



FINANCIAL SERVICES ACT 2008

**REGULATED ACTIVITIES ORDER 2009**

*Approved by Tynwald* 2009

*Coming into operation* 1st January 2010

The Treasury, after carrying out the consultations required by section 44(7) of the Financial Services Act 2008<sup>2</sup>, makes this Order under section 3 of that Act.

**1. Title**

The title of this Order is the Regulated Activities Order 2009.

**2. Commencement**

This Order shall come into operation on 1st January 2010.

**3. Interpretation**

(1) In this Order –

- (a) Any provision in Schedule 1 for the interpretation of any expression (marked \* in that Schedule) in relation to a class referred to in article 4(1) or an exclusion referred to in article 4(2) shall have effect for the construction of that expression in relation to that class or exclusion;
- (b) other expressions in this Order have the meanings given by Schedule 2.

(2) The expressions used in paragraphs (a) to (f) of section 3(2) of the Act have the meanings specified in relation to them in Schedule 3.

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<sup>2</sup> 2008 c.8

**4. Regulated activities**

- (1) Subject to paragraph (2), any activity of a class specified as a regulated activity in Schedule 1 is a regulated activity for the purpose of the Act.
- (2) Where an activity of a class referred to in paragraph (1) is carried on in circumstances specified in that Schedule as an exclusion in relation to that class, that activity shall not be treated as a regulated activity for the purpose of the Act by reason only that it falls within that class.

**5. Revocation**

The Regulated Activities Order 2008<sup>2</sup> is revoked.

MADE

2009

Minister for the Treasury

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<sup>2</sup> SD 367/08

Article 3.

## SCHEDULE 1

### REGULATED ACTIVITIES

#### CLASS 1 – DEPOSIT TAKING

##### Regulated activity

Accepting deposits of money, where –

- (a) the money received by way of deposit is lent to others; or
- (b) any other activity of the person accepting the deposit is financed wholly, or to a material extent, out of the capital of or interest on the money received by way of deposit.

##### Exclusions

*Deposits received by certain persons*

1(a) Where the money is received by –

- (a) the Isle of Man Government;
- (b) the Isle of Man Post Office; or
- (c) National Savings and Investments (an executive agency of the Chancellor of the Exchequer of the United Kingdom).

*Deposits made by certain persons*

1(b) Where the money is paid by a person who, at the time when it is paid –

- (a) is a close relative of the person receiving it;
- (b) is a director or manager of that person;
- (c) is a close relative of a director or manager of that person;
- (d) is an individual who controls that person; or
- (e) is a close relative of an individual who controls that person.

*Credit unions*

1(c) Where the money is received by a credit union in accordance with the Credit Unions Act 1993<sup>3</sup>.

*Client money or trust money*

1(d) Where the money –

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<sup>3</sup> 1992 c.19

- (a) is received by a person as client money or trust money, and
- (b) is paid into a client bank account or a trust bank account.

*Electronic money*

- 1(e) Where the money —
- (a) consists of electronic money, and
  - (b) the funds received in settlement of the claim on the issuer are paid into a client bank account.

*Groups*

- 1(f) Where the person who pays the money and the person who receives it are —
- (a) in the same group\*; or
  - (b) controlled by the same person.

*Friendly societies*

- 1(g) Where the activity is carried out by a body registered as a friendly society (but not as a branch of a society) under an enactment having effect in the Island or any part of the United Kingdom in respect of any business which it carries on for or in connection with any of the services for which friendly societies may provide under that or other enactments relating to friendly societies.

*Diocesan Board of Finance*

- 1(h) Where the activity is carried on by the Sodor and Man Diocesan Board of Finance for purposes of the Church of England.

**Interpretation**

- (1) For the purpose of exclusion 1(f) "group" includes any company in which a member of the group holds a qualifying capital interest; and for this purpose —
- (a) "qualifying capital interest" means an interest in relevant shares of the company which the member holds on a long term basis for the purpose of securing a contribution to its own activities by the exercise of control or influence arising from that interest;
  - (b) "relevant shares" means shares comprised in the ordinary share capital of the company of a class carrying rights to vote in all circumstances at general meetings of the body; and
  - (c) a holding of 20 per cent or more of the nominal value of the relevant shares of a company shall be presumed to be a qualifying capital interest unless the contrary is shown;

## CLASS 2 – INVESTMENT BUSINESS

### Regulated activities

- (1) Dealing in investments by a professional dealer as principal.
- (2) Dealing in investments by any person as agent for another person.
- (3) Arranging deals in investments, including –
  - (a) making arrangements for another person (whether as principal or as agent for a third person) to buy, sell, subscribe for or underwrite investments; and
  - (b) making arrangements with a view to a person who participates in the arrangements buying, selling, subscribing for or underwriting investments (whether as principal or as agent for a third person).
- (4) Managing investments belonging to another person, in circumstances involving the exercise of discretion, including –
  - (a) as an attorney managing investments under a power of attorney; and
  - (b) safeguarding bearer instruments of title to investments.
- (5) The provision of administration and safeguarding of investments under a contractual relationship, including arranging for one or more other persons to safeguard and administer the investments; and for this purpose it is immaterial that title to the investments is held in uncertificated form.
- (6) Advising a trustee or manager of a retirement benefits scheme on the suitability or otherwise of –
  - (a) buying, selling, subscribing for or underwriting investments; or
  - (b) exercising any right conferred by such investments to buy, sell, subscribe for or underwrite other investments.
- (7) Advising –
  - (a) any person (other than a trustee or manager of a retirement benefits scheme) in his capacity as an investor or potential investor; or
  - (b) an attorney for an investor or a potential investor, on the suitability or otherwise of –
    - (i) buying, selling, subscribing for or underwriting investments; or
    - (ii) exercising any right conferred by such investments to buy, sell, subscribe for or underwrite other investments.

