



**Isle of Man**

*Ellan Vannin*

**AT 6 of 2019**

**DORMANT ASSETS ACT 2019**





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## DORMANT ASSETS ACT 2019

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**Isle of Man***Ellan Vannin*

## DORMANT ASSETS ACT 2019

*Signed in Tynwald:* 18 June 2019  
*Received Royal Assent:* 18 June 2019  
*Announced to Tynwald:* 18 June 2019

**AN ACT** to provide for the establishment of a fund into which the balances of certain dormant assets may be transferred; and for the distribution of money in that fund for charitable and other purposes, subject to a right to reclaim those balances from the fund; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

### PART 1 – INTRODUCTORY

#### 1 Short title

The short title of this Act is the Dormant Assets Act 2019.

#### 2 Commencement

- (1) This Act (other than section 1 and this section) comes into operation on such day or days as the Treasury may by order appoint.<sup>1</sup>
- (2) An order under subsection (1) may include such consequential, incidental, supplementary, transitional and transitory provision as the Treasury considers necessary or expedient.

#### 3 Interpretation

J2017/1/1 and drafting

- (1) In this Act —

“**account**” means an account that —

- (a) has at all times only consisted of money; and

- (b) is provided by a licenceholder in the Island as part of its activity of accepting deposits;

“**applicable dormant at commencement date**” has the meaning given by section 32(2) (assets dormant at commencement);

“**asset**” has the meaning given by section 4 (“Asset” defined);

“**asset holder**” or “**holder**” means —

- (a) in respect of an asset, a person (whether or not an individual) —
- (i) in whose name the asset is held by a licenceholder;
  - (ii) who is beneficially entitled to the asset or has the power to operate it or control it; or
  - (iii) who is entitled to demand repayment of an amount on the asset; and
- (b) in respect of a transferred asset, the persons referred to in paragraph (a) immediately prior to the transfer of the asset into the Fund;

“**balance**” has the meaning given by section 5 (“Balance” defined);

“**bankruptcy**” is to be construed in accordance with subsection (2);

“**distribution account**” means the distribution account referred to in section 11(2) (the Fund);

“**distribution organisation**” means an organisation appointed under section 25(3) (distribution of Fund money);

“**distribution policy**” has the meaning given by section 24 (distribution policy);

“**dormant**” has the meaning given by section 7 (meaning of “dormant”);

“**dormant at commencement**” in relation to an asset has the meaning given by section 32(1) (assets dormant at commencement);

“**Fund**” means the Dormant Assets Fund established under section 11(1) (the Fund);

“**Fund currency**” means the Manx pound as defined in the *Currency Act 1992* and sterling;

“**law enforcement agency**” means —

- (a) the persons specified in section 10 of the *Financial Intelligence Unit Act 2016*; and
- (b) the Financial Intelligence Unit;

“**licenceholder**” has the meaning given by section 6 (“Licenceholder” defined);

“**liquidator**” means the person (whether the official receiver or some other person) for the time being charged with the administration of the property of a licenceholder by virtue of its bankruptcy;

“**permitted purpose**” —

- (a) means any of the following—
- (i) the prevention, detection, investigation or prosecution of criminal offences, whether in the Island or elsewhere;
  - (ii) the prevention, detection or investigation of, or the bringing of proceedings for, conduct for which penalties other than criminal penalties (including civil and regulatory penalties) are provided under the law of the Island or of any country outside the Island;
  - (iii) the furtherance or discharge of any function under this Act or any other enactment of the Treasury or a law enforcement agency (other than the Isle of Man Office of Fair Trading) seeking access to information regarding an asset holder or a dormant asset; and
  - (iv) the furtherance or discharge of any function of the Isle of Man Office of Fair Trading under Schedule 4 to the *Financial Services Act 2008* and in connection with the licensing and registration of moneylenders under the *Moneylenders Act 1991*; and
- (b) includes measures taken to —
- (i) determine whether or not to investigate, prosecute or bring proceedings;
  - (ii) initiate or bring to an end such an investigation, prosecution or proceedings; and
  - (iii) trace, restrain, freeze, seize, confiscate or recover assets;
- “**reclaim certificate**” means an application by a licenceholder to the Treasury under section 21(1) (licenceholder may recover payment from the Fund);
- “**Regulated Activities Order**” means the Regulated Activities Order 2011<sup>1</sup>, as it has effect from time to time;
- “**relevant business**” means the class of business activity the carrying on of which means that a person falls within the definition of licenceholder for the purposes of this Act;
- “**relevant year**” means the 12 month period commencing on 1 July and ending on the following 30 June and the “**first relevant year**” is the relevant year in which this Act comes into operation;
- “**repayment claim**” means a claim for repayment made under section 18(1)(b) (rights of asset holders);
- “**reserves account**” means the reserves account referred to in section 11(2) (the Fund); and

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<sup>1</sup> SD 0884/11

“**transferred asset**” means the balance of a dormant asset which has been transferred to the Fund under this Act.

- (2) In this Act, and without limiting the definition in the *Bankruptcy Code 1892*, references to bankruptcy include —
- (a) the winding up of an insolvent company under Part V of the *Companies Act 1931*; and
  - (b) a process or state equivalent or similar to such winding up, or to bankruptcy, under the law of a jurisdiction outside the Island.

#### 4 “Asset” defined

- (1) In this Act, an asset means —
- (a) an account; and
  - (b) any other asset to which this Act is applied by an order under section 10(1) (further application of this Act).
- (2) In this Act, an asset is not —
- (a) property which is the subject of a disclosure made under Part 3 of the *Proceeds of Crime Act 2008* or under Part III of the *Anti-Terrorism and Crime Act 2003*;
  - (b) criminal property within the meaning given in section 158 of the *Proceeds of Crime Act 2008*;
  - (c) property which is subject to —
    - (i) a restraint order;
    - (ii) a freezing order;
    - (iii) a detention order; or
    - (iv) another restrictive measure,under the *Proceeds of Crime Act 2008*, *Terrorism and Other Crime (Financial Restrictions) Act 2014* or the *Anti-Terrorism and Crime Act 2003*;
  - (d) property which is subject to any financial sanction which has effect in the Island and which is made —
    - (i) to comply with a United Nations obligation;
    - (ii) to comply with any other international obligation;
    - (iii) to further the prevention of terrorism;
    - (iv) in the interests of national security;
    - (v) in the interests of international peace and security;
    - (vi) to further a foreign policy objective;
    - (vii) to promote the resolution of armed conflicts or the protection of civilians in conflict zones;

- (viii) to provide accountability for or be a deterrent to gross violations of human rights, otherwise promote compliance with international human rights law or respect for human rights;
  - (ix) to promote compliance with international humanitarian law;
  - (x) to contribute to multilateral efforts to prevent the spread and use of weapons and materials of mass destruction; or
  - (xi) to promote respect for democracy, the rule of law and good governance.<sup>2</sup>
- (e) any other property in respect of which a licenceholder has been notified that there is a criminal or civil investigation being undertaken by any law enforcement agency.
- (3) To avoid doubt, subsection (2) does not apply if —
- (a) in the case of property to which paragraph (a) of that subsection applies, the appropriate consent has been given under section 151 of the *Proceeds of Crime Act 2008*, or the moratorium period has passed; or
  - (b) in the case of property to which any one of paragraphs (b) to (e) apply, the circumstances specified in the applicable paragraph cease to apply.
- (4) Any property to which subsection (2) applies must not be notified to the Treasury or transferred to the Fund as a dormant asset under this Act.

