



ENTERPRISE DEVELOPMENT SCHEME 2018

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Statutory Document No. 2018/0292



Financial Provisions and Currency Act 2011

ENTERPRISE DEVELOPMENT SCHEME 2018

Approved by Tynwald:

Coming into Operation:

18 January 2019

The Department for Enterprise, with the concurrence of the Treasury, makes the following Scheme under section 3 of the Financial Provisions and Currency Act 2011.

1 Title

This is the Enterprise Development Scheme 2018.

2 Commencement

If approved by Tynwald¹ this Scheme comes into operation on 18 January 2019.

3 Interpretation

(1) In this Scheme —

“**the 2015 Scheme**” means the Enterprise Development Scheme 2015²;

“**the Act**” means the Financial Provisions and Currency Act 2011;

“**applicant**” means an eligible business which applies for financial assistance under the Scheme;

“**the Committee**” means the Enterprise Development Scheme Committee constituted under paragraph 8;

“**company**” includes a body corporate;

“**the Department**” means the Department for Enterprise;

“**eligible business**” is to be construed in accordance with paragraph 5;

“**financial assistance**” includes —

(a) the provision of loans; and

(b) the acquisition by the Department of securities in an eligible business to which financial assistance is provided;

¹ As required by section 3(7) of the Financial Provisions and Currency Act 2011.

² SD 2015/0304

“**guidance**” means guidance made under paragraph 13;

“**investment adviser**” means a person appointed by the Department under paragraph 9(8)(a) whose functions include advising the Department and the Committee in relation to applications for financial assistance under the Scheme;

“**investment manager**” means a person appointed by the Department under paragraph 9(8)(b) whose functions include assisting the Department and the Committee in relation to businesses which have been provided with financial assistance under the Scheme;

“**Isle of Man staff**” means a person resident in the Island who —

- (a) is an Isle of Man worker within the meaning of the Control of Employment Act 2014;
- (b) holds a valid Isle of Man work permit under that Act (including a permit under section 8A (cohabiting partner of IOM worker) or 9 (spouse etc. of permit holder or exempt person)); or
- (c) is exempt from that Act under section 7(1), (4) or (5)(a) of that Act (exemptions) (other than persons who are exempt under section 7(5)(b) or paragraphs 8, 9(4), (5) or (6) of Part 1 of Schedule 1 to that Act (temporary etc. employments));

“**regulated activities**” means activities which require a licence under section 7 of the Financial Services Act 2008 or which would require a licence if they were being carried on, in or from the Isle of Man;

“**relevant shareholder**” means a shareholder who owns more than 25% of the shares in an eligible business; and

“**securities**” is to be construed in accordance with section 3(4)(aa) of the Act.

(2) In this Scheme the following persons are “**involved in controlling the business**” —

- (a) in the case of a business carried on by a company, a director, a person acting as a director, or a secretary of the company;
- (b) in the case of a company managed by its members, a member of the company; and
- (c) in the case of a business carried on by a partnership, a partner.

4 The Scheme

(1) Sums may be appropriated from reserves or funds maintained by the Treasury for expenditure under the Scheme for the period from 18 January 2019 to 31 December 2024.

(2) The purpose of the Scheme is to develop the Manx economy and encourage job creation in the Isle of Man through the provision of financial assistance to eligible businesses.

5 Eligible businesses

- (1) An eligible business is one that –
 - (a) meets the conditions in subparagraph (2); and
 - (b) does not fall within subparagraph (3).
- (2) The conditions of an eligible business are that –
 - (a) it is within an eligible sector as set out within guidance;
 - (b) some or all of the persons employed by the business are or will be Isle of Man staff;
 - (c) the principal activities in respect of which financial assistance is sought will take place in the Isle of Man;
 - (d) it can be conducted lawfully in the Isle of Man;
 - (e) it satisfies the probity requirements in paragraph 6; and
 - (f) it satisfies the disclosure requirements in paragraph 7.
- (3) A business is not an eligible business if its conduct –
 - (a) is or would be detrimental to the physical environment of the Isle of Man; or
 - (b) brings or would be likely to bring the Isle of Man or the Government into disrepute.
- (4) To avoid doubt, financial assistance may be provided to an off-Island business in respect of a business established or to be established in the Isle of Man.

6 The probity requirements

- (1) The probity requirements are as follows.
- (2) No person involved in controlling the business and no relevant shareholder is disqualified from holding an appointment as a director or a company secretary anywhere in the world at the time of application.
- (3) No person involved in controlling the business is the subject of an outstanding execution anywhere in the world at the time of application.
- (4) No person involved in controlling the business is insolvent at the time of application.