## Exclusions

### *Acceptance of instruments creating or acknowledging indebtedness*

- 2(a) Where a person accepts an instrument creating or acknowledging indebtedness in respect of any loan, credit, guarantee or other similar financial accommodation or assurance which he has made, granted or provided (including where he becomes a party to an instrument otherwise than as a debtor or a surety).

### *Issue of own shares or debentures*

- 2(b) Where a person issues its own shares, share warrants, debentures or debenture warrants.

### *Groups and joint enterprises*

- 2(c) Where the persons engaged in the activity —
- (a) are companies in the same group; or
  - (b) are, or propose to become, participators in a joint enterprise and the activity is wholly incidental to that joint enterprise.

### *Transactions with overseas persons*

- 2(d) Where the activity is carried on by an overseas person who is authorised to conduct that activity by an overseas regulator, and either —
- (a) the carrying on of the activity is the direct result of an approach made to the overseas person by or on behalf of an Isle of Man person which has not been solicited by the overseas person (otherwise than by means of an advertisement which is neither —
    - (i) targeted at Isle of Man persons, nor
    - (ii) disseminated by a medium which is targeted at Isle of Man persons,) or
  - (b) the client or potential client in the Isle of Man is either —
    - (i) a licenceholder,
    - (ii) a person falling within exclusion 2(r) below, or
    - (iii) a person whose ordinary business activities involve him in acquiring, holding, managing or disposing of shares or debentures (as principal or agent), for the purposes of his business.

*Venture capital*

- 2(e) Where the activity consists of the acquisition or disposal of, or anything done for the purposes of the acquisition or disposal of, shares in a company, and —
- (a) either —
    - (i) the shares consist of or include shares carrying 75 per cent or more of the voting rights attributable to share capital which are exercisable in all circumstances at any general meeting of the company; or
    - (ii) the shares, together with any already held by the person acquiring them, carry not less than that percentage of those voting rights; and
  - (b) the acquisition and disposal is, or is to be, between parties who are connected individuals.

*Employees' share schemes*

- 2(f) Where the activity is carried on by a company\* for the purpose of enabling or facilitating transactions in securities in the company between or for the benefit of relevant persons\* or the holding of such securities by or for the benefit of relevant persons.

*Corporate services*

- 2(g) In the case of an activity falling within paragraph (1), (2), (3) or (5) of Class 2, but only where the activity is also a regulated activity within Class 4,

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*Nominees and bare trustees*

- 2(h) In the case of an activity falling within paragraph (1), (2) or (5) of Class 2, where a nominee company deals in an investment which —
- (a) consists of securities issued by a private company, and
  - (b) is or is to be held by the nominee company as nominee or bare trustee.

*Trustees and personal representatives (1)*

- 2(i) In the case of an activity falling within paragraph (1) to (5) of class 2, where a person acts in his capacity as a trustee (otherwise than as bare trustee or nominee or as trustee of a collective investment scheme), or as the personal representative of a deceased person, unless that person holds himself out as prepared to carry on that activity in addition to the discharge of his duties as trustee or personal representative.

*Trustees and personal representatives (2)*

2(j) In the case of an activity falling within paragraph (6) of Class 2, where a person who is a trustee (otherwise than a bare trustee or nominee or a trustee of a collective investment scheme) or the personal representative of a deceased person advises —

- (a) a fellow trustee or personal representative for the purposes of the relevant trust or estate; or
- (b) a beneficiary under the relevant trust, will or intestacy concerning his interest in the trust or estate,

unless that person holds himself out as prepared to carry on that activity in addition to the discharge of his duties as trustee or personal representative.

*Enabling parties to communicate*

2(k) In the case of an activity falling within paragraph (3) of Class 2, where a person merely provides the means by which one party to a transaction or potential transaction is able to communicate with other such parties.

*Arranging transactions to which the arranger is a party*

2(l) In the case of an activity falling within paragraph (3) or (6) of Class 2, where a person (otherwise than a professional dealer or attorney) makes arrangements with a view to a transaction to which he will be a party.

*Introductions*

2(m) In the case of an activity falling within paragraph (3) of Class 2, where the activity consists of arrangements under which a person will be introduced to another person who is —

- (i) a person licensed to carry on regulated activities falling within Class 2; or
- (ii) a person exempted by regulations under section 44(2) of the Act in relation to activities falling within Class 2 who is acting in the course of a business comprising such an activity;

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and the introduction is made with a view to the provision of independent advice or the independent exercise of discretion in relation to investments generally or to any class of investments.

*Professional services*

2(n) In the case of an activity falling within paragraph (3) to (7) of class 2, where the activity —

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- (a) is carried on by a person who is an accountant, an advocate or a registered legal practitioner,
- (b) is wholly incidental to, or forms part of, advice given or another professional activity undertaken by that person in his professional capacity; and
- (c) is carried on at the time when, or within a reasonable period after, the advice is given or the professional activity is undertaken,

unless that person holds himself out as being available to carry on that activity in addition to his professional services.

*Introduction to eligible custodians*

- 2(o) In the case of an activity falling within paragraph (5) of Class 2, where a person is introduced to another person who is an eligible custodian.

