

REGULATORY INTELLIGENCE

COUNTRY UPDATE-Isle of Man: Securities and Banking

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The Isle of Man is a British Crown dependency, and is situated within the British Isles, but it is not part of the United Kingdom. King Charles III is acknowledged by the Isle of Man as its head of state, but the Isle of Man is politically and constitutionally separate from the UK. The Isle of Man is internally self-governing, independent in all matters except most foreign affairs and defence, both of which are the responsibility of the UK government, and for which the Isle of Man pays an annual contribution.

Tynwald, the Isle of Man parliament, legislates for the Island in respect of all other matters, including taxation, company law and financial services regulation. The Isle of Man is increasingly representing itself on the international stage, and engaging with the European Union and other international bodies in matters directly affecting the Island and its economy.

Regulators

Deposit-taking business conducted in or from the Isle of Man is regulated pursuant to the Financial Services Act 2008 (the Act). The Financial Services Authority (FSA) — a statutory body that is independent from the Isle of Man government — is responsible for the licensing and supervision of deposit-takers in the Isle of Man. The Act authorises the FSA to issue rules in relation to all "regulated activities", including deposit-taking. These are set out in the Financial Services Rulebook 2016 (as amended). The FSA has also issued detailed guidance notes relating to deposit-takers that cover such matters as quarterly prudential returns, liquidity risk management, interest rate and foreign exchange risk management, cyber security, corporate governance and deposit advertising.

Regulation of investment business and financial services

Investment business conducted in or from the Isle of Man is also regulated under the provisions of the Act. The Act requires all those who undertake investment business in or from the Isle of Man to obtain a licence from the FSA, unless they are excluded or exempt from the requirement to be licensed. The Act covers the following "investment activities", as contained in the Regulated Activities Order 2011 (as amended) (the RAO):

- dealing in investments, either by a professional dealer as principal or as an agent;
- arranging deals in investments on behalf of other people, including any activity that directly brings about an investment transaction;
- managing investments belonging to another person, including the management of investments under a power of attorney and the provision of safe custody services for bearer instruments of title to investments; and
- giving investment advice concerning a specific investment (as opposed to generic advice).

The term "investment" for the purposes of the FSA is widely defined in the RAO and encompasses, inter alia, traditional investments, such as shares, bonds and government securities, as well as derivatives.

The RAO specifies a number of activities which are excluded from the definition of investment business. In addition, the Financial Services (Exemptions) Regulations 2011 exempt a number of activities from the definition of "investment business". To be licensable, investment activity must be carried on by way of business — private transactions such as engaging in investment activities as a director of a private company are unlikely to fall within the scope of the Act.

Investment business licences are issued subject to conditions which specify the permitted scope of a licence holder's activities. The investment business licence holder must comply with the applicable rules for licensed investment businesses in the Rulebook, and the FSA may take appropriate enforcement action against a licence holder who is in contravention of the Rulebook.



The Isle of Man's financial services regulatory regime is closely modelled on that of the UK's [Financial Services and Markets Act 2000](#). The Isle of Man was the first territory to be designated by the UK government under the Financial Services Act 1986 (now replaced by the Financial Services and Markets Act 2000), which demonstrates the quality of the Isle of Man's regulatory regime.

Permission to operate

The FSA is permitted to issue three types of deposit-taking licence for:

- retail/non-restricted deposit takers
- non-retail/restricted deposit takers
- representative offices of foreign banks

At the time of writing there are 10 retail/non-restricted deposit-taking institutions licensed as such by the FSA; there is only one non-retail/restricted deposit taker and one representative office of a foreign bank so licensed. In the light of the number of licenced non-retail/restricted and representative offices of foreign banks operating in the Island this update makes no further mention of these types of licence.

Non-restricted deposit-taking licences are only granted to institutions of quality, with proven track records that will contribute to the Isle of Man. Such licences may be issued to banks with a full presence (in terms of staff and management) in the Isle of Man, and to subsidiary companies or branches of banks licensed in another jurisdiction applying equivalent regulatory standards to those on the Isle of Man.

A non-restricted deposit-taking licence normally permits a bank to conduct a full range of banking business with customers both in the Isle of Man and elsewhere. The licence holder must have a real presence on the Island (such as its own premises, management, staff, systems and resources). The FSA has published a detailed document on its licensing policy, which is available from the FSA's [website](#).

The Isle of Man is a member of the Group of International Finance Centre Supervisors (of the Basel Committee on Banking Supervision) and of the International Organisation of Securities Commissions. These two organisations are the main bodies responsible for the setting of international standards in the banking and securities sectors respectively. The FSA endorses the Basel Committee's Core Principles for Effective Banking Supervision.

All non-restricted deposit-taking licence holders that conduct retail banking in the Isle of Man must be members of the Depositors' Compensation Scheme (the DCS), which was first introduced in 1991, the Island being the first offshore centre to introduce such a scheme. The DCS is managed by the Isle of Man Treasury or a person appointed by the Treasury in its capacity as scheme manager.