## 5 “Balance” defined

J2017/1/3

- (1) For the purposes of this Act, the balance of an asset at any particular time is the amount, or value, owing to the holder of the asset in respect of the asset at that time, after adjustments have been made for sums due in respect of the asset (such as any interest due or any fees or charges payable at that time, including those payable under section 23(1) (costs of licenceholder)).
- (2) To avoid doubt, a reference to the sums due is a reference to sums due according to the terms and conditions with respect to the asset as applicable from time to time and up to the time referred to in subsection (1).
- (3) However, the balance of an asset at any particular time does not include such amount, or value, in that asset as is subject to a security interest.
- (4) In subsection (3), “security interest” includes a mortgage or charge (whether legal or equitable), deed of bond and security, debenture, lien, pledge, assignment by way of security or other means of securing the payment or discharge (in whole or part) of a debt or liability.

## 6 “Licenceholder” defined

- (1) In this Act, a “**licenceholder**” means the holder of a class 1 deposit taking licence in accordance with paragraphs 1(1) and 1(2) of Schedule 1 to the Regulated Activities Order, or with the equivalent provisions of any instrument or Manx legislation from time to time replacing that Order (“**the licence**”).
- (2) Despite subsection (1), a person is not a licenceholder for the purposes of this Act if the licence of that person is revoked or withdrawn or for any period that the licence is suspended.
- (3) The Treasury may by order provide that a person is exempt from the definition of licenceholder set out in subsection (1).

Tynwald procedure – approval required.

## 7 Meaning of “dormant”

J2017/1/5 and drafting

- (1) Subject to the following provisions of this section, an account is dormant at any time for the purposes of this Act if –
  - (a) the account has been open throughout the period of 15 years ending at that time; and
  - (b) during that period –
    - (i) no transactions carried out in relation to the account were initiated by a holder of the account; and
    - (ii) there is no evidence held by the licenceholder of the holder of the account having made any contact with the licenceholder in relation to that account by any means of communication.
- (2) An account is not to be treated as dormant if at any time during the period mentioned in subsection (1)(a) –
  - (a) a transaction initiated by a holder of the account (the “account holder”) was carried out, or the licenceholder in question holds evidence of contact having been made, in relation to another account in the name of the account holder held with the same licenceholder; or
  - (b) under the terms and conditions of the account –
    - (i) withdrawals were not permitted from the account; or
    - (ii) there was a financial penalty or other disincentive for making a withdrawal from the account and the financial penalty or other disincentive applied in all circumstances.
- (3) If any of the restrictions mentioned in subsection (2)(b) applied to an account but the account then continues without such a restriction, the

account is treated as having been opened only at the date on which the restriction ceased to apply.

- (4) For the purposes of subsection (1), an account is to be treated as remaining open where it is closed otherwise than by, or on the instructions of, the holder of the account.
- (5) For the purposes of subsection (2)(b)(ii), “financial penalty or other disincentive” does not include a reasonable fee for keeping the account or for carrying out a transaction on the account, or a requirement to give a reasonable period of notice of a withdrawal from the account.
- (6) An account ceases to be dormant if, at any time before a transfer to the Fund in relation to the account made under —
  - (a) section 16(3) (transfer of dormant assets); or
  - (b) section 35(5) (transfer of assets dormant at commencement),an event occurs in relation to the account which, if it had occurred during the period mentioned in subsection (1)(a), would have meant the account was not dormant.
- (7) The notice and transfer requirements in sections 15 and 16 (or sections 34 and 35, as the case may be) do not apply to an account to which subsection (6) applies.

## 8 Cases where dormancy cannot be determined

- (1) If a licenceholder is unable to determine —
  - (a) the date on which an account referred to in section 7(1)(a) (meaning of “dormant”) becomes dormant; or
  - (b) whether such an account is in fact dormant,the licenceholder may apply to the Treasury, in such form and accompanied by such information as the Treasury may require, seeking that the Treasury treat the account as dormant for the purposes of this Act.
- (2) If, as a result of an application under subsection (1), the Treasury agrees to treat an account as dormant, that account is dormant for the purposes of this Act even if the period during which no transactions have been carried out or no contact has been made under section 7(1)(b) in relation to the account is less than 15 years.

## 9 Amendment of definitions

The Treasury may by order amend any provision in sections 3 to 7 (interpretation, “Asset” defined, “Balance” defined, “Licenceholder” defined and meaning of “dormant”).

Tynwald procedure — approval required.

## 10 Further application of this Act

- (1) The Treasury may by order specify an asset (other than an account) to which this Act applies (a “new asset”), subject to such exceptions, adaptations and modifications as may be specified in the order.

Tynwald procedure — approval required.

- (2) An order under subsection (1) may disapply any provision of this Act that is inconsistent with, or is unnecessary or requires modification in relation to, a new asset to which this Act is applied by the order.
- (3) An order under subsection (1) is subject to subsection (4).
- (4) In relation to an asset to which this Act is applied by an order under subsection (1) a “licenceholder” may only be —
  - (a) a person issued with a licence under section 7 of the *Financial Services Act 2008*; or
  - (b) a person or class of persons specified in an order made by the Treasury.

Tynwald procedure — approval required.

- (5) Section 6(2) (“Licenceholder” defined) applies to any licenceholder mentioned in subsection (4) and for this purpose “licence” in that section includes a permit or other form of authorisation.
- (6) An order under subsection (1) may do all or any of the following —
  - (a) specify the exceptions, adaptations and modifications subject to which this Act applies to a new asset; and
  - (b) set out the text of this Act, incorporating the exceptions, adaptations and modifications referred to in paragraph (a).

## PART 2 — DORMANT ASSETS FUND

### 11 The Fund

J2017/1/18; Oireachtas 2001/32/17 and drafting

- (1) There is established the Dormant Assets Fund.
- (2) The Fund consists of a reserves account and a distribution account both of which are separate from the General Revenue.
- (3) The Fund is under the care and management of the Treasury.
- (4) Transfers made into the Fund in accordance with this Act must be paid into the reserves account of the Fund.
- (5) Payments out of the Fund to meet repayment claims and any other liabilities as permitted under this Act must, unless this Act provides otherwise, be made out of the reserves account of the Fund.

