

The Financial Supervision (Scheme Particulars) Regulations 1988

Government Circular No: 237/88



THE FINANCIAL SUPERVISION (SCHEME PARTICULARS) REGULATIONS 1988

[Amended by:-

Financial Supervision (Scheme Particulars)(Amendment) Regulations 1988;
Financial Supervision (Scheme Particulars)(Amendment) (No.2) Regulations 1988;
Financial Supervision (Scheme Particulars) (Amendment) (No.1) Regulations 1989;
Financial Supervision (Scheme Particulars) (Amendment) (No.2) Regulations 1989;
Financial Supervision (Scheme Particulars) (Amendment) Regulations 1996]

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**THE FINANCIAL SUPERVISION (SCHEME PARTICULARS)
REGULATIONS 1988**

The Treasury, in exercise of the powers conferred on it by section 10 of the Financial Supervision Act 1988 and all other powers it enabling hereby makes the following regulations:-

1. *Citation and commencement*

These regulations may be cited as "The Financial Supervision (Scheme Particulars) Regulations 1988" and shall come into operation on the day on which section 1 of the Act comes into force.

2. *Interpretation*

(1) In these regulations unless the context otherwise requires, expressions defined in the Financial Supervision (Authorised Collective Investment Schemes) Regulations 1988 have the same meanings as are ascribed to them in those regulations and the following expressions have the following meanings:-

"marketing", in relation to units in a collective investment scheme and a particular country, means:-

- (a) issuing or causing to be issued in that country advertisements inviting persons to become or offer to become participants in that scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in that scheme; or
- (b) advising or procuring any person in that country to become a participant in that scheme;

"scheme" means a collective investment scheme; and

"scheme particulars" has the meaning ascribed to it in regulation 3.

"UK scheme" means a collective investment scheme authorised under section 78 of the Financial Services Act 1986 (an Act of Parliament) or recognised under section 86,87 or 88 of that Act.

(2) In the application of these regulations to a recognised collective investment scheme in a form other than those referred to in the Financial Supervision (Authorised Collective Investment Schemes) Regulations 1988, expressions defined in those regulations shall be taken to refer to the equivalent in such a scheme.

3. *Preparation of scheme particulars*

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- (1) A document ("scheme particulars") stating prominently at the head of the first page or on the cover page that the document is scheme particulars prepared in accordance with these regulations and complying with the requirements of Schedule 1 shall be prepared by the operator of an authorised collective investment scheme and the operator of a collective investment scheme which is a recognised scheme by virtue of section 12 (1) or 13(1) of the Act for the purpose of marketing any units in that scheme in the Island.
- (2) Scheme particulars shall be revised at least once in every twelve months but, if any significant change occurs in the matters stated therein or any significant new matter arises which ought to be stated therein before the scheme particulars are due for such an annual revision they shall be revised immediately that change occurs or new matter arises so far as is necessary to take account of that change or matter.
- (3) A revision of scheme particulars may take the form of a complete substitution for the previous particulars or of a supplement to those particulars.
- (4) References in these regulations to scheme particulars prepared in accordance with this regulation are references to scheme particulars revised (where revision is required) in accordance with this regulation.

4. *Publication of scheme particulars*

The operator of an authorised collective investment scheme and the operator of a collective investment scheme which is a recognised scheme by virtue of section 12 (1) or 13(1) of the Act: -

- (a) shall not market units in that scheme in the Island unless:-
 - (i) scheme particulars have been prepared in accordance with regulation 3 in English; and
 - (ii) arrangements have been made for a printed document containing those particulars to be available in what the operator reasonably considers to be sufficient numbers to enable it to satisfy those who accept the offer referred to in sub-paragraph (b); and
 - (iii) a copy of that document has been sent: -
 - (A) to the Commission; and
 - (B) to the trustee (if any); and
- (b) shall not effect any sale of units in the scheme to any person in the Island until it has offered that person free of charge a copy of the scheme particulars in English.

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5. *Inspection of scheme particulars*

The operator of an authorised collective investment scheme and the operator of a collective investment scheme which is a recognised scheme by virtue of section 12(1) or 13(1) of the Act who markets or has marketed units in that scheme in the Island shall make a copy of the scheme particulars in English available for inspection by any member of the public free of charge at all times during ordinary office hours:-

- (a) at its principal place of business in the Island; or
- (b) in the case of such an operator who has no place of business in the Island, at an address in the Island notified to the Commission in writing.