Under the Depositors' Compensation Scheme Regulations 2010, which govern the current DCS, the amount of compensation payable to each depositor is an amount equal to 100% of the eligible protected deposit, subject to a maximum compensation payment of £50,000 where the depositor is an individual beneficially entitled to the deposit and £20,000 in any other case. All holders of a non-restricted deposit-taking licence on the Island must be members of the Scheme unless specifically exempted.

Tax on banks

Since April 6, 2006, Isle of Man-licensed banks have been subject to income tax in the Isle of Man at a rate of 10% on income deriving from their "banking business". In summary, banking business includes: deposit-taking and its related activities, including the reinvestment or utilisation of deposits in any manner; ancillary income from deposit-taking activities, and income derived from capital held by a bank that it is required to hold under its banking licence conditions.

Income that banks receive that is not derived from their banking business will be taxed at the standard zero rate. Banking business does not include: income derived from capital that a bank holds in excess of the minimum amount required to be held under its banking licence conditions; income that arises from sources of funding other than customer deposits, such as group-funded lending; fiduciary deposits, and (subject to review by the Assessor of Income Tax) income that arises from group functions.

Capital resources requirements

Details of the capital resource requirements that govern deposit-takers in the Isle of Man can be found at rule 2.19 of the Rulebook and in the Rulebook more generally.

Global legislation applicable to the Isle of Man

Isle of Man laws are made and governed by Tynwald. However, where there are not any applicable Isle of Man laws, legislation with persuasive value from other jurisdictions may be considered and applied by the Isle of Man judiciary where appropriate.

European legislation applicable to the Isle of Man

Prior to Brexit the Isle of Man's relationship with the European Union (the EU) was set out in Protocol Three to the Act of Accession annexed to the Treaty of Accession 1972. It was by virtue of this Act that the UK became a member of the European Community. When the UK left the EU, the Isle of Man's limited relationship with the EU ceased.

The post-Brexit trading relationship between the UK and the EU set out in their Trade Cooperation Agreement, however, also covers, in part, the Isle of Man. Pursuant to this agreement, Isle of Man goods entering the EU are not subject to tariffs and undergo the same customs and regulatory checks as UK goods.



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Domestic laws (including proposals before Tynwald)

Domestic laws are made and governed by Tynwald.

Product-specific legislation

There are not any directly applicable Isle of Man laws governing financial products. However, legislation with persuasive value from other jurisdictions may be considered and applied by the Isle of Man judiciary where appropriate.

Enforcement and investigation

The Isle of Man Office of Fair Trading operates a financial services ombudsman scheme which provides a free, independent dispute resolution service for customers of Isle of Man-regulated financial businesses such as banks, insurance companies and financial advisers, where the services provided to the customer have been supplied by a firm that operates in or from the Isle of Man. The customer must be a private individual and can be based anywhere in the world.

The customer must first pursue his/her complaint with the financial services company and then bring the complaint to the ombudsman within six years of the act or omission taking place, or within two years of the date at which the act or omission came to the notice of the complainant. The ombudsman agency first provides mediation services, then adjudication. It can impose a remedy and financial damages of up to £100,000.

Creditor hierarchy on insolvency

Pursuant to a company becoming insolvent, and the satisfactory proving of all debts, the costs of the liquidator will normally be met first. Creditors with fixed-charge security against the insolvent company will rank ahead of Preferential Creditors pursuant to the Preferential Payments Act 1908, then creditors with non-crystallised floating charge security against the insolvent company's assets, and finally unsecured creditors.

The validity, performance and enforcement of any security by a creditor may be limited by laws relating to bankruptcy, insolvency, liquidation and reorganisation or similar laws of general application relating to or affecting the rights of creditors, including those concerning the disclaimer of onerous contracts by a liquidator under the Companies Act 1931 and those concerning preferential creditors under the Preferential Payments Act 1908.

Enforcement may be limited by general principles of equity; equitable remedies are available only at the discretion of the Isle of Man courts and are not available where damages are considered to be an adequate remedy. The equitable remedies of specific performance or injunction may be available in certain circumstances.

Data protection

The Information Commissioner is appointed by the Isle of Man government subject to the approval of Tynwald. His office is the independent authority currently established under the provisions of the Freedom of Information Act 2015 (and confirmed under the GDPR and LED Implementing Regulations 2018). The Information Commissioner is responsible for upholding the rights of individuals and for ensuring that data controllers comply with the obligations imposed upon them by the Isle of Man's "Applied GDPR", which implements the EU [General Data Protection Regulation](#) into domestic law, with modifications.

The Information Commissioner's office is also responsible for administering the regime applying to freedom of information and ensuring compliance with the Unsolicited Communications Regulations 2005 (which implement certain parts of the EU [Privacy and Electronic Communications Directive](#) related to direct marketing). Further details may be obtained from the Information Commissioner's [website](#).

Financial promotion and market abuse

There are not any directly applicable Isle of Man laws governing financial promotion and market abuse. Legislation with persuasive value from other jurisdictions may, however, be considered and applied by the Isle of Man judiciary where appropriate.

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[Complaints Procedure](#)

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