OVERVIEW OF THE ISLE OF MAN
by Katherine Johnson and Simon Harding

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OVERVIEW OF RECENT ACTIVITY

The Isle of Man is an attractive place to anchor a business, offering a stable economy; zero percent corporation tax; no capital gains tax, inheritance tax or stamp duty; a sophisticated infrastructure; an established financial services support industry; a large number inter-governmental agreements; and above all a supportive, responsive and forward-thinking government.

In 2010 Tynwald (the Island’s parliament) approved the creation of a new government department, the Department of Economic Development (DED), tasked with promoting and encouraging the creation of a successful diversified economy offering employment opportunities for all1. Since then, the DED has been proactive in working with the Isle of Man Treasury and the Island’s financial services regulators the Financial Supervision Commission (FSC) and the Insurance and Pensions authority (IPA) in identifying and supporting new areas to tap into to grow and diversify the Island’s economy.

In June 2014, the DED and the FSC jointly issued a statement announcing that they were considering ways of regulating virtual currency businesses operating in the Island and promoting growth of this industry by attracting credible businesses to Manx shores2. This has been carried through and virtual currency businesses

1 Transfer of Functions (New Departments) (No. 2) Order 2010 and http://www.gov.im/about-the-government/departments/economic-development/
are now subject to the Island’s anti-money laundering laws, with enforcement overseen by the FSC. This year also saw the FSC issue a consultation concerning proposals to create a specific regulatory regime to facilitate crowdfunding activity, looking to attract another developing niche industry whose position within financial services regulation has, so far, been ambiguous³.

In March of this year, after consultation with industry and the DED, a bespoke authorisation and supervision regime for insurance special purpose vehicles (ISPV) was introduced to facilitate insurance linked securities transactions and other collateralised (re)insurance transactions between sophisticated parties⁴. The IPA is also continuing to steadily progress a road-map for change to update the Island’s difficult to navigate insurance legislation and ensure adherence to relevant international standards⁵.

On 1 November 2015, the IPA and FSC are to merge. This should mean a more cohesive approach to regulation in the Isle of Man and simplify compliance for the many financial services businesses which are currently regulated by both authorities.

Although developments in metropolitan countries like the UK in relation to registers of beneficial ownership have sought to cast jurisdictions such as the Isle of Man in a less favourable light, the reality is that back in 2012 legislation came into force to strengthen the Island’s already robust anti-money laundering and countering the financing of terrorism (AML/CFT) regime by ensuring that the ultimate ownership of a company’s shares is known to the company’s administrators and giving the police, regulators and tax authority (amongst others) powers to request such information where there are grounds to do so⁶.

Despite the global economic crisis, the Isle of Man economy has continued to grow. In his budget speech in February, Treasury Minister Eddie Teare MHK reported that the Isle of Man had recorded its thirtieth year of consecutive growth in 2012-13 and is expected to record growth of around four percent in the years 2013-14, 2014-15 and 2015-16⁷. The economic picture is generally one of stability, although fund investments and banking deposits fell slightly in the period of 2014-15⁸.

GENERAL INTRODUCTION TO REGULATORY FRAMEWORK

At the time of writing, the Isle of Man has two regulatory bodies responsible for oversight of the financial services sector, however these are to merge on 1 November 2015 to form “the Isle of Man Financial Services Authority” (IOMFSA). The transfer of functions order which establishes the IOMFSA, also transfers the functions, assets and liabilities of the IPA and the FSC to the IOMFSA, dissolves the IPA and FSC, and makes consequential amendments to primary legislation to reflect the new regulator⁹. The FSC has also issued a consultation on draft changes to secondary legislation and transitional provisions, with the IPA expected to follow shortly. The insurance and pensions function will initially remain distinct and retain its own reporting line within the IOMFSA, so the distinction in services drawn in this article will remain relevant for some time¹⁰.