6. *Schemes authorised in certain designated countries*

In the case of a scheme which is:-

- (a) a recognised scheme by virtue of section 12(1) of the Act which is managed and authorised under the law of a country or territory specified in column 1 of Schedule 2; and
- (b) is of any class of scheme specified in column 2 of that Schedule opposite the name of that country or territory;

the scheme particulars need not contain any matter required to be contained in them

by any provision of Schedule 1 specified in column 3 of Schedule 2 if they contain corresponding matter required by or under the law of that country or territory to be contained in particulars of the scheme published in that country or territory.

7. *Compensation for false or misleading scheme particulars*

- (1) The following persons are to be treated as responsible for any scheme particulars:-
 - (a) in the case of an authorised collective investment scheme or a collective investment scheme which is a recognised scheme by virtue of section 12(1) or 13(1) of the Act, the operator; and
 - (b) in the case of a recognised scheme for the purposes of section 13(5) of the Act the operator of which is not an authorised person, the representative, if any, in the Island of the operator.
- (2) A person who is under paragraph (1) responsible for any scheme particulars shall be liable to pay compensation to any person who has purchased or agreed to purchase units in the scheme and suffered loss as a result of any untrue or misleading statement in the scheme particulars or the omission from them of any matter required by these regulations to be included therein.

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And where the operator of a recognised scheme and its representative in the Island are both liable under this regulation that liability shall be a joint and several liability.

- (3) Where these regulations require scheme particulars to include information as to any particular matter on the basis that the particulars must include a statement either as to that matter or, if such be the case, that there is no such matter, the omission from the scheme particulars of the information shall be treated for the purposes of paragraph (1) as a statement that there is no such matter.

8. Exemption from liability to pay compensation

- (1) A person shall not incur any liability under regulation 7 for any loss in respect of units in a scheme caused by any such statement or omission as is there mentioned if he satisfies the court that at the time when the scheme particulars were prepared or ought to have been revised in accordance with regulation 3 he reasonably believed, having made such enquiries (if any) as were reasonable, that the statement was true and not misleading or that the matter the omission of which caused the loss was properly omitted and that: -
- (a) he continued in that belief until the time when the units were acquired; or
 - (b) the units were acquired before it was reasonably practicable to bring a correction to the attention of persons likely to acquire units in the scheme; or
 - (c) before the units were acquired he had taken all such steps as it was reasonable for him to have taken to secure that a correction was brought to the attention of persons likely to acquire units in the scheme; or
 - (d) the person who acquired the units was not influenced, or not influenced to any material extent, by that statement or would not have been influenced, or influenced to any material extent, by the inclusion of the matter omitted in making his decision to acquire the units.
- (2) Without prejudice to paragraph (1), a person shall not incur any liability under regulation 7 for any loss in respect of any units in a scheme caused by any such statement or omission as is there mentioned if he satisfies the court: -
- (a) that before the units were acquired a correction had been published in a manner calculated to bring it to the attention of persons likely to participate in the scheme; or
 - (b) that he took all such steps as it was reasonable for him to take to secure such publication and reasonably believed that it had taken place before the units were acquired.
- (3) A person shall not incur any liability under regulation 7 if he satisfies the court that the person suffering the loss acquired the units in question with knowledge that the statement was false or misleading or of the omitted matter, as the case may be.

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- (4) A person shall not incur any liability under regulation 7 as a result of a failure to prepare revised scheme particulars in accordance with regulation 3(2) if he satisfies the court that he reasonably believed that the change or new matter in question was not such as to call for a revision of the scheme particulars under regulation 3(2).

9. Feeder Funds

- (1) In the case of a scheme which is a feeder fund, the matters required to be stated in the scheme particulars shall be stated both in respect of the feeder fund and in respect of the scheme into which it is to feed.
- (2) The requirements of paragraph (1) shall be satisfied if, on each occasion on which scheme particulars are required to be made available, sent or offered under regulation 4 there is made available, sent or offered together with the scheme particulars prepared in accordance with Schedule 1 in respect of the feeder fund, scheme particulars in respect of the collective investment scheme into which it is to feed prepared in accordance with these regulations or, in the case of a UK scheme, in accordance with regulations made under the Financial Services Act 1986 (an Act of Parliament).

