The Bribery Act 2013 creates the offence of bribery and the AML legislation has requirements in relation to all predicate crime including bribery and corruption.

I.5 Policies, Procedures and Controls

Regulators should require that TCSPs promote employee awareness of Financial Crime Risk and compliance with its policies, procedures and controls.

603. The IOMFSA AML/CFT Code, Paragraph 4, requires TCSPs to establish, record, operate and maintain procedures and controls on all aspects of the Code which must be communicated to employees and workers. The Code also includes explicit training requirements in relation to AML/CFT (Paragraph 32). There are also testing requirements in place to ensure TCSPs make sure that procedures and controls are being operated at all times and are effective in respect of that organisation (Paragraph 30).
604. It is a requirement of the AML Code for licence holders to provide annual AML training to staff. Data in the annual AML Statistical Return provides details of training broken down between induction, refresher and specialist AML training.

I.6 International Sanctions

An effective sanctions regime in relation to terrorism and proliferation financing is required under Recommendations 6 and 7 of the Financial Action Task Force Standards. Regulators should monitor the readiness of TCSPs to comply with sanction regimes. Testing regulatory compliance with the sanction's regimes should form part of their on-site and off-site supervision.

605. Sanction regime is applicable to all TCSPs. As part of the MONEYVAL assessment in 2016/17 the country was rated compliant for R6 (targeted financial sanctions relating to terrorism and terrorist financing) and largely compliant for R7 (targeted financial sanctions relating to proliferation).
606. The IOMFSA, as part of an overall assessment of the control environment of licence holders during the period 2019 and 2020, conducted initiatives focussing on the roles and responsibilities of staff within key compliance and risk functions, and the responsibilities of licence holder Boards. The compliance and risk initiative commenced with meetings with staff responsible for the compliance and risk functions at 17 licence holders (thematic exercise).
607. In addition, details of sanction screening undertaken by TCSPs are obtained with the annual AML/CFT Statistical Return.

The Regulator should require that TCSPs:

Have adequate procedures to identify their obligations and comply with national laws on financial sanctions. Implementation should include the development of proportionate and adequate systems, internal controls and processes to satisfy relevant sanctions requirements and manage overlapping sanctions regimes;

608. The IOMFSA AML/CFT Code, Paragraph 4, requires TCSPs to have procedures and controls in place to determine whether a customer is included on the sanction list and is required to form part of ongoing monitoring of customers. The AML/CFT Handbook provides further information on sanctions at Section 7.3.5 and in relation to customer screening at 3.4.3.

609. The Sanction List is defined as the list of persons who are subject to international sanctions which apply in the Island which is maintained by the Customs and Excise Division of the Treasury.

Ensure that their policies and procedures on sanctions legislation are compliant and being applied in practice. Adequate resources must be allocated to monitoring sanctions compliance. Regular risk assessments and AML/CTF audits are recommended to help assess the effectiveness of the policies and procedures;

610. The IOMFSA AML/CFT Code, Paragraph 30, requires TCSPs to monitor and test their compliance with all areas of the Code.

Ensure that their staff possess the appropriate knowledge, competencies, awareness and understanding of relevant sanctions regimes, especially staff charged with developing and implementing systems of compliance and policies, procedures and controls; and

611. The IOMFSA AML/CFT Code, Paragraph 32, requires TCSPs to provide or arrange education and training, including refresher training, at least annually for all staff to improve awareness of the provisions of the AML/CFT legislation and the TCSPs policies and procedures for AML/CFT purposes. Paragraph 23, require TCSP MLRO to be sufficiently senior in the organisation or have sufficient experience and authority.

612. The MLRO, DMLRO and Compliance Officer roles are all key person roles and controlled functions as set out in rule 8.21 of the IOMFSA Rule Book.

Inform the relevant competent Authorities forthwith where they know or suspect a Client or a person with whom the TCSP has or has had business is effected by a relevant sanction.

613. The IOMFSA AML/CFT Code, Paragraph 27, requires the MLRO of a TCSP to make an external disclosure to the IOMFIU in accordance with the reporting procedures and controls established under Paragraph 25 as soon as is practical if the MLRO knows or suspects; or has reasonable grounds for knowing or suspecting, that the activity is ML/FT.

614. The competent authority for these disclosures is the FIU. As part of the AML/CFT Statistical Return the Authority obtains data from TCSPs, reporting the number of external disclosures of sanctioned clients made to the FIU and how many clients have been exited due to sanction related matters. The FIU provide details of disclosure made to them, sharing under their gateway to assist the Authority in its functions. Dependent on the inspection scope, the TCSPs SAR registers may be reviewed.

615. The policies and procedures are utilised to assist supervisors in performing walk-throughs of the activity and the controls and reporting activity which considers the effectiveness of the policies and procedures and the firms' adherence to those in practice. Registers of internal and external disclosures are also reviewed. In addition, while onsite a sample of client files are reviewed.