- (6) Monies to be distributed in accordance with Part 5 must be transferred from the reserves account to the distribution account prior to any distribution from the Fund.
- (7) Whenever the monies in the reserves account are insufficient to meet the liabilities of the Fund as specified in this Act, there must be paid into that account from the distribution account the monies that are necessary to meet those liabilities.
- (8) Whenever the monies in both the reserves account and distribution account are insufficient to meet the liabilities of the Fund as specified in this Act, the Treasury must pay into the reserves account out of the General Revenue an amount not exceeding the amount of the deficiency.
- (9) Where monies are paid into the reserves account under subsection (8), the Treasury must, as soon as practicable, repay the monies to the General Revenue from monies in the Fund after appropriate provision has been made in relation to —
  - (a) the liabilities of the Fund specified in this Act; and
  - (b) any prospective or contingent liabilities of the Fund for which, in the opinion of the Treasury, provision should be made out of those monies.
- (10) The Treasury may by regulations make further provision for the structure and operation of the Fund.

Tynwald procedure — approval required.

## 12 Responsibilities and duties of the Treasury

J2017/1/10 and drafting

- (1) The Treasury's responsibilities in relation to the Fund are limited to —
  - (a) the operation of the reserves account and the distribution account in accordance with this Act;
  - (b) payments out of the Fund to meet repayment claims;
  - (c) the management of the Fund in such a way as to enable the meeting of those repayment claims as it is prudent to expect;
  - (d) defraying the costs of the administration of this Act, subject to section 44 (costs);
  - (e) the preparation of the distribution policy and the transfer of money from the reserves account to the distribution account in accordance with the distribution policy;
  - (f) making arrangements for the distribution of Fund money in accordance with section 25 (distribution of Fund money), subject to paragraphs (c) and (d) and to the distribution policy;
  - (g) the management of the relationship with licenceholders with regard to the Fund;

- (h) the appointment of, and management of the relationship with, any distribution organisation; and
  - (i) matters incidental or conducive to, or otherwise connected with, any of the above (including in particular the prudent investment of money held in the Fund).
- (2) Nothing in subsection (1) affects the operation of section 19 (duties of licenceholders).

### 13 Investment

- (1) The Treasury may invest the Fund in such investments as it thinks prudent.
- (2) Accumulations and interest on investments under subsection (1) accrue to the Fund.
- (3) The Treasury may delegate its powers of investment under subsection (1) to persons appearing to it to be appropriately qualified to undertake that function.

### 14 Annual report

- (1) As soon as practicable following the first anniversary of the establishment of the Fund under section 11(1) (the Fund), and at every subsequent anniversary, the Treasury must prepare an annual report on the operation of the Fund in the preceding year and the report must be laid before Tynwald.
- (2) The report specified in subsection (1) must include —
  - (a) the opening and closing amounts in the reserves account and the distribution account;
  - (b) details of the value of transferred assets;
  - (c) any payments into the reserves account under section 11(7) or (8);
  - (d) any investment income accrued under section 13(2) (investment);
  - (e) the persons (if any) to whom powers of investment are delegated under section 13(3);
  - (f) details of the amounts paid out of the reserves account including —
    - (i) any amounts paid out under section 21(3) (licenceholder may recover payment from Fund);
    - (ii) any costs as provided for under this Act;
    - (iii) any payments from the reserves account to the distribution account; and
    - (iv) any repayments to the General Revenue under section 11(9);

- (g) details of the number of repayment claims processed by licenceholders on behalf of the Treasury and by the Treasury under section 28 (Treasury may act in cases of default by licenceholder);
  - (h) details of any payments made from the distribution account in accordance with Part 5, including any costs of the distribution organisation in relation to its functions under this Act; and
  - (i) the distribution policy.
- (3) Any policies or procedures made by the Treasury concerning the operation of the Fund may be published by the Treasury on a webpage dedicated to the Fund, or in a manner the Treasury considers will bring the policies and procedures to the attention of those likely to be affected by them.

### **PART 3 – NOTICES AND TRANSFERS**

#### **15 Notice of dormant assets**

J2017/1/7 and drafting

- (1) Within 3 months of the start of each relevant year a licenceholder must, in relation to assets it holds that fell dormant during the preceding relevant year, give notice to the Treasury setting out the number of dormant assets and balance of each dormant asset.
- (2) At any time after an asset falls dormant, but in any event within the period referred to in subsection (1), a licenceholder must give notice of the balance of every dormant asset to the person in whose name the asset is held at that person's last address known to the licenceholder, unless the licenceholder reasonably believes that writing to that address may lead to a risk of fraud.
- (3) A notice under subsection (2) must state clearly that unless the person to whom it is given makes contact with the licenceholder, the balance of the dormant asset will be transferred to the Fund on or after a date stated in the notice.
- (4) The licenceholder may aggregate the balances of dormant assets which each have a balance of below £100 for the purposes of the notice required under subsection (1).
- (5) The notice periods in subsections (1) and (2) are subject to Part 7 (transitional arrangements and assets dormant at commencement).
- (6) The Treasury may, subject to subsection (3), by order specify requirements in relation to the form or content of, or the information to be included in, a notice under subsection (1) or (2), including any different notice requirements where the balances of dormant accounts have been aggregated in accordance with subsection (4).

Tynwald procedure – laying only.

- (7) Upon receipt of a notice under subsection (1), the Treasury may make a written request for further information about any dormant asset held by the licenceholder and the licenceholder must provide the further information within one month of the date of the request.
- (8) Subsection (7) is subject to section 40 (data protection legislation not affected).
- (9) If, upon receipt of a notice from a licenceholder under subsection (1), or of further information under subsection (7), the Treasury determines that the balance of a particular dormant asset should not be transferred to the Fund, it must notify the licenceholder that the balance of such an asset should not be transferred.
- (10) If the Treasury makes a request for further information from a licenceholder under subsection (7), it may –
  - (a) vary the time for compliance with the notice and transfer requirements in section 16(1) and (3) (transfer of dormant assets); and
  - (b) revise the time period referred to in section 16(5).
- (11) Subsection (10) is subject to section 16(6).
- (12) If a licenceholder, in any given relevant year, holds no assets that would be the subject of a notice under subsection (1), it must, within the period specified in that subsection, notify the Treasury of that fact.
- (13) A licenceholder who fails, without reasonable excuse, to comply with this section commits an offence.

Maximum penalty (summary) – a fine of level 4 on the standard scale.

## 16 Transfer of dormant assets

J2017/1/7 and drafting

- (1) Subject to section 15(10), within the sixth month of a relevant year, a licenceholder must, in relation to a dormant asset to which subsection (5) does not apply, submit to the Treasury a notice of an intended transfer to the Fund.
- (2) The licenceholder may aggregate the balances of dormant assets which each have a balance of below £100 for the purposes of the notice required under subsection (1).
- (3) Subject to section 15(10), by the end of the sixth month in the relevant year a licenceholder must transfer to the Fund the balance of a dormant asset that is included in the notice referred to in subsection (1).
- (4) A transfer under subsection (3) must comply with the requirements of section 17 (foreign currencies) with respect to an asset which is not held in the Fund currency.