Insurance and pensions activities are regulated by the IPA. The regulatory objectives of the IPA are: (1) the securing of an appropriate degree of protection for policyholders and pension scheme members; (2) the maintenance of confidence in the Island’s insurance and pensions industries in the Island and elsewhere; and

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³ “Crowdfunding – a potential new regulated activity encompassing both equity and loan crowdfunding” a consultation issued by the Isle of Man Financial Supervision Commission on 16 April 2015.
⁴ Insurance (Special Purpose Vehicles) Regulations 2015.
⁵ “Roadmap for updating the Isle of Man’s regulatory framework for insurance business 2013-16” issued by the Insurance and Pensions Authority and updated at least annually.
⁶ Companies (Beneficial Ownership) Act 2012.
⁷ “A Fair and Balanced Vision for the Future” speech delivered by Treasury Minister Eddie Teare MHK to Tynwald on 17 February 2015.
⁹ The Transfer of Functions (Isle of Man Financial Services Authority) Order 2015.
(3) the reduction in the extent to which it is possible for any insurance or pensions business to be used in connection with the commission of financial crime.\textsuperscript{11}.

The FSC is responsible, amongst other things, for carrying out the regulation and supervision of persons undertaking regulated activities under the Financial Services Act 2008 (\textbf{FSA}) and collective investment schemes within the meaning of the Collective Investment Schemes Act 2008 (\textbf{CISA}).

Under the FSA a person must not carry on, nor hold themselves out as carrying on, a regulated activity in or from the Isle of Man without a licence issued by the FSC unless an exclusion (found in the Regulated Activities Order 2011 (as amended) (\textbf{RAO})) or an exemption (set out in the Financial Services (Exemptions) Regulations 2011 (as amended)) applies. Regulated activities fall into seven classes, with each having further sub-classes of activity set out in the RAO for which an applicant to the FSC may be licensed to carry out. These classes are: deposit taking; investment business; services to collective investment schemes; corporate services; trust services; management or administration of another person holding a licence issued under the FSA; and money transmission services. As mentioned above, a consultation was recently undertaken regarding the introduction of a further class of regulated activity for crowdfunding\textsuperscript{12}.

Whilst investment advisors, stock brokers and administrators delivering services for one or more collective investment schemes (\textbf{CIS}) must be licensed under the FSA, the funds themselves are subject to the CISA and secondary legislation made thereunder. Promotion of CIS in the Isle of Man is generally prohibited under the CISA, other than to experienced investors.

Funds incorporated in the Isle of Man will fall into one of the following categories:

\textbf{Authorised Scheme}\textsuperscript{13}

The Authorised Scheme is a highly regulated form of CIS that is intended for retail distribution. An authorised scheme must be approved by the FSC before launch and is required to have an Isle of Man based licensed manager, and an independent fiduciary custodian appropriately regulated in a jurisdiction acceptable to the FSC. There are detailed rules applying to Authorised Schemes which have their origin in the UCITS Directive, including restrictions on the types of investment that may be acquired, leverage and hedging policies and investment concentration, and concerning the content of the CIS’ constitutional documents and offering document. The prohibition on promotion of CIS does not apply to Authorised Schemes, which are suitable for selling directly to the general public.

An authorised scheme is an Alternative Investment Fund under the AIFMD. In EEA jurisdictions which allow national private placement and where a relevant memorandum of understanding is in place, an Authorised Scheme may be sold providing all domestic requirements are met. In order to be sold in the UK an Authorised Scheme must apply for individual recognition under the Financial Services and Markets Act 2000 (an Act of Parliament). Reciprocal arrangements operate between the Isle of Man, Jersey, Guernsey and Ireland in respect of Authorised Schemes\textsuperscript{14}.

\textbf{Regulated Fund}\textsuperscript{15}

Whilst the Regulated Fund is not as highly regulated as the Authorised Schemes, it does also require pre-approval from the FSC and is subject to rules concerning its constitutional documents and offering document. Although the investment policy of Regulated Funds are not subject to the same constraints as Authorised Schemes, the fund will only be approved by the FSC if it is satisfied that the policy is suitable and appropriately disclosed to investors. A Regulated Fund must have an Isle of Man based licensed

\textsuperscript{11} Insurance Act 2008 section 1.
\textsuperscript{12} “Crowdfunding – a potential new regulated activity encompassing both equity and loan crowdfunding” a consultation issued by the Isle of Man Financial Supervision Commission on 16 April 2015.
\textsuperscript{13} Authorised Collective Investment Scheme Regulations 2010.
\textsuperscript{14} “Guidance Note – Promotion of Authorised Schemes” issued by the Financial Supervision Commission March 2015.
\textsuperscript{15} Collective Investment Schemes (Regulated Fund) Regulations 2010.
manager and a fiduciary custodian which is appropriately regulated in a jurisdiction acceptable to the FSC. Regulated Funds are aimed at retail investors or markets requiring a fiduciary depository and are generally sold by independent financial advisors.