SCHEDULE 1**INFORMATION TO BE CONTAINED IN SCHEME PARTICULARS****(Regulation 3(1))****1. The operator or manager**

The following particulars of the operator and, where there is a manager, the manager shall be stated:-

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country or territory of its incorporation;
- (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (e) in the case of an authorised collective investment scheme:-
 - (i) the address of the registered office;
 - (ii) the address of the head office if that is different from the address of the registered office;
 - (iii) if neither the registered office nor the head office is in the Island, the address of the principal place of business in the Island;
- (f) in the case of:-
 - (i) a scheme which is a recognised scheme by virtue of section 12(1) of the Act; or
 - (ii) a scheme which is a recognised scheme by virtue of section 13(1) of the Act the operator of which is an authorised person;

the address of the place in the Island for the service on the operator of notices or other documents required or authorised to be served on it under the Act and notified to the Commission under section 12(5) of the Act;
- (g) in the case of a scheme which is a recognised scheme by virtue of section 13(1) of the Act, whose operator is not an authorised person, the name and address of the representative in the Island who has power to act generally for the operator and to accept service of notices and other documents on his behalf for the purposes of section 13(5);
- (h) the date of its incorporation;
- (i) if the duration of its corporate status is limited, when that status will or may cease;

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- (j) except in the case of an open-ended investment company, the amount of its issued share capital and how much of it is paid up;
- (k) the names of the directors and, in each case, any significant activities of the director not connected with the business of the manager or operator;
- (l) whether or not it is an authorised person; and
- (m) if it is the operator of another collective investment scheme which is either an authorised collective investment scheme or a recognised scheme, the name of that other scheme, whether it is an authorised collective investment scheme or a recognised scheme and, if it is a recognised scheme, whether it is recognised under section 12(1) or 13(1) of the Act, the investment objectives of that scheme and the fact that it is the operator of it.

And if any director of the manager or operator is a body corporate there shall also be stated in relation to that director the matters referred to in (a) to (d) and (h) to (k) above.

2. The trustee

The following particulars of the trustee shall be stated:-

- (a) its name;
- (b) the nature of its corporate form;
- (c) the country or territory of its incorporation;
- (d) if it is a subsidiary, the name of its ultimate holding company and the country or territory in which that holding company is incorporated;
- (e) the address of its registered office;
- (f) the address of its head office if that is different from the address of its registered office;
- (g) if neither its registered office nor its head office is in the Island and it has a place of business in the Island, the address of its principal place of business in the Island;
- (h) the date of its incorporation;
- (i) the amount of its issued share capital and how much of it is paid up;
- (j) a description of its principal business activity; and
- (k) whether or not it is an authorised person.

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3. *The investment adviser*

The following particulars of an investment adviser shall be stated:-

- (a) the name of the investment adviser;
- (b) whether or not he is an authorised person;
- (c) if the investment adviser is a body corporate, the address of its registered office, or, if otherwise, the address of the investment adviser's principal place of business;
- (d) if the investment adviser is a body corporate in a group of which the operator is a member, that fact;
- (e) if the principal activity of the investment adviser is other than providing services as an investment adviser, what that principal activity is; and
- (f) the main terms of the agreement or arrangement between the operator and the investment adviser (other than those relating to the investment adviser's remuneration) and, if the investment adviser has the authority of the operator to make decisions on behalf of the operator, that fact and a description of the matters in relation to which the investment adviser has that authority.

4. *The registrar*

If the operator or the trustee employs the services of a registrar, that is to say, a person who maintains the register of participants in the scheme, that person's name and address shall be stated.

5. *The auditor*

The name and address of the auditor of the scheme shall be stated.

6. *The register of participants*

The address in the Island where the register of participants can be inspected shall be stated.