- (5) A licenceholder must not transfer the balance of a dormant asset under this section if at any time prior to the end of the fifth month in the relevant year (or at any other time as determined by the Treasury under section 15(10)) –
- (a) an asset holder has notified the licenceholder that the asset is not dormant;
  - (b) the licenceholder otherwise realises that the asset is not dormant; or
  - (c) the Treasury has notified the licenceholder, in accordance with section 15(9), that the asset should not be transferred.
- (6) If for any reason a transfer does not take place within the period mentioned in subsection (3) it must take place within the next period of 12 months following that time without any further notice being given.
- (7) An asset transferred to the Fund under this section must be paid into the reserves account of the Fund.
- (8) The Treasury may by order specify requirements in relation to any or all of the following –
- (a) the form or content of, or the information to be included in, a notice under subsection (1), including any different notice requirements where the balances of dormant accounts have been aggregated in accordance with subsection (2); and
  - (b) the information that must accompany a transfer by the licenceholder under subsection (3).
- Tynwald procedure – laying only.
- (9) A licenceholder who fails, without reasonable excuse, to comply with this section commits an offence.
- Maximum penalty (summary) – a fine of level 4 on the standard scale.

## 17 Foreign currencies

J2017/1/8 and drafting

- (1) If a dormant asset consists of money in a currency other than the Fund currency, that money must be converted to the Fund currency at the currency conversion rate no more than 2 working days before the balance of the asset is transferred to the Fund.
- (2) The currency conversion rate referred to in subsection (1) is the prevailing exchange rate that applies to the asset on the day of conversion according to the terms and conditions under which that asset is held by the licenceholder.

## PART 4 – REPAYMENT CLAIMS

### 18 Rights of asset holders

J2017/1/9 and drafting

- (1) With respect to a transferred asset, an asset holder —
  - (a) no longer has any right against the licenceholder to payment of the transferred asset; but
  - (b) has against the Treasury in respect of the Fund whatever right to payment of the transferred asset the asset holder would have had against the licenceholder if the transfer of that asset had not occurred.
- (2) The Treasury may pay the asset holder out of the Fund a sum greater than that to which the asset holder would be entitled under subsection (1)(b) if the Treasury considers it appropriate to do so, having regard to the amount of money held in the Fund and any other matter that the Treasury considers relevant pertaining to the circumstances of the claim.
- (3) Where a person is authorised by the Treasury in accordance with section 3 of the *Government Departments Act 1987* to perform its functions under this Act, any additional payment under subsection (2) may not be made by that person without the approval of the Treasury.
- (4) A transferred asset is no longer a debt owed, or an amount due, by the licenceholder to the asset holder.
- (5) An asset holder is not entitled to interest on the transferred asset in respect of any period during which it is held in the Fund, except to the extent that the Treasury otherwise by order prescribes (although the licenceholder remains liable in respect of any interest that accrued before the transfer but was not in fact transferred).

Tynwald procedure - approval required.
- (6) Nothing in subsection (1)(b) or (7) entitles a holder of a transferred asset that consisted (before it was transferred under section 16 (transfer of dormant assets)) of money in a currency other than the Fund currency to recover the transferred asset —
  - (a) in that other currency; or
  - (b) at an amount calculated in terms of that currency as at any time other than the time of the conversion of that other currency under section 17 (foreign currencies).
- (7) To avoid doubt, nothing in subsection (1) or (4) affects —
  - (a) any liability of the licenceholder to the asset holder in respect of an amount, or value, other than the transferred asset referred to in whichever subsection; or
  - (b) the operation of section 19 (duties of licenceholders).

- (8) Subject to subsection (5) and to the extent that an order made by the Treasury prescribes otherwise, the terms on which, prior to transfer, the transferred asset was held by a licenceholder apply to the transferred asset that is held in the Fund.

Tynwald procedure — approval required.

## 19 Duties of licenceholders

J2017/1/11 and drafting

- (1) A licenceholder must do the following in relation to a transferred asset —
- (a) retain the records that the licenceholder has created or acquired relating to the relevant transferred asset and to any holder of that asset;
  - (b) receive any repayment claim for payment of that transferred asset;
  - (c) verify any repayment claim;
  - (d) calculate the amount that should be paid in respect of a repayment claim;
  - (e) determine who is the asset holder in relation to a repayment claim;
  - (f) pay out to the asset holder the amount that should be paid in respect of a repayment claim;
  - (g) comply with any written directions of the Treasury given to the licenceholder under subsection (7) for the purposes of Part 3 and this Part; and
  - (h) provide information or assistance in respect of a transferred asset or the holder of that asset if requested by a law enforcement agency for a permitted purpose.
- (2) Despite subsection (1)(f), in exceptional circumstances a licenceholder may apply in writing to the Treasury —
- (a) for the transfer to the licenceholder of a sum equal to the amount payable as the result of a repayment claim prior to the licenceholder making a payment out on that repayment claim; or
  - (b) for the Treasury to pay from the Fund the amount due as a result of a repayment claim directly to the asset holder.
- (3) The Treasury may accept or refuse any application made under subsection (2) at its discretion.
- (4) Any payment out on a repayment claim under subsection (1)(f) must be made in the Fund currency.
- (5) A licenceholder must act promptly to execute its responsibilities under this section.
- (6) To avoid doubt, a licenceholder is responsible, in respect of dealing with a repayment claim, for satisfying all the obligations which apply to any

payment to an asset holder, despite the asset claimed being a transferred asset.

- (7) The Treasury may issue written directions to a licenceholder or a class of licenceholders for the purposes of Part 3 and this Part, with which the licenceholder must comply.
- (8) The Treasury may by order amend subsection (1).  
Tynwald procedure — approval required.
- (9) A reference in this section to payment of a transferred asset includes payment of any amount of interest that becomes due to the asset holder, in relation to that asset, as prescribed under section 18(5) (rights of asset holders).
- (10) A licenceholder who fails, without reasonable excuse, to comply with this section commits an offence.

Maximum penalty (summary) — a fine of level 4 on the standard scale.

## 20 Annual statement of repayments

J2017/1/12 and drafting

- (1) A licenceholder must give to the Treasury, by the end of 3 months following the end of each relevant year, written notice of —
  - (a) the amounts that it has during that year paid out in accordance with section 19(1)(f) (duties of licenceholders);
  - (b) the amounts that it has during that year claimed from the Treasury under section 21 (licenceholder may recover payment from the Fund);
  - (c) any application it has made during that year under section 19(2) (duties of licenceholders) and the amount of any sum transferred to the licenceholder or any payment made directly to the asset holder during that year as a result of that application; and
  - (d) the number of repayment claims it has received during that year in respect of which it has not made any payment.
- (2) If no repayment claims were received, no applications under section 19(2) made, or no amounts paid out or claimed as referred to in subsection (1)(a) or (b) during the relevant year, the written notice required under subsection (1) must confirm that fact.
- (3) The Treasury may by order specify the form or content of, and the information to be included in, the written notice referred to in subsection (1).  
Tynwald procedure — laying only.
- (4) A licenceholder who fails without reasonable excuse to comply with this section commits an offence.