*Activities not constituting safeguarding and administration*

- 2(p) In the case of an activity falling within paragraph (5) of Class 2, where the activity consists of —
  - (a) providing information as to the number of units or the value of any assets safeguarded; or
  - (b) converting currency; or
  - (c) receiving documents relating to an investment solely for the purpose of onward transmission to, from or at the direction of the person to whom the investment belongs; or
  - (d) safekeeping title documents relating to investments contained within sealed packages, where the packages remain sealed and the contents of which are not known to the person providing the safekeeping service.

*Advice given in media*

- 2(q) In the case of an activity falling within paragraph (6) of Class 2, where —
  - (a) advice in writing or other legible form is contained in a newspaper, journal, magazine or other periodical publication, or given by way of a service comprising regularly updated news or information, or
  - (b) advice is given in any service consisting of a sound, television, world wide web or internet broadcast or transmission,

if the principal purpose of the publication or service, taken as a whole and including any advertisement or other promotional material contained in it, is neither —

- (i) giving advice of a kind mentioned in paragraph (6) of Class 2, nor
- (ii) leading or enabling persons to buy, sell, subscribe for or underwrite investments.

*Insurers etc.*

- 2(r) Where the activity is carried on by a person who is —
- (a) authorised under section 8 of the Insurance Act 2008<sup>3</sup>;
  - (b) the holder of a permit issued under section 22 of that Act;
  - (c) registered under section 23 of that Act;
  - (d) the subject of an exemption under sections 5(2)(c) or 5(2)(d) of that Act; or
  - (e) registered as a scheme administrator under section 36(1) of the Retirement Benefits Schemes Act 2000<sup>4</sup>,
- as part of any business carried on by virtue of that authorisation, permit, registration or exemption.

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*Friendly societies*

- 2(s) Where the activity is carried out by a body registered as a friendly society (but not as a branch of a society) under an enactment having effect in the Island or any part of the United Kingdom in respect of any business which it carries on, for or in connection with any of the services for which friendly societies may provide under that or other enactments relating to friendly societies.

*Court officers etc.*

- 2(t) Where the activity is carried on by any judge of the High Court, the Chief Registrar or any receiver or officer of the High Court in the exercise of his functions as such.

*Diocesan Board of Finance*

- 2(u) Where the activity is carried on by the Sodor and Man Diocesan Board of Finance for purposes of the Church of England.

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<sup>3</sup> 2008 c.16

<sup>4</sup> 2000 c.14

*Collective investment schemes*

- 2(v) Where the activity is carried on by a collective investment scheme for its own account.

**Interpretation**

In exclusion 2(f) —

- (a) the reference to an activity carried on by a company includes a reference to such an activity carried on by a company in the same group or a relevant trustee;
- (b) "relevant person" means any of the following —
  - (i) a bona fide employee or former employee of the company or a company in the same group; or
  - (ii) the wife, husband, widow, widower, or child or stepchild under the age of 18, of any such employee or former employee;

and in (a) above "relevant trustee" means a person holding securities in the company as trustee in pursuance of arrangements made by the company or a group company for the purpose mentioned in exclusion 2(f).

**CLASS 3 — SERVICES TO COLLECTIVE INVESTMENT SCHEMES**

**Regulated activities**

- (1) Acting as a manager\* of a collective investment scheme\* other than an exempt scheme or an exempt-type scheme.
- (2) Acting as an administrator\* of a collective investment scheme other than an exempt scheme or an exempt-type scheme.
- (3) Acting as a trustee\* of a collective investment scheme other than an exempt scheme or an exempt-type scheme.
- (4) Acting as a fiduciary custodian\* of a collective investment scheme other than an exempt scheme or an exempt-type scheme.
- (5) Acting as a custodian\* of a collective investment scheme other than an exempt scheme or an exempt-type scheme.
- (6) Acting as an asset manager to a collective investment scheme.
- (7) Acting as an investment adviser\* to a collective investment scheme.
- (8) Acting as a promoter\* of a collective investment scheme which is exempted from a requirement of the Collective Investment Schemes Act 2008 subject to a condition that the promoter of the scheme be regulated as a promoter

- (9) Providing management or administration services to a person acting as mentioned in paragraphs (1), (2), (6) or (7).
- (10) Providing administration services to the manager or administrator of a collective investment scheme where that manager or administrator is located outside the Island.
- (11) Acting as a manager, administrator, trustee, fiduciary custodian or custodian to a collective investment scheme which is an exempt scheme or exempt type scheme.
- (12) Providing administration services to a person who is exempt from licensing under section 4 of the Act by virtue of paragraph 3.2 of the Financial Services (Exemptions) Regulations 2008 in relation to an exempt scheme or an exempt-type scheme.
- (13) Providing services set out in Schedule 4 paragraph(2)(8) of the Collective Investment Schemes Act 2008 in relation to an individually recognised scheme.

#### **Exclusion**

In the case of an activity falling within paragraph (11) of Class 3, where —

- (a) the person by whom it is carried on acts as manager, administrator, trustee, fiduciary custodian or custodian of no more than one exempt scheme or exempt-type scheme; and
- (b) no person in the same economic group as that person is acting in the same capacity in relation to an exempt scheme or exempt-type scheme.