7 The disclosure requirements

- (1) The disclosure requirements are as follows.
- (2) A declaration must be submitted by the applicant to the Department which confirms –
 - (a) the disclosable beneficial owners of the business at the time of application to the Department;

- (b) whether or not, at the time of application, the business is in compliance with the law in the Isle of Man (or, where the business is not based in the Isle of Man at the time, the laws of the jurisdiction in which the business is based) in relation to –
 - (i) income tax;
 - (ii) national insurance;
 - (iii) value added tax;
 - (iv) any other taxes or duties payable;
 - (v) health and safety;
 - (vi) planning;
 - (vii) employment; and
 - (viii) immigration and work permits;
 - (c) any instances of non-compliance with the law in any of those respects occurring in the period of one year ending with the time of application;
 - (d) any debts owed by a person involved in controlling the business, a relevant shareholder or any business with which those persons are associated which are overdue by more than 6 months at the time of application; and
 - (e) any criminal convictions of a person involved in controlling the business or a relevant shareholder at the time of application.
- (3) For the purposes of subparagraph (2) –
- (a) “beneficial owner” means a natural person who ultimately owns or controls the eligible business in respect of which financial assistance is sought by the applicant under the Scheme, in whole or part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in that business, or who exercises control via other means, and “beneficial ownership” is to be construed accordingly;
 - (b) “disclosable beneficial owner” means a beneficial owner, or class of beneficial owners, who owns or controls more than 10% of the beneficial ownership of the eligible business in respect of which financial assistance is sought by the applicant under the Scheme;
 - (c) if 2 or more natural persons each own or control an interest in an eligible business which has applied for financial assistance under the Scheme, each of them is treated as owning or controlling that interest;
 - (d) beneficial ownership may be traced through any number of persons or arrangements of any description; and
 - (e) in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each beneficial owner, the

details to be disclosed must identify and describe the class of persons who are beneficial owners.

- (4) For the purpose of subparagraph (2)(e) –
 - (a) it is immaterial where –
 - (i) the offence was committed; or
 - (ii) the conviction was imposed; and
 - (b) the following offences are to be disregarded –
 - (i) offences which are spent for the purposes of the Rehabilitation of Offenders Act 2001 (or would be had the convictions occurred in the Isle of Man); and
 - (ii) offences which are not punishable with custody or would not be so punishable if committed in the Isle of Man.

8 The Enterprise Development Scheme Committee

- (1) The Department shall establish the Enterprise Development Scheme Committee.
- (2) The functions of the Committee are –
 - (a) to determine in accordance with guidance whether an application for financial assistance should be approved and, if so, the form and extent of such assistance, the applicable terms and conditions and any other connected matters; and
 - (b) to take any necessary action or to make any necessary arrangements in connection with financial assistance provided under –
 - (i) the Scheme; and
 - (ii) the 2015 Scheme.
- (3) The Committee shall comprise –
 - (a) a chairperson who –
 - (i) has relevant commercial experience; and
 - (ii) is appropriately qualified;
 - (b) an officer of the Department; and
 - (c) an officer of the Treasury, or an officer delegated by the Treasury to undertake this function,

each of whom shall be appointed to the Committee by the Department and on such terms as the Department considers necessary.

- (4) The Committee shall hold meetings to carry out its business at such times as may be necessary for the proper exercise of its functions.
- (5) Subject to subparagraph (6), no business shall be carried out at a meeting unless all members of the Committee are present.

- (6) If the chairperson is unable to attend a meeting, he or she may arrange for a substitute to take his or her place provided that –
 - (a) the substitute meets the conditions in subparagraph (3)(a); and
 - (b) the Department gives prior written approval to the substitution.
- (7) A decision of the Committee must be unanimous.

9 The application process

- (1) An application for financial assistance under the Scheme must be –
 - (a) made to the Department, in writing and in a form specified by the Department; and
 - (b) accompanied by any other documents and information the Department may require.
- (2) Without limiting subparagraph (1)(b), the application must include details of any other applications for financial assistance or grants submitted by the applicant in respect of the same business or any similar business which have been made in the previous 5 years to –
 - (a) the Department;
 - (b) any other Department or Statutory Board of the Isle of Man Government; or
 - (c) a Government or public authority in a jurisdiction other than the Isle of Man.
- (3) The Department may reject an application at any time on the grounds that it does not comply with the Scheme or any guidance provided that it gives the applicant –
 - (a) reasons for the rejection; and
 - (b) where appropriate, information as to the manner in which a defective application may be rectified.
- (4) Other than in a case to which subparagraph (3) applies, a report must be prepared which recommends whether or not an application for financial assistance should be approved and, if so, the form and extent of such assistance and the applicable terms and conditions.
- (5) The report referred to in subparagraph (4) may be prepared by –
 - (a) the Department; or
 - (b) an investment adviser,and must include the results of due diligence enquiries.
- (6) The Committee, having regard to the report referred to in subparagraph (4), will decide whether financial assistance is to be offered (subject to any further due diligence enquiries) in accordance with paragraph 8(2)(a).