Maximum penalty (summary) — a fine of level 4 on the standard scale.

## **21 Licenceholder may recover payment from the Fund**

J2017/1/13 and drafting

- (1) Subject to subsections (2) and (4), a licenceholder may, by submitting a reclaim certificate to the Treasury, apply to recover quarterly from the Fund an amount equal to the amount that the licenceholder, in accordance with section 19 (duties of licenceholders), has paid out on repayment claims made to that licenceholder.
- (2) A licenceholder may not recover from the Fund any amount to the extent that —
  - (a) the amount was paid out on a repayment claim more than 3 years before the application under subsection (1) is made; or
  - (b) the amount was paid out in error.
- (3) The Treasury must pay from the reserves account of the Fund any amount that the Treasury is satisfied has been the subject of an application made in accordance with the requirements of this section and any order made under subsection (4).
- (4) The Treasury may by order —
  - (a) specify the form and content of, and the information to be included in, a reclaim certificate and any procedures relating to the submission of a reclaim certificate; and
  - (b) provide that an application made under subsection (1) —
    - (i) be made in respect of aggregates of amounts instead of individual amounts; and
    - (ii) be made at, within or in respect of any specified time or times.

Tynwald procedure — laying only.

## **22 Licenceholder acts as agent of the Treasury**

J2017/1/19 and drafting

- (1) A licenceholder acts as the agent of the Treasury in relation to the Fund in respect of the following matters —
  - (a) repayment claims;
  - (b) payments paid out on repayment claims;
  - (c) relationships with asset holders;
  - (d) record-keeping; and
  - (e) the fulfilment of any legal or regulatory obligations arising out of the relationship with an asset holder.

- (2) The Schedule has effect with respect to the terms on which a licenceholder acts as the agent of the Treasury under this section.
- (3) Despite subsection (2), the Treasury may agree with a licenceholder additional terms as the Treasury considers appropriate.
- (4) Unless terminated with the consent of the Treasury, the terms upon which a licenceholder acts as agent of the Treasury set out in the Schedule (and any additional terms agreed under subsection (3)) are binding on a liquidator or any other person acting in the place of the licenceholder under Part 6.
- (5) A licenceholder's role as agent under this section may not be assigned or transferred by contract except as approved by the Treasury.

## 23 Costs of licenceholder

J2017/1/14 and drafting

- (1) A licenceholder may deduct from the value of an asset reasonable fees and expenses incurred in respect of carrying out its functions under this Act to the extent provided for in terms and conditions that are binding on the asset holder.
- (2) Where a licenceholder deducts fees and expenses under subsection (1), the licenceholder must refund those fees and expenses to the asset holder on a payment out to the asset holder of the amount to which the asset holder is entitled in respect of a repayment claim.
- (3) Save as provided for in subsection (1) or elsewhere in this Act, a licenceholder may not deduct from any amount transferred to, recovered from or to be paid from, the Fund, any amount in respect of the licenceholder's costs in connection with the performance of its functions under this Act.
- (4) To avoid doubt, a refund of fees and expenses under subsection (2) must not be deducted by a licenceholder from any amount transferred to, recovered from or to be paid from, the Fund.

## PART 5 — DISTRIBUTION

### 24 Distribution policy

- (1) After consulting with such persons as it considers appropriate, the Treasury must establish a policy which provides the method for determining —
  - (a) when assets may be transferred from the reserves account into the distribution account;
  - (b) when a distribution may be made from the distribution account;and

- (c) the amount of assets, if any, which may be made available for distribution.
- (2) The policy referred to in subsection (1) is known as the “distribution policy”.

## 25 Distribution of Fund money

J2017/1/20 and drafting

- (1) The purposes for which the funds in the distribution account may be distributed are —
  - (a) to pay the costs of a distribution organisation incurred in the performance of its functions under this Act; and
  - (b) the charitable purposes referred to in subsection (7).
- (2) For the purposes of enabling the distribution organisation to carry out its functions in subsection (3), the Treasury may distribute funds in the distribution account to the distribution organisation.
- (3) The Treasury must by order appoint a distribution organisation not connected with the management of the Fund to —
  - (a) determine the persons or bodies for whose charitable purposes amounts from the Fund must be distributed in accordance with this section and any order made under subsection (8); and
  - (b) distribute those amounts to those persons or bodies.Tynwald procedure — approval required.
- (4) An order made under subsection (3) must —
  - (a) include the terms of appointment of the distribution organisation; and
  - (b) provide that the distribution organisation may recover its reasonable costs incurred in the performance of its functions under this Act.
- (5) An order under subsection (3) may —
  - (a) provide for procedures to be followed on the receipt of a complaint regarding any decision or action of the distribution organisation with respect to a distribution under this Act; and
  - (b) impose any requirements on the distribution organisation to permit a review by specified persons and for specified purposes of records held by the distribution organisation which are related to distributions made under this Act.
- (6) The distribution organisation, for the duration of its appointment as the distribution organisation, is not eligible to receive any money from the Fund on its own account for a purpose specified in subsection (1)(b).

- (7) In accordance with the distribution policy, the distribution organisation must distribute amounts for charitable purposes undertaken in the Island.
- (8) The Treasury may by order specify the proportions in which amounts may be distributed to the charitable purposes referred to in subsection (7).  
Tynwald procedure – approval required.
- (9) For the purposes of this Part, distributing funds for a purpose includes distributing funds to establish, contribute to, or endow (including permanently endow) in connection with the purpose.
- (10) As soon as practicable following the first anniversary of its appointment, and every subsequent year, the distribution organisation must report to the Treasury on its activities under this section during the preceding year.
- (11) The report referred to in subsection (10) must be laid before Tynwald as soon as practicable and must include –
- (a) the identity of all recipients of distributions;
  - (b) the amounts paid to each recipient;
  - (c) the purposes for which the distributions were made; and
  - (d) audited accounts relating to the distribution organisation’s activities under this section.

The report must be published on the webpage dedicated to the Fund.

- (12) In this section, “charitable purposes” has the same meaning as in section 5 of the *Charities Registration and Regulation Act 2019*.<sup>3</sup>
- (13) The Treasury may by order amend subsection (12) in so far as may be necessary or desirable in consequence of any change to the law relating to charities in the Island.

Tynwald procedure – approval required.