#### **Interpretation**

- (1) For the purpose of Class 3 —
  - (a) the following terms have the same meanings as in the Collective Investment Schemes Act 2008 —
    - "administrator"
    - "asset manager"
    - "collective investment scheme"
    - "custodian"
    - "fiduciary custodian"
    - "investment adviser"
    - "manager"
    - "promoter"
    - "trustee"
    - "exempt scheme"
- (2) For the purpose of the above exclusion —

- (a) "exempt-type scheme" means a scheme which does not, but would be an exempt scheme if it did, comply with paragraph 1(2) of Schedule 3 to the Collective Investment Schemes Act 2008;
- (b) persons are in the same economic group where an individual, either alone or with an associate or associates, is entitled to exercise or control the exercise of 50% or more of the voting power at any general meeting of any of those persons or of another company of which they are subsidiaries.

#### **CLASS 4 – CORPORATE SERVICES**

##### **Regulated activities**

- (1) Providing services with respect to the formation of companies.
- (2) The sale, transfer or disposal of companies.
- (3) Providing or arranging for premises for use as a registered office for a company.
- (4) Providing or arranging for accommodation address facilities for a company.
- (5) Acting as a registered agent under the Limited Liability Companies Act 1996 or the Companies Act 2006<sup>5</sup>.
- (6) Acting as an officer of a company (including as director or alternate director, but excluding as secretary, of a company).
- (7) Acting as secretary of a company.
- (8) Arranging for another person to act as an officer of a company (including acting as a director, alternate director or secretary of a company).
- (9) Acting or arranging for another person to act as a nominee shareholder or nominee member of a company.
- (10) Providing administration services to a company.
- (11) Providing services with respect to the formation of partnerships.
- (12) Providing or arranging for premises for use as a place of business by a partnership.
- (13) Providing or arranging for accommodation address facilities for a partnership.

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<sup>5</sup> 2006 c.13

- (14) Acting as or arranging for another person to act as a person authorised to accept on behalf of a partnership service of any process or documents under section 48A of the Partnership Act 1909<sup>6</sup>.
- (15) Arranging for another person to act as a partner in a partnership.

**Exclusions**

*Landlord, property manager or estate agent*

- 4(a) In the case of an activity falling within paragraph (3), (4), (12) or (13) of Class 4, where a person acts in his capacity as landlord, property manager or estate agent.

*Company administration services*

- 4(b) In the case of an activity falling within paragraph (10) of Class 4, where the company is —
  - (a) an open-ended investment company; or
  - (b) a body incorporated under an enactment having effect in the Island or any part of the United Kingdom relating to building societies, industrial and provident societies or credit unions.

*Professional services*

- 4(c) Where the activity —
  - (a) is carried on by a person who is an accountant, an advocate or a registered legal practitioner,
  - (b) is wholly incidental to, or forms part of, advice given or another professional activity undertaken by that person in his professional capacity; and
  - (c) is carried on at the time when, or within a reasonable period after, the advice is given or the professional activity is undertaken,unless that person holds himself out as being available to carry on that activity in addition to his professional services.

*Group transactions*

- 4(d) Where the activity is undertaken by —
  - (a) a company which is part of a group;
  - (b) a company which is an officer of a company and which is part of a group; or

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<sup>6</sup> VIII p.327

- (c) an individual who is a member or employee of a company which is part of a group,  
for or in respect of\* a company which is a member of that group.

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*Introductions*

- 4(e) Where the activity consists of arrangements under which a person will be introduced to another person who is licensed to carry on any regulated activity falling within Class 4.

Deleted: Exclusion 4(e) – Joint enterprises¶

. Where the activity is undertaken by a person who is, or proposes to become, a participator in a joint enterprise and the activity is wholly incidental to that joint enterprise.¶

Exclusion 4(f) –

*Employment agencies*

- 4(f) Where the activity is undertaken by the holder of an employment agency licence or employment business licence under the Employment Agencies Act 1975<sup>7</sup> and the activity is wholly incidental to the business which it is licensed to carry on under that Act.

*Officers*

- 4(g) Where the activity consists of an individual acting as a director or secretary of a company which is wholly and beneficially owned by any of the following –
- (a) that individual; or
  - (b) one or more close relatives of his.

*Insurers etc.*

- 4(h) Where the activity is carried on by a person who is –
- (a) authorised under section 8 of the Insurance Act 2008;
  - (b) the holder of a permit issued under section 22 of that Act;
  - (c) registered under section 23 of that Act;
  - (d) the subject of an exemption under sections 5(2)(c) or 5(2)(d), of that Act; or
  - (e) registered as a scheme administrator under section 36(1) of the Retirement Benefits Schemes Act 2000,
- as part of any business carried on by virtue of that authorisation, permit, registration or exemption.

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*Court officers etc.*

- 4(i) Where the activity is carried on by any of the judges of the High Court, the Chief Registrar or any receiver or officer of the High Court in the exercise of his functions as such.

<sup>7</sup> 1975 c.20

## Interpretation

- (1) For the purpose of this Class "company" includes —
  - (a) a *Stiftung* (foundation) established under the law of Austria, Germany or Liechtenstein;
  - (b) an *Anstalt* (institution) established under the law of Liechtenstein;
  - (c) a foundation or similar entity established under the law of a country or territory outside the Island.
- (2) For the purpose of exclusion 4(d) an activity is not undertaken for or in respect of a company which is a member of that group if that member is acting —
  - (a) as a trustee where each beneficiary (direct or indirect) under the trust is a third party;
  - (b) in a fiduciary capacity and the activity is undertaken wholly or partly in the interests of a third party;
  - (c) as a nominee of a third party;
  - (d) as attorney for a third party;
  - (e) as the agent of a third party; or
  - (f) otherwise on behalf of or with the consent of a third party;and for this purpose "third party" means —
  - (i) an individual who is not a member (legal or equitable), officer or employee of any company which is a member of the group;
  - (ii) a company which is not a member of the group;
  - (iii) a company which is a member of the group but is acting (directly or indirectly) for, or on behalf of, or for the benefit of, a person who is not a member of the group.