**Full International Scheme** 16
The Full International Scheme has been superseded by the Regulated Fund and can no longer be established, however a number still continue to exist. A Full International Scheme must have an Isle of Man based licensed manager and comply with detailed rules regarding the content of its constitutional documents and offering document.

**Qualifying Fund** 17
Whilst the Qualifying Fund must report and make post-event notifications to the FSC, it is not subject to regulatory pre-approval. Although there is no prescribed minimum initial investment, investors must be “qualifying investors”. Essentially, investors who are not professional or institutional investors must have their expertise certified by a financial advisor. An Isle of Man based licensed manager is required, as is a custodian appropriately regulated in a jurisdiction acceptable to the FSC. There are no restrictions on investment, borrowing or hedging policies but the offering document must disclose all material information that an investor would reasonably expect to be disclosed. Qualifying Funds may not be widely promoted and are normally sold through independent financial advisors to qualifying investors.

**Specialist Fund** 18
Like the Qualifying Fund, the Specialist Fund is not subject to regulatory pre-approval by the FSC, but must make post-event notifications. The Specialist Fund is aimed at institutional and non-retail investors and must have a minimum subscription of at least US$100,000. Investors must certify that they are sufficiently experienced to understand the risks associated with investment and must fall into one of the categories of permitted investor, including professional investors, public bodies, affiliates of the fund’s promoters and managers, and individuals with a net worth in excess of US$1m. There is no formal requirement for a Specialist Fund to have a custodian, although it must have a licensed fund administrator based in the Isle of Man or in another jurisdiction approved by the FSC. There are no restrictions on investment, borrowing or hedging policies but the offering document must disclose all material information that an investor would reasonably expect to be disclosed.

**Professional Investor Fund** 19
These funds can no longer be established but a number continue to exist and are similar to the Specialist Fund.

**Experienced Investor Fund** 20
These funds were similar to the Specialist Fund but without a minimum subscription level. They can longer be established but a number continue to exist.

**Exempt Scheme** 21
An Exempt Scheme is a CIS which falls outside of the scope of regulation as a private arrangement, provided that it does not offer its securities to the public or any section of the public in any part of the world (and contains a prohibition to that effect in its constitutional documents), has fewer than 50 participants at

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17 Collective Investment Schemes (Qualifying Fund) Regulations 2010.
18 Collective Investment Schemes (Specialist Fund) Regulations 2010.

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all times, and does not imply in any way in its constitutional documents that it is regulated in the Isle of Man. These are by far the most popular form of open-ended fund²².

**Close-ended investment companies (CEIC)**

The definition of a CIS in the CISA is drawn very widely, however, the Collective Investment Schemes (Definition) Order 2008 (*CIS Definitions Order*) specifies certain entities and arrangements which are not considered to be a CIS for the purposes of Isle of Man law. This includes a statement that no other body corporate, other than an open-ended investment company (OEIC), shall be regarded as constituting a CIS. Whether or not an entity is an OEIC will depend, amongst other things, on whether its constitutional documents provide that participants have the right to require the redemption of their investments prior to the liquidation of the company. CEICs are not captured by the CISA and are therefore not subject to regulation by the FSC.

However, the FSC has recently undertaken two rounds of consultation which concerned making amendments to the CIS Definitions Order to bring some CEICs within the CISA regulatory regime. The most recent information published by the FSC suggests that changes will be made to bring a limited number of CEICs (being those which are no listed or traded on an exchange and which are promoted by, or on behalf of, the CEIC’s board in such a way that their existence is designed to become known to consumers in general) within the definition of a CIS, and that these will be subject to regulation mirroring the regulations which apply to Regulated Funds²³.