## PART 6 – DEFAULT OF LICENCEHOLDER

### 26 Rights of asset holder preserved on insolvency etc of licenceholder

P2008/31/11

Where after an asset holder has acquired a right to payment under section 18(1)(b) (rights of asset holders) –

- (a) the licenceholder in question is dissolved or wound up; or
- (b) for any other reason the liability that the licenceholder would have to the asset holder (but for the transfer of an asset under Part 3 or Part 7) is extinguished or reduced,

the dissolution, winding up, extinguishment or reduction is to be disregarded for the purposes of section 18(1)(b).

**27 Default by licenceholder**

J2017/1/15 and drafting

Subject to the provisions of this Part, the operation of Part 4 is not affected by the fact that a licenceholder has —

- (a) become bankrupt;
- (b) transferred any part of its relevant business;
- (c) ceased to trade; or
- (d) for any other reason ceased to be a licenceholder within the meaning given in this Act.

**28 Treasury may act in cases of default by licenceholder**

J2017/1/15

If the Treasury believes that any function referred to in section 19(1)(a) to (f) or (h) (duties of licenceholders) is not being performed by or in respect of a licenceholder, the Treasury may perform the function instead.

**29 Operation of repayment claims in cases of default by licenceholder**

J2017/1/15 and drafting

- (1) If a licenceholder —
  - (a) transfers any part of its business to another entity or moves it to another branch of the same licenceholder, the person to whom that business is transferred or moved must comply with the requirements of subsection (2);
  - (b) ceases to trade in the Island, the licenceholder must make arrangements to ensure compliance with the requirements of subsection (2); or
  - (c) becomes bankrupt, the liquidator must comply with the requirements of subsection (2).
- (2) The requirements are —
  - (a) to ensure that section 19(1)(b) to (h) (duties of licenceholders) are complied with; and
  - (b) to hold the records of the relevant business of the licenceholder and make them accessible from within the Island,  
  
for a period, unless regulations made under section 30(a) or (b) provide to the contrary, of 6 years, beginning with the date of whichever is the relevant event in subsection (1).
- (3) Where a liquidator or any other person acts in the place of a licenceholder under this section, a reference to “licenceholder” in sections 19(2) to (10), 20 and 21 includes the liquidator or person.
- (4) Any costs of a liquidator, whenever incurred, in complying with the requirements of —

- (a) this section; and
- (b) section 22(4) (licenceholder acts as agent of the Treasury),

have the same priority as the costs, charges and expenses payable in the winding up of a company under Part V of the *Companies Act 1931*.

### 30 Regulations in cases of default by licenceholder

J2017/1/23 and 11

The Treasury may by regulations make provision for the following matters in cases where any of the circumstances in section 27(a) to (d) (default by licenceholder) apply to a licenceholder –

- (a) the provision, or modification, of the duties, liabilities and rights of a liquidator or other person who acts in relation to a licenceholder;
- (b) the performance of the functions of a licenceholder under this Act;
- (c) the rights and priorities of holders of dormant assets, and of other persons with an interest in those assets;
- (d) the appointment or constitution, and functions under this Act, of a person who may perform the functions of the licenceholder under this Act;
- (e) the remuneration or funding of a person appointed under paragraph (d), including remuneration or funding from the bankrupt estate of the licenceholder or from the licenceholder's assets or former assets or from the Fund; and
- (f) the provision for priority as between a person appointed under paragraph (d) and creditors of the relevant licenceholder.

Tynwald procedure – approval required.

## PART 7 – TRANSITIONAL ARRANGEMENTS AND ASSETS DORMANT AT COMMENCEMENT

### 31 Transitional arrangements

J2017/1/29 and drafting

- (1) Where before this section comes into operation –
  - (a) a licenceholder has no system in place for identifying dormant assets; or
  - (b) a licenceholder has a system in place that identifies assets held by the licenceholder as dormant for a period other than the period specified in section 7(1)(a) (meaning of “dormant”),

the licenceholder does not contravene Part 3 until 5 years after the coming into operation of that Part.

- (2) Subsection (1) is subject to subsection (3).

- (3) Subsection (1) does not apply if the licenceholder is able by taking reasonable steps to discover whether or not any assets held by it are dormant other than by a manual check of each asset it holds (for example by means of a computerised search using its existing systems).
- (4) Where a new licenceholder becomes subject to this Act —
  - (a) subsections (1) and (3) apply to the licenceholder with respect to the system or lack of system for identifying dormant assets that the licenceholder has in place on becoming subject to this Act; and
  - (b) the 5 years referred to in subsection (1) relates to the time after which the licenceholder has become subject to this Act.
- (5) A licenceholder to which subsection (1) applies (whether or not by virtue of subsection (4)) must give written notice to the Treasury of —
  - (a) the particular transitional arrangement in subsection (1) that it relies upon;
  - (b) when the licenceholder expects to be in a position to comply with the requirements of Part 3; and
  - (c) when that date is known, the date when the licenceholder will cease to rely upon the transitional arrangement and comply with the requirements of Part 3.

## 32 Assets dormant at commencement

- (1) In this Act, an asset is “dormant at commencement” if —
  - (a) the asset is held by a licenceholder and the asset became dormant before the first relevant year;
  - (b) the asset is held by a licenceholder relying upon the transitional arrangements in section 31 and the asset became dormant before the relevant year in which the licenceholder begins to comply with Part 3; or
  - (c) the asset is held by an entity that becomes a licenceholder after the coming into operation of Part 3 and the asset became dormant before the relevant year in which the entity becomes a licenceholder and subject to this Act.
- (2) In this Act, the “applicable dormant at commencement date” is —
  - (a) in the circumstances described in subsection (1)(a), the date Part 3 comes into operation;
  - (b) in the circumstances described in subsection (1)(b), the date the licenceholder becomes liable to comply, or if earlier the date the licenceholder complies, with the requirements in Part 3;
  - (c) in the circumstances described in subsection (1)(c), the date that Part 3 applies to the licenceholder.

### 33 Notices to holders of assets dormant at commencement

- (1) A licenceholder must give notice of the balance of every asset dormant at commencement to the person in whose name the asset is held at that person's last address known to the licenceholder, unless the licenceholder has a reasonable belief that writing to that address may lead to a risk of fraud.
- (2) A notice under subsection (1) must state clearly that unless the person to whom it is given makes contact with the licenceholder, the balance of the dormant asset will be transferred to the Fund on or after a date stated in the notice.
- (3) The Treasury may, subject to subsection (2), by order specify any particular requirements in relation to the form or content of, or the information to be included in, a notice made under subsection (1).

Tynwald procedure — laying only.

- (4) A licenceholder must comply with subsection (1) —
  - (a) after the applicable dormant at commencement date; or
  - (b) if the licenceholder is relying upon the transitional arrangements in section 31, after the licenceholder commences the application of those arrangements,and in either case before giving the notice to the Treasury required under section 34(1).
- (5) A licenceholder who fails, without reasonable excuse, to comply with this section commits an offence.

Maximum penalty (summary) — a fine of level 4 on the standard scale.