## CLASS 5 – TRUST SERVICES

### Regulated activities

- (1) Acting as sole trustee in relation to an express trust.
- (2) Acting as trustee (other than sole trustee) in relation to an express trust.
- (3) Providing trust administration services in relation to an express trust.
- (4) Acting as a trust corporation.
- (5) Acting as a protector in relation to an express trust (that is, a person other than a trustee who, as the holder of an office created by or under



the terms of the trust, is authorised or required to participate in the administration of the trust).

- (6) Acting as an enforcer (within the meaning of the Purpose Trusts Act 1996<sup>8</sup>) in relation to a purpose trust.

**Exclusions**

*Professional services*

5(a) Where the activity —

- (a) is carried on by a person who is an accountant, an advocate or a registered legal practitioner,
- (b) is wholly incidental to, or forms part of, advice given or another professional activity undertaken by that person in his professional capacity; and
- (c) is carried on at the time when, or within a reasonable period after, the advice is given or the professional activity is undertaken,

unless that person holds himself out as being available to carry on that activity in addition to his professional services.

*Group transactions*

5(b) Where the activity is undertaken by —

- (a) a company which is part of a group; or
- (b) an individual who is a member, officer or employee of a company which is part of a group,

for or in respect of\* an express trust which is established for the benefit of that group\*.

*Insurers etc.*

5(c) Where the activity is carried on by a person who is —

- (i) authorised under section 8 of the Insurance Act 2008;
- (ii) the holder of a permit issued under section 22 of that Act;
- (iii) registered under section 23 of that Act;
- (iv) the subject of an exemption under sections 5(2)(c) or 5(2)(d) of that Act; or
- (v) registered as a scheme administrator under section 36(1) of the Retirement Benefits Schemes Act 2000,

**Deleted:** Exclusion 5(c) — Joint enterprises¶¶

. Where the activity is undertaken by a person who is, or proposes to become, a participator in a joint enterprise and the activity is wholly incidental to that joint enterprise.¶¶

Exclusion 5(d) —

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<sup>8</sup> 1996 c.9

as part of any business carried on by virtue of that authorisation, permit, registration or exemption.

*Court officers etc.*

5(d) Where the activity is carried on by any of the judges of the High Court, the Chief Registrar or any receiver or officer of the High Court in the exercise of his functions as such.

### Interpretation

(1) For the purpose of exclusion 5(b) –

- (a) an activity is not undertaken for or in respect of a trust mentioned in that exclusion if it is undertaken –
  - (i) in a fiduciary capacity and wholly or partly in the interests of a third party;
  - (ii) as a nominee of a third party;
  - (iii) as an attorney for a third party;
  - (iv) as the agent of a third party; or
  - (v) otherwise on behalf of or with the consent of a third party;
- (b) a trust is not established for the benefit of a group if any beneficiary under the trust is a third party;

and for this purpose "third party" means –

- (i) an individual who is not a member (legal or equitable), officer or employee of any company which is a member of the group;
- (ii) a company which is not a member of the group; or
- (iii) a company which is a member of the group but is acting (directly or indirectly) for, or on behalf of, or for the benefit of, a person who is not a member of the group.

### CLASS 6 – E-MONEY

#### Regulated activity

Issue of electronic money.

### CLASS 7 – MANAGEMENT OR ADMINISTRATION SERVICES

#### Regulated activity

Management or administration of a person licensed to carry on a regulated activity (other than one falling within Class 3).

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**Exclusion**

Groups

Where the person who is providing management or administration services and the person who receives the services are in the same group.

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**CLASS 8 – MONEY TRANSMISSION SERVICES**

**Regulated activities**

- (1) Operation of a bureau de change.
- (2) Any service or activity involving transmission of money, or any representation of monetary value, by any means either directly or as agent.
- (3) Provision of cheque cashing services.

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**Exclusions**

Groups

- 8(a) In the case of an activity falling within paragraph (2) of Class 8, where the person who transmits the money and the person who receives it are –
  - (a) in the same group; or
  - (b) controlled by the same person.

Deleted: (4) Issue of electronic money.¶

Deleted: Exclusion 6(a) – Activities of certain persons ¶  
 . Where the activity is conducted by –¶  
 (a) . a person licensed to carry on a regulated activity falling within Class 1; or¶  
 (b) . the Isle of Man Post Office; or¶  
 (c) . National Savings and Investments (an executive agency of the Chancellor of the Exchequer of the United Kingdom).¶  
 Exclusion 6(b) –

*Client money and trust money*

- 8(b) In the case of an activity falling within paragraph (2) of Class 8, where the money –
  - (a) is client money or trust money,
  - (b) is received or transmitted by a person licensed to carry on a regulated activity falling within Class 2, 3, 4, 5 or 6, and
  - (c) is held or to be held in a client bank account or trust bank account.

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*Activities incidental to professional services*

- 8(c) In the case of an activity falling within paragraph (2) of Class 8, where the activity –
  - (a) is carried on by a person who is an accountant, an advocate or a registered legal practitioner;

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- (b) is wholly incidental to, or forms part of, advice given or another professional activity undertaken by that person in his professional capacity; and
- (c) is carried on at the time when, or within a reasonable period after, the advice is given or the professional activity is undertaken,

unless that person holds himself out as being available to carry on that activity in addition to his professional services.