- (7) The Department will –
- (a) update due diligence enquiries to its satisfaction;
 - (b) notify the applicant in writing of the Committee’s decision and, where (subject to head (a)) assistance is to be offered, the terms and conditions of the offer; and
 - (c) if the applicant, accepts the offer –
 - (i) request monies from the Treasury; and
 - (ii) arrange for payments to be made to or in respect of the eligible business to which financial assistance is to be provided.
- (8) The Department may make arrangements, including the appointment of –
- (a) one or more investment advisers to advise on applications for financial assistance under the Scheme; and
 - (b) one or more investment managers to –
 - (i) manage investments;
 - (ii) monitor businesses; and
 - (iii) ensure compliance with the applicable terms and conditions,where assistance is provided under the Scheme.

10 Terms and conditions

- (1) The Department may publish terms and conditions which apply to financial assistance provided under the Scheme.
- (2) In addition to any terms and conditions published under subparagraph (1), the provision of financial assistance is subject to any terms or conditions and the completion of such binding contractual documentation as the Department may, in any particular case, require.
- (3) Without limiting subparagraph (1) or (2), the terms and conditions –
- (a) will provide that –
 - (i) an applicant who accepts an offer of financial assistance must enter into a binding agreement with the Department;
 - (ii) the acceptance by an applicant of an offer of financial assistance does not constitute a binding agreement and the agreement will be formed only when the applicant and the Department both sign the agreement and it is dated by the Department;
 - (iii) the agreement will incorporate the terms and conditions subject to which the financial assistance is provided;

- (iv) in the case of a loan, the conditions set out in paragraph 5(2) continue to apply until the expiry of the period during which the eligible business may be required to repay the loan to the Department (“the repayment period”); and
 - (v) in the case of a loan, if, within the repayment period, there is any change of circumstances as a result of which the eligible business no longer meets the conditions set out in paragraph 5(2), the business must notify the Department within 10 working days and the Department may treat such an event as a failure to comply for the purposes of paragraph 17(1); and
- (b) may include provision as to the —
 - (i) repayment of any monies loaned or to be loaned by the Department;
 - (ii) disposal of any securities acquired by the Department;
 - (iii) grant of such security in favour of the Department as the Department may require, including, but not limited to, the grant of debentures and other charges and the provision of guarantees and indemnities by the eligible business; and
 - (iv) doing of such other things as the Department may require to protect its position in connection with the provision of financial assistance.
- (4) An eligible business which receives financial assistance under the Scheme must —
 - (a) comply with the terms and conditions subject to which the financial assistance is provided;
 - (b) co-operate with the Department or any person undertaking any function set out in paragraph 9(8)(b);
 - (c) co-operate with any auditor appointed by the Department under paragraph 14; and
 - (d) provide such financial and statistical information as is reasonably required by —
 - (i) the Department or a person referred to in head (b) or (c) for the respective purposes referred to in those heads; and
 - (ii) the Department, so that it may evaluate the impact of the provision of financial assistance on the eligible business and on the economy, or for other purposes.

11 Review of decision

- (1) An applicant who submits an application for financial assistance which is decided by the Committee may request the Department to review the decision.

- (2) A request for a review must —
 - (a) be made in writing within one month of the decision; and
 - (b) specify the ground for the review which must be that the Committee —
 - (i) erred in law;
 - (ii) based its decision on any incorrect material fact; or
 - (iii) exercised a discretion in an unreasonable manner.
- (3) The Department may appoint an officer of the Department (other than a person involved in the preparation of the report under paragraph 9(5) or the officer referred to in paragraph 8(3)(b)) or another person to —
 - (a) review the decision; and
 - (b) provide a report to the Department on the matter.
- (4) If the Department concludes that subparagraph (2)(b)(i), (ii) or (iii) applies to a decision reached by the Committee, the Department will remit the decision to the Committee for reconsideration, together with its reasons for doing so.

12 Licencing of investment advisers and investment managers

An investment adviser or an investment manager must, where the activities to be performed under the Scheme include regulated activities, —

- (a) hold a licence for the class or classes of regulated activities to be performed in relation to the Scheme; or
- (b) if he or she performs those activities in another jurisdiction, be appropriately licenced and regulated by the relevant overseas regulator.