CIS incorporated outside of the Isle of Man may apply to the FSC to become “Recognised Schemes” which may be promoted to the general public in the Isle of Man, either by way of an application for individual recognition or a notification under a general regime open to CIS incorporated in the UK, Ireland, Jersey, Guernsey or Luxembourg²⁴. Additionally, there are now 27 agreements in place between the Isle of Man and EEA countries with regard to the marketing of alternative investment funds to professional investors²⁵.

There are also almost 100 CIS domiciled overseas which are administered in the Isle of Man by administrators licensed by the FSC, the most common being from the Cayman Islands with 52 such funds known to the FSC as at 31 March 2015²⁶.

**COMMON ASSET MANAGEMENT STRUCTURES**

The Isle of Man offers a full range of vehicles for use as fund structures including OEICs, protected cell companies, limited partnerships and unit trusts. Companies and limited partnerships are registered with the Isle of Man Companies Registry (part of the DED), whereas there is no public register of trusts.

There are two co-existing company regimes in operation in the Isle of Man, with the Companies Acts 1931-2004 providing a more traditional form of company (*1931 Act Companies*) and the less prescriptive Companies Act 2006 offering a very popular form of company (*2006 Act Companies*). Some of the key features of 2006 Act Companies include: no requirement for authorised share capital; no capital maintenance requirements (subject to satisfaction of a statutory solvency test); no prohibition of financial assistance; reduced compulsory registry filings; less prescriptive accountancy requirements; no distinction between public and private companies; and no requirement to hold an annual general meeting. A company incorporated as a 1931 Act Company may re-register as a 2006 Act Company to take advantage of the simplified regime,

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however re-registration in the other direction is not available and it should be noted that an Authorised Scheme cannot be constituted as a 2006 Act Company.

Also available are protected cell companies (PCC) which can be incorporated as either 1931 Act Companies or 2006 Act Companies. Assets and liabilities can be attributed to a particular cell of the PCC and kept separate from one another, so each cell can be used as a separate sub-fund and share class. By segregating the interests of investors and other stakeholders within each cell, PCCs provide a low-cost and quick-to-launch means of creating legally robust new sub-funds. The Isle of Man also offers incorporated cell companies where each cell is a separate legal entity, however these are currently only available for insurance purposes.

Limited partnerships offer flexibility and tax transparency whilst retaining limited liability for investors. A general prohibition against a limited partnership consisting of more than twenty persons does not apply in the case of a CIS. Since the introduction of the Limited Partnership (Legal Personality) Act 2011 limited partnerships may be registered in the Isle of Man as a body corporate with separate legal personality.

The trust is an important feature of Manx common law which is also supported by legislation, with unit trusts being popular fund structures. The Trust (Amendment) Act 2015 has made Manx trusts even more flexible by, amongst other matters, abolishing the requirement for a trust to have a perpetuity period.

The Isle of Man also offers foundations and limited liability companies (LLC) but these are not generally used as fund vehicles.

**MAIN SOURCES OF INVESTMENT**

Whilst the Isle of Man does have business links across the globe its closest links are with the UK, with over half of the Island’s licensed deposit takers having the UK as their ultimate country of origin of their banking group. In the year 2014-15, 41 percent of non-bank deposits originated from the UK, 25 percent from the Isle of Man and just four percent from North America.

The Isle of Man has not been immune to the effects of the crash of 2008 and onwards. Total deposits have gone down by 28 percent from December 2008 to March 2015, although March 2015 figures are up on those of March 2014. Of those March 2015 deposits, retail deposits made up 40 percent, and corporate/trust/fiduciary deposits 33 percent. Total lending by Isle of Man deposit takers has also been declining and at March 2015 was down 28 percent on that of December 2008.

Property is by far the largest asset class for funds administered in the Isle of Man, with almost 120 funds shown in statistics collected by the FSC and the next category recorded having less than forty (this being “mixed” tiers, including equities, derivatives, hedge, equities, derivatives, options, bonds, shares and cash and absolute return investments). Total NAV of funds under management in the Isle of Man (including those CEICs that are listed vehicles or with a minimum NAV of US$50 million) was down at 31 March 2015 by five percent on the previous year.