*Activities incidental to provision of goods or services*

8(d) In the case of an activity falling within paragraphs (1) or (2) of Class 8, where the activity –

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- (a) is carried on by way of business which consists of the provision of goods or services (not being services the provision of which would, apart from this exclusion, be a regulated activity), and
- (b) is wholly incidental to, or forms part of, the provision of those goods or services; and
- (c) is carried on at the time when, or within a reasonable period after, the goods or services are provided,

unless that person holds himself out as being available to carry on that activity in addition to the provision by him of those goods or services.

*Insurance etc.*

8(e) In the case of an activity falling within paragraph (2) of Class 8, where the activity is carried on by a person who is –

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- (a) authorised under section 8 of the Insurance Act 2008;
- (b) the holder of a permit issued under section 22 of that Act;
- (c) registered under section 23 of that Act;
- (d) the subject of an exemption under sections 5(2)(c) or 5(2)(d) of that Act; or
- (e) registered as a scheme administrator under section 36(1) of the Retirement Benefits Schemes Act 2000,
- (f) registered as an insurance intermediary under the Insurance Intermediaries (General Business) Act 1996<sup>9</sup>,

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as part of any business carried on by virtue of that authorisation, permit, registration or exemption.

<sup>9</sup> 1996 c.4

*Giving of change for goods or services*

- 8(f) In the case of an activity falling within paragraph (1) of Class 8, where the activity carried on consists of an exchange of money in which —
- (a) payment for goods or services is made in cash or by travellers' cheque; and;
  - (b) the change due in respect of that payment is tendered —
    - (i) in a different currency from that in which that payment is made, and
    - (ii) by the person to whom that payment is made.

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*Transmission of payment for goods or services*

- 8(g) In the case of an activity falling within paragraph (2) of Class 8, where the activity consists of the transmission or receipt of money by electronic means, or the provision of money transmission services, by a person for the sole purpose of enabling another person —
- (a) to pay for goods or services; or
  - (b) to access his own money.

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*Credit unions*

- 8(h) In the case of an activity falling within paragraph (2) of Class 8, where the money is transmitted by a credit union in accordance with the Credit Unions Act 1993.

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*Friendly societies*

- 8(i) In the case of an activity falling within paragraph (1) of Class 8, where the activity is carried out by a body registered as a friendly society (but not as a branch of a society) under an enactment having effect in the Island or any part of the United Kingdom in respect of any business which it carries on for or in connection with any of the services for which friendly societies may provide under that or other enactments relating to friendly societies.

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*Diocesan Board of Finance*

- 8(j) In the case of an activity falling within paragraph (2) of Class 8, where the activity is carried on by the Sodor and Man Diocesan Board of Finance for purposes of the Church of England.

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## SCHEDULE 2

## INTERPRETATION

## PART 1 – DEFINITIONS

*Expression**Definition*

accommodation address facilities

means any of the following services –

- (a) the receipt or dispatch on behalf of a person of any communication or packet by post, a courier service, hand delivery, a telecommunications system, wireless telegraphy or any electronic medium;
- (b) the redirection of communications or packets on behalf of a person;
- (c) the provision of an address at which services within (a) or (b) are provided;
- (d) the provision of an address at which process and notices may be served on a company as provided by section 313(1)(c) of the Companies Act 1931<sup>10</sup>;

the Act

means the Financial Services Act 2008;

administration services (in relation to a company)

includes the following activities –

- (a) the keeping of any register which is required to be kept by a company under the Companies Acts 1931 to ~~2009~~;
- (b) the keeping of accounting records and the preparation of accounts which are required to be kept or prepared by the company under the Companies Act 1982;
- (c) the preparation and making of returns required to be made by a company to the Commission under the Companies Acts 1931 to ~~2009~~;
- (d) the preparation and submission of documents which a company is required to prepare and

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<sup>10</sup> XIII p.235

submit under the Companies Acts 1931 to ~~2009~~;

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- (e) the convening of general meetings of a company;
- (f) the taking, preparation and entry of minutes of proceedings at general meetings and directors' meetings of a company;
- (g) the entry of written resolutions which are required to be entered in a minute book by a company under section 119A of the Companies Act 1931;
- (h) the entry of decisions of sole members which are required to be entered in a minute book by a company under section 119B of the Companies Act 1931,
- (i) equivalent activities in relation to companies which are not constituted under the Companies Acts 1931 to ~~2009~~.

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agent

includes an attorney and a nominee;

attorney

means the donee of a power of attorney acting under that power;

buy

means acquire for valuable consideration;

certificate representing securities

means any certificate or other instrument which confers —

- (a) property rights in respect of any share, debenture, government security or warrant;
- (b) any right to acquire, dispose of, underwrite or convert an investment, being a right to which the holder would be entitled if he held any such investment to which the certificate or instrument relates; or
- (c) a contractual right (other than an option) to acquire any such investment otherwise than by subscription;

client

includes a customer (and vice versa)

client bank account

means a bank account which is —

- (a) specially created for the purpose of holding client money, and

	(b) segregated from any account holding money which is not client money;
client money	means money which, for the purpose or in the course of a business carried on by him, a person holds or receives on behalf of a customer or client;
close relative	means parent, step-parent, spouse, child, step-child, brother or sister (including a brother or sister of the half blood);
connected individuals (in relation to a disposal or acquisition of shares in a company)	means persons each of whom is, or is a close relative of, a person who is or (as the case may be) is to be a director or manager of the company;
collective investment scheme	has the same meaning as in the Collective Investment Schemes Act 2008 <sup>11</sup> ;
company	includes any body corporate, whether constituted under the law of the Island or elsewhere;
debenture	includes debenture stock, loan stock, bonds and certificates of deposit and other instruments creating or acknowledging indebtedness, but does not include — (a) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services; (b) a cheque or other bill of exchange, a banker's draft or a letter of credit; (c) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) relating to a lease or other disposition of property, a deed of bond and security or an insurance policy; (d) a government security;
debenture warrant	means an instrument entitling the holder to, or to subscribe for, a debenture;
deposit	means a sum of money paid (otherwise than for or