616. The IOMFSA statistics on total suspicious activity reports or SARs submitted to the FIU are included below:

	SARs (Total)	SAR (TCSPs)	% of Total (TCSPs)
2017/18	1536	111	7%
2018/19	1878	144	8%
2019/20	2022	130	6%

Observations relating to Part 3J of the Standard – Co-operation

Summary

- **The IOMFSA was able to demonstrate that it has the legal authority to obtain and share information with domestic and foreign counterparts and is Compliant with this part of the Standard.**

J.1 Information Sharing

The Regulator should have the legal authority and sufficient resources to obtain and share both public and non-public information with domestic and foreign counterparts without the approval of another body or government department. The existence of a Memorandum of Understanding (“MOU”) should not be a pre-requisite to exchanging information.

617. The Authority has the ability and resources to obtain and share both public and non-public information without prior approvals from other bodies or departments and MOUs are not pre-requisites.

618. The non-public information that the IOMFSA obtains is defined as ‘restricted information’. Section 31 of the FSA08 brings Schedule 5 of the same Act into effect. Schedule 5 defines a restricted information, provides for various exceptions, confidentiality clauses, and enables the Authority to co-operate with other regulatory organisations both domestically and internationally. The Authority is also empowered to enter into mutually assistance agreements with any regulatory authority under Section 34 of the FSA08.

619. The Authority discloses information under regulatory gateways on a daily basis for authorisations and supervisory reasons. The Competent Authorities are the IOM Customs and Excise and the FIU whom the IOMFSA notifies if it becomes aware of a suspected sanctioned individual in receipt of services from any licence holder. The Authority has made four sanctions disclosures in the past 6 years, none of which are related to a TCSP.

The regulatory system should allow for assistance to be provided to foreign Regulators who make enquiries in the discharge of their supervisory functions and exercise of their powers, including for purposes of day-to-day supervision, investigations and inquiries and enforcement. Information sharing mechanisms and procedures should extend to sharing information both in the context of regular supervision and in other conditions, including crisis situations.

620. The Authority has the ability and resources to obtain and share both public and non-public information without prior approvals from other bodies or departments and MOUs are not pre-requisites.
621. Schedule 5 of the FSA08 defines restricted information, provides for various exceptions, confidentiality clauses, and enables the Authority to co-operate with other regulatory organisations both domestically and internationally. The Authority is empowered to enter into mutually assistance agreements with any regulatory authority under section 34 of the FSA08.
622. The Authority discloses information under regulatory gateways on a daily basis for authorisations and supervisory reasons.
623. Disclosures and receipts of information in relation to licence holders have been recorded on the Authority’s ATLAS system since November 2019. Disclosures and information received in relation to the fitness and propriety of licence applicants and individuals has been recorded on the ATLAS system since October 2020.
624. The IOMFSA statistics on exchange of information (“EOI”) since the recording on the ATLAS system commenced:

Exchange of Information	TOTAL	INWARD	OUTWARD
EOI since November 2019	456	52	404
EOI with other Regulators	392		
EOI with Government Dept.	53		

Information has been exchanged with 40 different jurisdictions globally and the average time to respond to requests was 9 days.

625. In relation to formal requests for information. For example, requests to exercise the Authority’s powers of inspection and investigation on behalf of another regulator, these are conducted by the Enforcement Division (assisted by Supervisory staff if necessary or appropriate). No such requests for the purposes of an overseas investigation into TCSP activity have been recorded in recent times. Requests for assistance with publicly available material for example company details, are dealt with on an ad hoc basis and are not statistically recorded. Where such instances arise, it is usual to respond immediately or within a very short period with any available public information.

Requested Regulators may impose conditions on the use of the information by the Requesting Regulator, including limiting the use of the information by the requesting authority.

626. The IOMFSA’s gateway communications do preclude onward disclosure by the recipient without consent of the Authority.
627. Features of the procedure include: standard clauses on restriction of onward transmission without the consent of the Authority, and citation of the power that is being used to disclose the information. The Authority has delegated the decision to make such disclosures to Senior

Manager level. We do not separately record for each item whether incoming information includes a statement from the sending regulator regarding onward transmission, but would check before using any such information.

Regulators should have the legal authority to enter into information sharing mechanisms, including MOUs, with other Regulators and Competent Authorities.

628. Section 34 of the FSA08, empowers the IOMFSA to enter into a mutual assistance agreement with any regulatory authority. But the powers to share restricted information in schedule 5 of the FSA08 do not rely on the existence of such an agreement.

629. The Authority has 54 MOUs with other jurisdictions and the Authority confirmed that most MOUs refer to timeframes, such as: "as soon as possible" or "as soon as practicable". In practice all requests are dealt with a time sensitive and urgent manner.

630. The assessors note that the IOMFSA has responded to all gateways which required a response within an average of 9 days turnaround.

The mechanisms established by a Regulator to share information should cover information sharing on a timely and constructive basis at the Regulator's own initiative and also on request.