On the other hand, the most recent figures available from the IPA show that the pensions sector is continuing to grow with pension fund values reaching £2.4 billion of assets under management in 2013, representing an eleven percent increase on the previous year. Funds under management attributable to the pensions sector...
are expected to be over £5 billion for the year 2014-15\textsuperscript{36}. The life assurance sector has also continued to perform strongly, with funds under management remaining constant at £56.5 billion\textsuperscript{37}.

The total number of companies under administration by licensed corporate and trust service providers (TCSPs) rose slightly in the year 2014-15, with the number of 2006 Act Companies and overseas companies administered in the Isle of Man increasing whilst the number of 1931 Act Companies decreased as this more traditional form of structure falls from favour\textsuperscript{38}. The number of trust administered by TCSPs fell slightly in the year 2014-15, and there were small reductions in both aggregate turnover (by one percent) and aggregate profitability (by four percent)\textsuperscript{39}.

**KEY TRENDS**

The Council of Europe body MONEYVAL will be undertaking a full assessment of the Island’s AML/CFT requirements and compliance with the FATF’s Recommendations in the first half of 2016, so particular focus has been placed by the regulators on monitoring, reviewing and updating the Island’s AML/CFT requirements for businesses operating in the financial services industry. A revised AML/CFT Code\textsuperscript{40} was issued this year, and the FSC has published a series of sector-specific guidance notes to assist financial services businesses to comply with their AML/CFT obligations.

The ripples of the global financial crisis do continue to touch the Isle of Man, with a number of CIS still in the process of remediation where liquidity issues have caused suspension of redemptions\textsuperscript{41}.

As banking groups carry out wide reviews of their global operations, this is having a direct effect on the Isle of Man. Five of the 28 deposit takers licensed at 31 March 2014 surrendered their licences in the period to 31 March 2015, one being the result of a re-organisation of an institution’s operations in the Isle of Man but four representing banking groups closing their Isle of Man deposit taking presence\textsuperscript{42}.

It is however worth noting the Isle of Man’s now proven record of delivering assistance to consumers when faced with financial catastrophe. The Isle of Man Depositors’ Compensation Scheme (DCS) was activated on 27 May 2009 in respect of the insolvency of Kaupthing Singer & Friedlander (Isle of Man) Limited, and this year saw the total dividend declared by the joint liquidators of the company taken to 100 pence in the pound. This year also saw the FSC as manager of the DCS fund established in 1992 in respect of BCCI resolve to terminate the fund with the final payments having been made in August 2012\textsuperscript{43}.

**SECTORAL REGULATION**

**Insurance**

The law concerning insurers (both those incorporated in the Isle of Man (Authorised Insurers) and those incorporated elsewhere but operating in the Isle of Man (Permit Holders)) and insurance intermediaries is found principally in the Insurance Act 2008, the Insurance Regulations 1986 and the Insurance Intermediaries (General Business) Regulations 1999. The regulation of intermediation in respect of the effecting or carrying out of contracts of insurance which are investments within the meaning of the FSA is carried out by the FSC, whereas all other forms of insurance activity are regulated by the IPA.

\textsuperscript{38} Isle of Man Financial Supervision Commission Annual Report 2014/15 page 42.
\textsuperscript{39} Isle of Man Financial Supervision Commission Annual Report 2014/15 page 42.
\textsuperscript{40} Anti-Money Laundering and Terrorist Financing Code 2015.
\textsuperscript{41} Isle of Man Financial Supervision Commission Annual Report 2014/15 page 5.
\textsuperscript{42} Isle of Man Financial Supervision Commission Annual Report 2014/15 page 31.
\textsuperscript{43} Isle of Man Financial Supervision Commission Annual Report 2014/15 page 48.
It is an interesting feature of Manx insurance law that a person does not need to have an insurable interest to effect a contract of assurance\textsuperscript{44}, which has helped give the Island’s life assurance industry a unique-selling-point and global appeal. The life assurance sector in the Isle of Man consists predominantly of unit linked long-term insurance business, with non-unit linked technical reserves representing less than one percent of the total\textsuperscript{45}. There have recently been some high-profile changes to businesses operating in this industry, with 2013 seeing RL360 established as an independent Isle of Man business and brand following a management buyout from Royal London, and RL360 continuing to grow with the agreement for the purchase of the insurance business operated by Clerical Medical Insurance from Lloyds Banking Group having been concluded earlier this year.