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<sup>11</sup> 2008 c.7



in respect of a debenture, government security, warrant or certificate representing securities) on terms —

- (a) under which it will be repaid, with or without interest or premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; and
- (b) which are not referable to the provision of property (other than currency) or services or the giving of security, and references in this Order to money deposited and to the making of a deposit shall be construed accordingly;

and includes a sum of money paid by an investing member to a building society held in share and / or savings accounts, but not sums invested in Permanent Interest Bearing Shares.

For the purposes of this definition, money is paid on terms which are referable to the provision of property or services or the giving of security if, and only if, —

- (i) it is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, and is repayable only in the event that the property or services is or are not in fact sold, hired or otherwise provided; or
- (ii) it is paid by way of security for the performance of a contract or by way of security in respect of loss which may result from the non-performance of a contract; or
- (iii) without prejudice to (ii) above, it is paid by way of security for the delivery up or return of any property, whether in a particular state of repair or otherwise;

disposal

includes —

- (a) in the case of an investment consisting of rights under a contract or other arrangements, assuming the corresponding liabilities under

- the contract or arrangements;
- (b) in the case of any other investment, issuing or creating the investment or granting the rights or interests of which it consists;
- (c) in the case of an investment consisting of rights under a contract, surrendering, assigning or converting those rights;
- electronic money means monetary value, as represented by a claim on the issuer, which is —
- (a) stored on an electronic device;
- (b) issued on receipt of funds; and
- (c) accepted as a means of payment by persons other than the issuer;
- eligible custodian means —
- (a) a licenceholder authorised to carry on activities falling within paragraph (5) of Class 2;
- (b) a wholly-owned subsidiary of such a licenceholder which —
- (i) carries on no other business than those activities, and
- (ii) acts only in accordance with the directions or instructions of the licenceholder; or
- (c) in relation to such a licenceholder, a person carrying on business in a country or territory outside the Island —
- (i) whose business includes activities which, if carried on in the Island, would fall within paragraph (5) of Class 2, and
- (ii) who the licenceholder reasonably believes is subject to regulation and supervision in relation to those services by a regulatory body or agency of government in that country or territory;
- enactment includes a statute or other instrument of a legislative character having effect in the Island or a country or territory outside the Island;

exempt collective investment scheme	has the same meaning as in the Collective Investment Schemes Act 2008;
express trust	means a trust created by the intentional act of the settlor either orally or evidenced in writing;
government security	means loan stock or a bond or other instrument creating or acknowledging indebtedness issued by or on behalf of — <ul style="list-style-type: none"><li>(a) the government of the Island or of any country or territory outside the Island;</li><li>(b) a local authority in the Island or elsewhere;</li><li>(c) any international organisation the members of which include the Island or any Member State of the European Union;</li></ul> but does not include — <ul style="list-style-type: none"><li>(i) any instrument acknowledging or creating indebtedness for, or for money borrowed to defray, the consideration payable under a contract for the supply of goods or services;</li><li>(ii) a cheque or other bill of exchange, a banker's draft or a letter of credit;</li><li>(iii) a banknote, a statement showing a balance in a current, deposit or savings account or (by reason of any financial obligation contained in it) to a lease or other disposition of property, a heritable security or an insurance policy;</li></ul>
instrument	includes any record which may be produced in a visible and legible form;
investment	means any of the following — <ul style="list-style-type: none"><li>(a) a share;</li><li>(b) a debenture;</li><li>(c) a government security;</li><li>(d) a warrant;</li><li>(e) a certificate representing securities;</li><li>(f) a unit in a collective investment scheme, including a share in, or security of, an open-</li></ul>

ended investment company;

- (g) an option to acquire or dispose of –
- (i) an investment falling within this or any other paragraph of this definition;
  - (ii) currency of any country or territory,
  - (iii) gold, palladium, platinum or silver; or
  - (iv) a commodity or goods of any description except under an option entered into for commercial and not investment purposes; or
  - (v) an option to acquire or dispose of an option falling within sub-paragraph (i), (ii), (iii) or (iv).
- (h) rights under a contract for the sale of a commodity or goods of any other description under which delivery is to be made at a future date and at a price agreed on when the contract is made, except rights under a contract made for commercial and not investment purposes;
- (i) rights under a contract for differences, or under any other contract the purpose or pretended purpose of which is to secure a profit or avoid a loss by reference to fluctuations in the value or price of property of any description or in an index or other factor designated for that purpose in the contract;
- (j) long-term insurance;
- (k) rights to and interests in anything falling within any other paragraph of this definition, except interests under the trusts of an occupational pension scheme.