631. FSA08, Paragraph 8 of Schedule 5 covers powers to disclose information.

632. There is no statutory provision requiring information sharing to be timely and on a constructive basis, however, many agreements between regulatory authorities (including MOUs) include such provisions as part of the agreed protocols. Where formal requests for assistance are received requiring the Authority to exercise its powers of inspection or investigation to obtain information for another regulator, the Authority aims to respond within 28 days of receipt or, if that proves impossible due to circumstances, for example volumes of material, the Authority seeks to keep the requesting authority regularly updated on progress. The Authority have received no such requests in respect of TCSP related matters within the past 6 years. In respect of ad-hoc regulator-to-regulator requests for information or spontaneous disclosures the Authority aims to assist as soon as reasonably practical. As noted in J.1.2 above the average time of the responses logged on ATLAS was 9 days.

Regulators that receive information from another Regulator should have measures to ensure that the information is kept confidential, used only for supervisory purposes and is not disclosed to any third party without the other Regulator's prior approval.

633. Information received from other regulators is classified 'restricted information' and therefore subject to all protections (Paragraph 1(2) of Schedule 5 of the FSA08). The IOMFSA staff are also subject to the Official Secrets Act 1911 and standards of conduct are set out in the Staff Handbook.

634. All information obtained by the Authority in the exercise of its functions is subject to a statutory restriction on disclosure with personal criminal liability applying to any person disclosing it except as permitted within statute. Where information is received that is subject to special handling restrictions in addition to the statutory restrictions it is normally received by the Enforcement Division who are experienced in handling sensitive and restricted information. The information is stored in an area accessible only to the Enforcement Division and access is granted only at their discretion and with appropriate communication of the handling protocols applicable. Any indexing of the information is such as to identify only the name of the subject

and source but not the detail of the information. Supervisory information is normally less sensitive and more widely accessible to supervisory staff.

635. The IOMFSA statistics on information received each year, since 2017:

	Total	2017	2018	2019	2020	2021
Information Received	481	128	74	110	84	85

The Authority confirmed that all information received was shared with the required parties.

Information sharing mechanisms could, where appropriate, include establishing colleges for supervisory co-operation and exchange of prudential supervisory information in relation to TCSPs whose operations extend to different jurisdictions.

636. The Authority is bound by Supervisory College Protocol for TCSPs which operate multi-jurisdictionally. The IOMFSA has also has a GIFCS MMOU in place.

637. The IOMFSA has never used the MMOUs for colleges before on the grounds that Section 31 of, and Schedule 5 paragraph 2(5)(a) to the FSA08 gives the Authority the statutory powers it needs to share the information at those colleges. The statutory gateways and the GIFCS terms of reference satisfy these criteria.

Regulators should adopt a pro-active approach to sharing information in a coordinated, timely and effective way during each stage of the regulatory relationship pertaining to a TCSP. Regulators should inform any other Regulator concerned with a TCSP as soon as possible when taking any action that might reasonably be considered to affect that TCSP.

638. The IOMFSA takes part in colleges and shares information regularly. It actively and timely responds to any gateway requests received from other regulatory bodies.

639. The Authority confirmed that not all multi-jurisdictional TCSPs have had Supervisory Colleges, however the IOMFSA has participated in 6 supervisory colleges and the IOM have 11 multi-jurisdictional groups.

J.2 Other forms of Co-operation

Regulators should have the legal ability to provide assistance to foreign Regulators upon request.

640. The IOMFSA has extensive powers in Schedule 5, Paragraph 2 of the FSA08 to be able to provide assistance to foreign Regulators.

641. The Authority responds to requests for information under regulatory gateways on a daily basis for authorisations and supervisory purposes and have responded to all requests received.

Regulators should have the legal authority to allow a foreign counterpart to conduct an onsite inspection of a TCSP operating in the Regulator's jurisdiction that is also regulated by the foreign counterpart.

642. The IOMFSA may authorise any person to exercise on its behalf, all or any of the powers conferred by or under Schedule 5, Paragraph 2 of the FSA08.

643. In the context of investigations into an IOM TCSP licence holder with known business in other jurisdictions for example Guernsey or Jersey, information has been shared.

644. The Authority has received no requests from foreign counterparts to conduct an inspection of a TCSP operating in the IOM.

Regulators should have mechanisms to collaborate with each other and other competent authorities in exercising their functions in the case of suspected or actual criminal activities by a TCSP. The existence of a MOU should not be a pre-requisite to exchanging information.

645. The existence of an MOU is not a pre-requisite of the IOMFSA exchanging information.

646. In an ongoing case, the IOMFSA has collaborated with the deemed Official Receiver, the joint Liquidators, the Court appointed Manager/Receiver, HMAG Chambers, the Court appointed Company Inspectors, the ECU, the FIU, IOM Customs and Excise and the ICAEW at various points and ongoing. In a previous concluded case, the Authority collaborated with the deemed Official Receivers, the FIU and the ECU and were material in identifying and evidencing alleged theft act offences, albeit charges have not yet been laid.

Group of International Finance Centre Supervisors