**Pensions**
The Retirement Benefits Scheme Act 2000 is the principal piece of legislation governing the operation and regulation of pensions in the Isle of Man. Almost all pension schemes in the Isle of Man must be registered with IPA, however the Retirement Benefits Schemes (Excepted Schemes) Regulations 2001 provide some exemptions and were updated in 2014. The Isle of Man has had legislation since 2001 to facilitate the creation of international pension schemes, which can be established by employers carrying on business outside the Isle of Man for the benefit of their non-Isle of Man resident employees.

**TAX LAW**
The Isle of Man operates a very favourable tax regime, with no capital gains tax, no inheritance tax and no stamp duties. Whilst corporation tax does exist, it is levied at zero percent, save in respect of income derived from deposit taking activity (subject to a ten percent rate) and from real estate in the Isle of Man (now subject to a twenty percent rate). This means that a corporate fund vehicle will automatically benefit from a zero rate of corporation tax without having to apply through an exemption process, as will its Isle of Man based fund manager and administrators.

Investors will be subject to tax on their dividends and capital gains under the laws of their home jurisdictions. The Isle of Man has a number of double taxation treaties and tax information exchange agreements in place which reduce the risk of any double charge. The Isle of Man signed intergovernmental agreements to improve international tax compliance in 2013 with both the UK and the USA and has been proactive in developing measures for compliance with FATCA and the Common Reporting Standard.

Fees charged by fund administrators and investment managers based in the Isle of Man in respect of services to CIS (other than exempt schemes) are not subject to VAT. Fees payable in respect of an exempt scheme are subject to VAT, but if the fund is established in a jurisdiction outside the scope of VAT then no VAT will be charged.

**OUTLOOK**
There are changes on the horizon with the IPA and FSC set to merge to form the IOMFSA, and at the same time both the insurance supervisor who heads the IPA and the chief executive of the FSC are due to retire from their roles. Yet, whilst there will be some significant changes to personnel and the name of the body regulating the financial services industry in the Isle of Man, these are not expected to have any material impact on the day-to-day operations of the industry and the momentum for implementing positive change by modernising the Island’s insurance legislation and tweaking the CIS regulations will continue.

Neither should the appeal of the Isle of Man as a place to do business decline, as it will continue to operate a favourable tax strategy and recognise the importance of the financial services industry to the local economy.

\textsuperscript{44} Life Assurance (Insurable Interest) Act 2004.  
In January 2014 the Isle of Man government issued the “Vision 2020” strategic plan, which provided an overall vision for the Isle of Man to be, amongst other things, an international business centre for excellence; a transparent international business partner; and a skilled technology centre. This document notes that whilst a simple tax regime is attractive, it is recognised that it is a reputation for delivering customer focused outcomes which will amplify the attractiveness of the Island to investors. It is hoped that with specialised knowledge, niche products and services, and world class professionalism, the Isle of Man can be the perfect partner for other economies in the future, and recognised that to reach this requires the Island to keep pace with changing standards and act as a leader in adopting international standards.

Bringing virtual currency businesses within the Island’s AML/CFT regime and consulting upon the regulation of crowdfunding are recent examples demonstrating the Isle of Man’s ability to take action in respect of these aspirations to be a leader in international standards of regulation - it is a goal that is perhaps not as far-fetched as it may first appear, and it will be interesting to see where else the Isle of Man can take the lead in strengthening its regulatory regime and global offering.

This article has been written by:

Isle of Man
Katherine Johnson
Associate
+44 (0) 1624 647 971
kjohnson@applebyglobal.com

Simon Harding
Partner
+44 1624 647 652
sharding@applebyglobal.com

Partner Simon Harding and associate Katherine Johnson are part of our Corporate Department at Appleby. A copy of this article is available on the firm’s web site at applebyglobal.com