### 34 Notices in respect of assets dormant at commencement

- (1) A licenceholder must give notice to the Treasury of the assets it holds that are dormant at commencement within 12 months of the applicable dormant at commencement date.
- (2) A licenceholder may give notice under subsection (1) by one notice on a single occasion or by way of a series of notices within the period specified in that subsection.
- (3) The Treasury may by order specify requirements in relation to the form or content of, or the information to be included in, a notice under subsection (1).

Tynwald procedure — laying only.

- (4) Upon receipt of a notice under subsection (1), the Treasury may make a written request for further information regarding any assets dormant at commencement about which it has been notified, and a licenceholder must

provide the further information within one month of the date of the request.

- (5) If the Treasury makes a request for further information from a licenceholder under subsection (4), it may vary the time for compliance with the notice and transfer requirements in section 35(3) and (5).
- (6) The Treasury may vary the notice period in subsection (1) on an application by a licenceholder if it appears to the Treasury appropriate in all the circumstances.
- (7) A licenceholder who fails, without reasonable excuse, to comply with this section commits an offence.

Maximum penalty (summary) — a fine of level 4 on the standard scale.

### **35 Transfer of assets dormant at commencement**

- (1) Following receipt of a notice under section 34(1) (notices in respect of assets dormant at commencement) or further information under section 34(4), the Treasury may determine that the balance of a particular dormant asset should not be transferred to the Fund.
- (2) The Treasury must inform the licenceholder if the balance of a particular asset that is dormant at commencement should not be transferred to the Fund by the end of 3 months after receiving the notice referred to in section 34(1) relating to the asset.
- (3) Unless —
  - (a) an asset holder has notified the licenceholder that the asset is not dormant;
  - (b) the licenceholder otherwise realises that the asset is not dormant; or
  - (c) the Treasury has notified the licenceholder, in accordance with subsection (2), that the asset should not be transferred,
 a licenceholder must, in relation to assets dormant at commencement, submit to the Treasury a notice of intended transfer to the Fund within the fourth month following the giving of the notice referred to in section 34(1).
- (4) The Treasury may by order specify requirements in relation to the form or content of, or the information to be included in, a notice under subsection (3).
 

Tynwald procedure — laying only.
- (5) The balance of an asset dormant at commencement must, unless any of subsection (3)(a) to (c) applies to the asset, be transferred to the Fund by the end of the fourth month following the giving of the notice referred to in section 34(1).

- (6) Section 17 (foreign currencies) applies to a transfer made under subsection (5).
- (7) The time periods specified in subsections (3) and (5) are subject to any variation made by the Treasury under section 34(5).
- (8) A licenceholder who fails, without reasonable excuse, to comply with this section commits an offence.

Maximum penalty (summary) — a fine of level 4 on the standard scale.

## PART 8 – MISCELLANEOUS

### 36 Disclosure of information

J2017/1/17 and drafting

- (1) A licenceholder (or any other person who holds any records of a licenceholder that relate to dormant assets or the holders of dormant assets held or formerly held with the licenceholder) must allow the Treasury (or other person authorised in writing by the Treasury for the purposes of this section) to have access to any records of the licenceholder where that access is necessary for the performance of the Treasury's functions under this Act.
- (2) The requirement imposed by subsection (1) has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.
- (3) The Treasury and law enforcement agencies may exchange information relating to dormant assets or the holders of dormant assets acquired under this section or section 19(1)(h), but only where this is necessary for a permitted purpose.
- (4) A licenceholder who fails without reasonable excuse to comply with subsection (1) commits an offence.

Maximum penalty (summary) — a fine of level 4 on the standard scale.

- (5) This section is subject to section 40 (data protection legislation not affected).

### 37 Offences in connection with information

J2017/1/24 and drafting

- (1) A person commits an offence if —
  - (a) the person provides information to the Treasury, or to any other person entitled to information under this Act —
    - (i) in connection with an application or repayment claim;
    - (ii) in purported compliance with a requirement imposed by or under this Act; or

- (iii) otherwise than as mentioned in sub-paragraphs (i) and (ii) but in circumstances in which the person providing the information intends, or could reasonably be expected to know, that the information would be used in the exercise of functions under this Act by the Treasury or another person;
- (b) that information is false or misleading in a material particular; and
- (c) the person knows that, or is reckless as to whether, the information is false or misleading in a material particular.

Maximum penalty —

- (a) (summary) — 6 months' custody or a fine of level 5 on the standard scale, or both; or
  - (b) (on information) — 2 years' custody or a fine, or both.
- (2) A person commits an offence if the person fails, without reasonable excuse, to comply with a requirement imposed by or under this Act to provide information in connection with an application or repayment claim to the Treasury or to any other person entitled to the information under this Act.

Maximum penalty (summary) — a fine of level 4 on the standard scale.

### **38 Functions under Act not deposit-taking or financial services business**

J2017/1/21 and drafting

The performance —

- (a) by the Treasury or another person of any function that the Treasury may perform under this Act; or
- (b) of any function of the distribution organisation under this Act,

does not constitute deposit-taking or investment business within the meaning of the Regulated Activities Order and any instrument or Manx legislation from time to time replacing that Order.

### **39 Limitation of liability**

J2017/1/22 and drafting

- (1) Despite section 22(1) (licenceholder acts as agent of the Treasury) the Treasury, its officers or agents (excluding the licenceholder where the licenceholder acts as an agent of the Treasury) are not liable for the actions of the licenceholder, its officers or agents in respect of any of the licenceholder's obligations under this Act, other than in respect of its obligation under section 19(1)(f) (duties of licenceholders).
- (2) The Treasury, its officers or agents are not liable to a licenceholder or any of its asset holders as a result of any action taken in relation to the Fund that would otherwise arise under another enactment.

- (3) Without limiting subsections (1) and (2), the Treasury, its officers or agents are not liable in damages for anything done or omitted in the discharge or purported discharge of any function under, or authorised by or under, this Act unless it is shown that the act or omission was in bad faith.
- (4) To avoid doubt, this section applies to any person authorised by the Treasury in accordance with section 3 of the *Government Departments Act 1987* to perform any of its functions under this Act.

#### **40 Data protection legislation not affected**

- (1) Nothing in this Act authorises a disclosure, in contravention of the provisions of the data protection legislation, of personal data which is not exempt from those provisions.
- (2) In this section, “data protection legislation” has the meaning given in regulation 5(1) of the GDPR and LED Implementing Regulations 2018<sup>2</sup> as they have effect from time to time.

#### **41 Other obligations not affected**

Unless otherwise expressly provided for in this Act, nothing in this Act affects the operation of any other duty to comply with requirements under any other enactment, or any other obligation imposed by law.