13 Guidance

- (1) The Department may make guidance with respect to the manner in which powers are to be exercised under the Scheme, which may provide for various matters including —
 - (a) the economic sectors eligible for financial assistance;
 - (b) in relation to financial assistance —
 - (i) the form in which the assistance may be provided;
 - (ii) the minimum and maximum amounts of assistance which are available to businesses, including the maximum percentage of the total investment which may be made under the Scheme;
 - (iii) the criteria used by the Department to determine the maximum percentage; and
 - (iv) any other criteria for awarding financial assistance;

- (c) the documentation to be provided with an application for financial assistance;
 - (d) the role of the Committee, any investment adviser, investment manager or other person undertaking monitoring of businesses or any other activities in connection with the Scheme;
 - (e) the factors to be considered in determining whether a person is appropriately qualified to be an investment adviser, investment manager or chairperson, and in the case of the chairperson, whether he or she has relevant commercial experience;
 - (f) the procedures for —
 - (ii) the application process and the information that must be provided; and
 - (iii) a review under paragraph 11 ; and
 - (g) the process to be adopted should a business which has received financial assistance under the Scheme wish to apply to change the terms and conditions of the financial assistance provided.
- (2) Guidance issued under subparagraph (1) must be published by the Department on its website or in a manner which the Department considers will bring it to the attention of those likely to be affected by it.

14 Audit

The Department may make provision for the appointment of an auditor, in particular, for the purposes of —

- (a) ensuring that financial assistance provided to businesses has been expended for the purpose of the Scheme specified in paragraph 4(2) and in accordance with the terms and conditions subject to which it was provided; and
- (b) reporting on the operation of the Scheme including the effectiveness of its processes, the performance of the Committee, and any investment adviser, investment manager or other person appointed by the Department under or in connection with the Scheme.

15 Remuneration

The Department may make arrangements for the remuneration of —

- (a) the chairperson of the Committee;
- (b) any investment adviser;
- (c) any investment manager;
- (d) any person advising the Department in connection with the provision of financial assistance to a business; and

- (e) any other person appointed or engaged to advise in connection with the Scheme.

16 Reports to Tynwald

- (1) The Department must include in the annual report under section 6(1) of the Enterprise Act 2008 information in respect of payments made to businesses under the Scheme.
- (2) The Department must include in the report —
 - (a) a list of the businesses which have received financial assistance under the Scheme during the previous financial year ended on 31 March in any year; and
 - (b) information concerning —
 - (i) the economic benefits to the Island of financial assistance provided; and
 - (ii) the total amount of financial assistance provided under the Scheme during the previous financial year.

17 Failure to comply with terms and conditions etc

- (1) On any failure by an eligible business which has received financial assistance under the Scheme to comply with the terms and conditions subject to which the assistance was provided or if any information given by the business is proven to be false in a material particular the Department may by notice require, where the assistance consists of a loan, that the loan is to be repaid immediately.
- (2) A business to which financial assistance has been provided must co-operate with the Department in all respects if, in the opinion of the Department, action under subparagraph (1) is necessary.
- (3) A person who provides false, incomplete, or misleading information in connection with an application under the Scheme commits an offence.

Maximum penalty (summary) - 6 months' custody or a fine of level 5 on the standard scale or both.

18 Revocation

Subject to paragraph 19 the 2015 Scheme is revoked.

19 Transitional provision

Despite paragraph 18 —

- (a) any financial assistance provided under the 2015 Scheme will continue to be subject to the terms and conditions under which it was provided;

- (b) the Department may make such arrangements as it considers necessary for the administration of –
 - (i) any financial assistance provided under the 2015 Scheme; and
 - (ii) any applications for financial assistance under the 2015 Scheme received prior to 18 January 2019 in respect of which financial assistance has not been awarded by that date; and
- (c) the report to Tynwald required under paragraph 16 must include the information specified in subparagraph (2) of that paragraph, in respect of financial assistance provided under the 2015 Scheme.

MADE 14 NOVEMBER 2018

LAURENCE SKELLY
Minister for Enterprise

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

This Scheme revokes and replaces the Enterprise Development Scheme 2015. It enables the Department for Enterprise to provide financial assistance to eligible businesses through loans and the acquisition by the Department of securities in businesses, for the purpose of developing the Manx economy and encouraging job creation. The Scheme sets out prescribed criteria which businesses must meet in order to be eligible to receive assistance. Provision is also made for the establishment of an Enterprise Development Scheme Committee.

Transitional arrangements are made for financial assistance already provided under the Enterprise Development Scheme 2015.