7. *The constitution and objectives of the scheme*

The following shall be stated:-

- (a) the name of the scheme;
- (b) the date on which the scheme was established and, if the duration of the scheme is not unlimited, when it will or may terminate;

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- (c) that the scheme is an authorised collective investment scheme, a scheme recognised under section 12(1) of the Act or a scheme recognised under section 13(1) of the Act, as the case may be, and, if the scheme is an authorised collective investment scheme, a statement (which in the case of an umbrella fund is to be made separately in relation to each constituent part) of which of the categories of authorised collective investment scheme recognised in the Financial Supervision (Authorised Collective Investment Schemes) Regulations 1988 the scheme is intended to belong to;
- (d) if the scheme is a feeder fund, a statement of the name and authorised or recognised status of the scheme into which it is to feed;
- (e) if the scheme is an open-ended investment company, particulars of its capital structure;
- (f) in relation to the investment policy to be adopted by the operator: -
- (i) whether the objective of that policy is to be capital growth, income growth or some other stated policy;
 - (ii) any economic sectors or geographical areas to which investment will be confined or which are likely to be preferred in the making of decisions as to how the funds of the schemes are to be invested;
 - (iii) any other limitations on the descriptions of investment which may be included in the property of the scheme;
 - (iv) if investment in other collective investment schemes is provided for in the instrument constituting the scheme, that fact;
 - (v) in the case of an authorised securities scheme, the maximum extent to which the property of the scheme may be invested in:-
 - (A) Government and other public securities issued by the same issuer;
 - (B) securities not officially listed on an approved market within the meaning of the Financial Supervision (Authorised Collective Investment Schemes) Regulations 1988;
 - (C) secondary market securities, that is to say, securities dealt in on the London Unlisted Securities Market, the French Second Marche and the Tokyo Over-the-Counter Market; and
 - (D) other securities;
 - (vi) whether the operator may enter into hedging transactions within the meaning of regulation 10.03 of the Financial Supervision (Authorised Collective Investment Schemes) Regulations 1988 and, if so, what types of transaction are likely to be entered into for the purposes of hedging, the circumstances in which such transactions may be entered into and what are the limits to the amounts payable by way of premium or margin in connection with such transactions; and
 - (vii) a statement of what borrowing powers are exercisable in relation to the scheme;

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- (f) in the case of an authorised securities scheme and a fund of funds, the extent to which the property of the scheme may be invested in the units of collective investment schemes which are managed by the operator or by an associate of the operator;
- (g) the circumstances in which the winding-up of a scheme can be decided upon, a description of the procedure to be followed in a winding-up and what the rights of participants will be in a winding-up; and
- (h) the accounting dates.

7A. List of Eligible Markets

Any individual eligible securities and derivatives markets through which the scheme may invest or deal by virtue of regulation 10.05A of the Financial Supervision (Authorised Collective Investment Schemes) Regulations 1988 shall be listed.

Any securities market in a Member State which is eligible by virtue of regulation 10.05A may be included in the list or referred to in general terms.

8. The characteristics of units in the scheme

The following shall be stated:-

- (a) in relation to each available type of unit in the scheme, the entitlement of the holder of that unit to participate in the property of the scheme and the income thereof, a statement of the nominal value (if any) of each type of unit and, where there is more than one type of unit, the names given to each type and the characteristics of each type which distinguishes it from the others;
- (b) if title to the units or to some of the units will be evidenced by the issue of bearer certificates, that fact;
- (c) if title to the units or to some of the units is to be evidenced by entries on a register of unit holders, whether or not certificates evidencing title to those units will be issued;
- (d) in the case of an authorised unit trust scheme, the fact that the nature of the right represented by units is that of a beneficial interest under a trust, and in the case of any other authorised or recognised scheme, the nature of the right represented by the units in the scheme; and
- (e) what voting rights are exercisable at meetings of unit holders by the holders of units and, if different rights attach to different classes of units, what those different rights are and, in the case of a recognised scheme, whether persons other than unit holders can vote at meetings of unit holders and who those persons are.