#### **42 Statutory documents**

- (1) The Treasury may make orders and regulations —
  - (a) in accordance with this Act; or
  - (b) otherwise as are necessary or expedient to give effect to this Act.Tynwald procedure for orders or regulations made under paragraph (b) — approval required.
- (2) Without limiting subsection (1), the Treasury may by order make provision for or with respect to any of the following —
  - (a) amending any expression of time (whether numerical or otherwise) in this Act;
  - (b) notices, returns and reports to be furnished by licenceholders or other persons to the Treasury for the purposes of this Act; and
  - (c) for costs to be charged in specified circumstances for the benefit of the Fund for processing a repayment claim to a former asset holder whose dormant asset has been transferred to the Fund.
- (3) Orders and regulations made under this Act may —
  - (a) provide for their contravention to be an offence punishable by a fine of level 4 on the standard scale;

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<sup>2</sup> SD 2018/0145

- (b) permit a person to exercise a discretion in respect of any matters specified in the order or regulations;
- (c) contain any consequential, incidental, supplemental, transitional and saving provisions that the Treasury considers necessary or expedient for the purposes of the order or regulations.

#### **43** *Bona vacantia*

J2017/1/26

- (1) Nothing in this Act affects the operation of the rule of law regarding *bona vacantia* or any claim that the Treasury may have in respect of *bona vacantia*.
- (2) Accordingly, the Treasury may be paid from the Fund any amount of a transferred asset paid to the Fund where the amount corresponds to the amount of property that is *bona vacantia*.

#### **44** **Costs**

- (1) The Treasury, or any person authorised by the Treasury in accordance with section 3 of the *Government Departments Act 1987* to perform any of its functions under this Act, may recover from the reserves account of the Fund reasonable costs incurred in the performance of functions under this Act.
- (2) The costs referred to in subsection (1) may, in the case of a person authorised by the Treasury, include reasonable remuneration for the performance of functions under this Act as agreed with the Treasury.



**SCHEDULE****TERMS OF AGENCY**

(Section 22(2))

**1 The Treasury as manager of the Fund**

The Treasury in this Schedule means the Treasury acting in its capacity as manager of the Fund and references to the Treasury should be construed accordingly.

**2 Duration of agency**

The agency commences on a date on which a licenceholder first transfers any balance of a dormant asset to the Fund and continues until terminated by a written agreement between the licenceholder and the Treasury, on terms as may be agreed between those parties.

**3 Reimbursement of the Treasury**

If the Treasury incurs any costs, expenses or damages as a result of a failure of a licenceholder to comply with this Act, the licenceholder is liable to reimburse the Treasury.

**4 Licenceholder's general obligations**

A licenceholder must meet the general obligations of an agent towards its principal, including in particular —

- (a) to act in relation to the Fund conscientiously and in good faith and not allow its interests to conflict with its duties under the Act;
- (b) not to do or fail to do anything that would adversely affect the reputation or goodwill of the Treasury;
- (c) except as authorised by the Treasury, not to act in a way that will incur any liabilities on behalf of the Treasury nor increase the Treasury's liability to asset holders in any way, nor to pledge or purport to pledge the credit of the Treasury; and
- (d) to comply with all reasonable and lawful instructions of the Treasury concerning this Act, in particular the management of repayment claims, and generally to carry out its agency in such manner as it thinks best to further the purpose of the Act.

**5 Record keeping requirements**

- (1) A licenceholder must ensure that it retains all relevant records in respect of a holder of an asset held with the licenceholder which has been

classified as dormant, the balance of which has been transferred to the Fund.

- (2) An asset holder described in sub-paragraph (1) is referred to in this Schedule as a “transferred asset holder”.

## 6 Relations with transferred asset holders

A licenceholder must—

- (a) ensure that it complies with all legal and regulatory requirements applicable from time to time in respect of the relationship with a transferred asset holder;
- (b) respond to any contact from a transferred asset holder but nothing in sub-paragraph (a) or this sub-paragraph requires the licenceholder to initiate any contact with a transferred asset holder directly;
- (c) manage and process, in accordance with the licenceholder’s policies and procedures and any legal and regulatory requirements applicable from time to time, all queries and complaints from a transferred asset holder (or the transferred asset holder’s successors or personal representatives) in relation to a dormant asset balance that has been transferred to the Fund;
- (d) manage and settle any dispute between the transferred asset holder and the licenceholder in relation to the amount payable to the transferred asset holder, whether in respect of a principal sum or interest, in respect of a dormant asset balance that has been transferred to the Fund;
- (e) notify the Treasury quarterly of any dispute with a transferred asset holder in relation to the amount due to the transferred asset holder in respect of any transferred dormant asset balance, giving a summary of the complaint; and
- (f) manage any dispute with a transferred asset holder in relation to which the Treasury has been notified under sub-paragraph (e).

## 7 Repayment claims

When dealing with a repayment claim, a licenceholder must —

- (a) ensure the correct validation, calculation, processing and payment (if applicable) of the repayment claim from a transferred asset holder in accordance with the terms and conditions of the relevant asset, the licenceholder’s policies and procedures, and the provisions of this Act; and
- (b) complete all checks and investigations required at the time of the repayment claim by a transferred asset holder for the purposes of verifying the transferred asset holder’s identity in accordance with

all applicable law relating to anti-money laundering or the countering of terrorist financing and ensure that payment to the transferred asset holder is not prohibited by those requirements or by any other enactment.

## **8 Further obligations of the licenceholder**

- (1) Where a licenceholder submits a notice to the Treasury, including a reclaim certificate, it warrants that the information provided is true, accurate and complete in all respects.
- (2) A licenceholder must provide to the Treasury such information regarding its compliance with this Act as the Treasury may reasonably require.
- (3) A licenceholder must permit any person appointed by the Treasury to verify the licenceholder's compliance with the Act and may be required to pay the fees of such person.

## **9 Liability of the Treasury**

- (1) If a licenceholder has agreed to pay a transferred asset holder an amount in respect of a repayment claim that is greater than the amount of the Treasury's liability under this Act, the Treasury is not liable to reimburse the licenceholder for the full amount actually paid to the transferred asset holder by the licenceholder.
- (2) The Treasury has no liability to a transferred asset holder —
  - (a) arising as a result of any error, failure or breach by a licenceholder (including any possible failure by the licenceholder to observe the terms and conditions applicable to the transferred asset holder) that exceeds the maximum sum; and
  - (b) for any error, failure or breach by the licenceholder as agent of the Treasury under this Act.
- (3) In sub-paragraph (2)(a), "the maximum sum" means the amount transferred to the Fund by the licenceholder together with any interest due to which the transferred asset holder is entitled under section 18(5) (rights of asset holders).

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> ADO - Sections 6(3), 15(6), 16(8), 20(3), 21(4), 33(3), 34(3) and 35(4) in operation 19/06/2019 for the purposes of enabling orders and regulations to be made; whole Act in operation for all purposes in operation 01/07/2019 [SD2019/0234].

<sup>2</sup> Para (d) substituted by SD2019/0235 with effect from 31/12/2020 at 23:00.

<sup>3</sup> Subs (12) amended by SD2020/0081.