Isle of Man person

means –

- (a) an individual who is resident in the Isle of Man; or
- (b) a company incorporated or carrying on business in the Isle of Man.

licensed

means licensed under section 7 of the Act

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long-term insurance	means rights under a contract of insurance of the following descriptions, namely life, annuity, marriage, birth, permanent health, tontines, capital redemption and pension fund management, but does not include contracts under which —  (a) the benefits are payable only on death or in respect of incapacity due to injury, sickness or infirmity;  (b) no benefits are payable under the contract on a death (other than a death due to accident) unless it occurs within ten years of the date on which the life of the person in question was first insured under the contract or before that person attains a specified age not exceeding 70 years;  (c) there is no surrender value or the consideration consists of a single premium and the surrender value does not exceed that premium; and  (d) there is no provision for its conversion or extension in a manner that would result in its ceasing to comply with paragraphs (a), (b) and (c) of this definition;
nominee company	means a company whose sole activity is to hold as nominee or bare trustee investments beneficially owned by other persons
offer	includes an invitation to treat;
open-ended investment company	has the same meaning as in the Collective Investment Schemes Act 2008;
overseas person	means a person who —  (a) does not carry on a regulated activity from a permanent place of business maintained by him in the Island; and  (b) is not —  (i) a company incorporated in the Island under the Companies Acts 1931 to 2009 or the Companies Act 2006; or  (ii) a company incorporated outside the Island which is registered under Part XI of the

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	Companies Act 1931; or
	(iii) a limited partnership registered in the Island under Part II of the Partnership Act 1909;
private company	means a company which is prohibited by the law of the country or territory in which it is incorporated from making an offer (either in that country or territory or elsewhere) to the public or inviting any section of the public to subscribe for shares in or debentures of the company, and also for the purposes of this Order includes a company registered under the Companies Act 2006 that does not offer its shares or debentures to the public;
professional dealer	means any person who — (a) is a market maker in investments; or (b) regularly solicits members of the public (whether in the Island or elsewhere) to deal in investments;  and for this purpose "market maker", in relation to an investment of any description, means a person who (otherwise than in his capacity as the manager or administrator of a collective investment scheme) holds himself out as able and willing to enter into transactions of buying or selling investments of that description at prices determined by him generally and continuously rather than in respect of each particular transaction;
property	includes the currency of any country or territory;
registered legal practitioner	means a person who is entered in the register maintained under the Legal Practitioners Registration Act 1986; <sup>12</sup>
retirement benefits scheme	has the same meaning as in the Retirement Benefits Schemes Act 2000 <sup>13</sup>
the Rule Book	means the rules, or any part of the rules, made by

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<sup>12</sup> 1986 c.13

<sup>13</sup> 2000 c.14

	the Commission under section 18 of the Act;
securities	means shares, debentures, warrants or certificates representing securities and any rights to or interests in such securities;
sell	means dispose of for valuable consideration;
share	a share, including stock, in the share capital of a company;
share warrant	means an instrument entitling the holder to, or to subscribe for shares;
telecommunication system	has the same meaning as in the Telecommunications Act 1984; <sup>14</sup>
trust	means a legal relationship which falls within Article 2 of the Convention set out in the Schedule to the Recognition of Trusts Act 1988 <sup>15</sup> , whether such relationship was created in, or under the law of, the Island or any other country or territory;
trust bank account	"trust bank account" means an bank account held by a trustee of a trust which — (a) holds, and is intended to hold, trust money of that trust (and no other money), and (b) is segregated from any account holding money which is not trust money of that trust.
trust money	means money, forming part or all of the assets of a trust, which a person holds or receives as, or as agent or nominee of, a trustee of that trust;
units (in relation to a collective investment scheme)	has the same meaning as in the Collective Investment Schemes Act 2008;
unit trust scheme	has the same meaning as in the Collective Investment Schemes Act 2008;
Warrant	includes — (a) a share warrant, (b) a debenture warrant, or (c) an instrument entitling the holder to, or to

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<sup>14</sup> 1984 c.11

<sup>15</sup> 1988 c.8

subscribe for, a government security.

## **PART 2 – FURTHER INTERPRETATION PROVISIONS**

- (1) References in this Order to a numbered class are to the class of regulated activities so numbered in Schedule 1.
- (2) For the purposes of Schedule 1 a person controls another person if, and only if, —
  - (a) he is a controller of that person within the meaning of the Act, and
  - (b) either alone or with any associate or associates he is entitled to exercise or control the exercise of 15 per cent or more of the voting power at any general meeting of that person or of another body corporate of which it is a subsidiary.
- (3) References in this Order to dealing, making arrangements, managing and advising include offering or agreeing to deal, make arrangements, manage or advise respectively.
- (4) In determining for the purposes of this Order whether anything constitutes an investment or an activity falling within Class 2, the provisions of any enactment relating to gaming, betting or lotteries shall be disregarded.



Article 3.

### SCHEDULE 3

#### MEANING OF EXPRESSIONS IN SECTION 3(2) OF THE ACT

<i>Expression</i>	<i>Meaning</i>
(a) Deposit taking	Any activity of Class 1
(b) Investment business	Any activity of Class 2
(c) Any service to a collective investment scheme	Any activity of Class 3
(d) Corporate services	Any activity of Class 4
(e) Trust services	Any activity of Class 5
(f) Any service or activity involving money transmission	Any activity of Class 6 <u>or Class 8</u>

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#### EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order, which repeals and replaces the Regulated Activities Order 2008, specifies the activities which constitute "regulated activities" for the purpose of the Financial Services Act 2008. It also defines expressions used in section 1(2) of that Act.

joint enterprise

means an enterprise into which 2 or more persons ("participators") enter for commercial reasons related to a business or businesses (other than activities falling within Class 2) carried on by them, but does not include an enterprise the whole or main purpose of which is to undertake any regulated activity; and for this purpose, where a participator is a company and a member of a group, each other member of the group shall also be regarded as a participator in the enterprise;