



## ALTERNATIVE BANKING REGIME INTRODUCED IN THE ISLE OF MAN

by Juan Thornley

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On 1 August, significant changes were made to the Isle of Man's banking regulatory framework, through the introduction of two new classes of deposit-taking licence. These measures, which have been welcomed by local industry, are aimed at expanding the Island's non-retail banking sector. They also facilitate the opening of representative offices in the Island by foreign banks.

Tynwald (the Island's Parliament) passed amendments to regulations under the Financial Services Act 2008 to divide the existing 'Class 1' (deposit-taking) regulated activity into three sub-classes.

There are no regulatory implications for existing banks, aside from the renaming of their licences as Class 1(1), but two entirely new classes of licence have been created.

New Class 1(2) is intended to attract banks operating solely 'non-retail' business for corporate and high net worth depositors. Those 'restricted depositors' are, in summary: (a) corporates (b) individuals with net worth of at least £500,000, excluding their home and other specified rights such as insurance policies and pensions and (c) trustees of trusts with assets of at least £500,000.

In a marked departure from the Isle of Man Financial Services Authority's current licensing policy, Class 1(2) licence applicants need not be part of an established banking group. The Authority's updated licensing policy has not yet been published but it has previously stated with regard to this new class that, subject to suitable financial resources, track record and relevant competency, banking need not be the primary activity of the applicant's group. This change opens up the Island's non-retail banking sector to a range of potential new

entrants, a number of whom are, we understand, already considering licence applications. An important practical challenge for new entrants will be the need to have in place correspondent banking facilities for clearing purposes, though we understand that solutions are being investigated. If successful applicants emerge, this will not only boost the Island's banking sector but also benefit local fiduciary services providers by expanding the number of banking options available to their clients. The e-gaming sector might also stand to benefit as it has previously been faced with limited banking options due to the policies of several large banking groups not to service this sector. Suggestions have also been made that large corporate groups and family offices may consider using the regime to establish their own banking operations.

For new applicants, the other potential attraction of the Class 1(2) licence is that the Depositors' Compensation Scheme Regulations 2010 have been amended so that the holder of such a licence is not a participant under the Isle of Man Depositors' Compensation Scheme. This means that these licence holders will not take on any contingent liability to contribute to the Scheme. Equally, depositors with Class 1(2) licence holders will of course be ineligible to claim under the Scheme but, given the maximum limits of protection under the Scheme, the lack of cover is not expected to be considered material by most potential 'restricted depositors'.

Other existing regulatory requirements for banks are essentially unchanged for Class 1(2) licence holders, so there will be no reduction in financial resources requirements or regulatory oversight. Licence application and annual fees will remain unchanged. The Financial Services Ombudsman Scheme applies to Class 1(2) licence holders as it currently does to Class 1(1) licence holders and it is expected that any banking recovery and resolution regime implemented under Isle of Man law will also extend to both Class 1(1) and Class 1(2) licence holders.

The second new type of licence, Class 1(3), is far more restricted and is aimed at attracting foreign banks wishing to establish a 'representative office' in the Island. This overcomes an existing difficulty where it was not possible for a bank to establish an active marketing or business development presence in the Isle of Man without a full deposit-taking licence, even if the actual deposits were accepted and banking services administered outside the Isle of Man. This will allow foreign banks to establish offices to market their services in the Island and may prove to be a cost-effective entry point for the building of a presence in the jurisdiction, resulting in applications for one of the substantive classes of deposit-taking licence. Due to the reduced level of supervision and risk from a regulatory perspective compared with the above licences, the application fee is £3,000, with an annual fee of £2,500. We understand that at least one application for a Class 1(3) licence is currently in progress.

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