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9. Valuation of property, charges and distributions

The following shall be stated:-

- (a) how frequently and as at what time of day in a specified country or territory the property of the scheme will be regularly valued for the purpose of determining prices at which units in the scheme may be sold or repurchased by the operator and a description of any circumstances in which the scheme may be specially valued;
- (b) in relation to each purpose for which the property of the scheme will be required to be valued, whether it will be valued on an offer basis, a bid basis, a mid-market basis or any other specified basis;
- (c) if the price at which units may be purchased from the manager or operator may include a preliminary charge by the manager, a statement of the amount of that charge expressed as a percentage of the creation price of those units which is the maximum permitted by the constitutional documents and, if different, the amount currently charged;
- (d) how the following remuneration and expenses will be determined where they are payable out of the property of the scheme:-
 - (i) the remuneration of the manager;
 - (ii) the remuneration of the trustee; and
 - (iii) where the scheme is an open-ended investment company, the remuneration and expenses of the directors or other members of the company's governing organ and, if the constitutional documents of the scheme permit any of the above to be at a higher level, what those higher levels are or how they may be determined;
- (e) the nature of any other expenses payable out of the property of the scheme and how their amounts will be determined;
- (f) the date or dates in each calendar year on which allocations of income are to be made to participants and, in the case of participants who are the holders of bearer certificates, how they are to identify themselves for the purposes of receiving distributions of income;
- (g) if grouping for equalisation is permitted by the constitutional documents, that fact with an explanation of its meaning and a statement of what the grouping periods are; and
- (h) if, in the case of an umbrella fund, the manager may make a charge on the repurchase and sale of units in exchange, a statement of the maximum amount of that charge.

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10. *The sale and repurchase of units in the scheme*

The following shall be stated:-

- (a) the days and times therein on which the operator will be available to receive requests for the sale and repurchase of units;
- (b) the procedures for effecting the sale and repurchase of units and the settlement of transaction and how a holder to whom no certificate has been issued may produce evidence of title to his units;
- (c) the amounts of the following minima (if they apply) for each type of unit in the scheme:-
 - (i) the minimum number of units which any one person may hold;
 - (ii) the minimum value of units which any one person may hold;
 - (iii) the minimum number of units which may be the subject of one transaction of purchase;
 - (iv) the minimum value of units which may be the subject of any one transaction of purchase;
 - (v) the minimum number of units which may be the subject of one act of repurchase; and
 - (vi) the minimum value of units which may be the subject of any one act of repurchase;
- (d) the circumstances in which the repurchase of units may be suspended;
- (e) the days and times therein on which the re-calculation of sale and repurchase prices will commence;
- (f) where and when the most recent sale and repurchase prices will be published;
- (g) the investment exchanges (if any) on which units in the scheme are listed or dealt in; and
- (h) that the total consideration payable under a deal in units of the scheme which is to be a large deal within the meaning of the Financial Supervision (Authorised Collective Investment Schemes) Regulations 1988 is an amount exceeding a specified sum, that specified sum being not less than £15,000.

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11. General Information

The following shall be stated:-

- (a) when annual and half-yearly reports will be published;
- (b) the address at which copies of the constitutional documents of the scheme, any amending instrument and of the most recent annual and half-yearly reports may be inspected and from which copies of them may be obtained;
- (c) how the operator will publish, for the benefit of unit holders whose units are evidenced by bearer certificates, notice:-
 - (i) of the fact that annual and half-yearly reports are available for inspection;
 - (ii) that an allocation has been declared;
 - (iii) of the calling of a meeting of participants;
 - (iv) of the termination of the scheme or the revocation of its authorisation;
 - (v) that amendments have been made to the constitutional documents; and
 - (vi) that the scheme particulars have been revised;
- (d) the extent to which and the circumstances in which:-
 - (i) the scheme is liable to pay or suffer tax on any appreciation in the value of the property of the scheme or on the income of the property of the scheme; and
 - (ii) deductions by way of withholding tax may be made from distributions of income to participants and payments made to participants on the repurchase of units;
- (e) in the case of a scheme out of whose property amortised establishment expenses are paid, the amount of those expenses payable in each year; and
- (f) in the case of a scheme which is a recognised scheme by virtue of section 13(1) of the Act, that complaints about the operation of the scheme may be made to the Commission.

12. Umbrella Funds

In the case of a scheme which is an umbrella fund, if any information required by this Schedule to be included in scheme particulars is different for different parts of the scheme that information shall be given in relation to each part of the scheme.

13. Additional information in all cases

Any material information which:-

- (a) investors and their professional advisers would reasonably require, and reasonably expect to find in the scheme particulars, for the purpose of making an informed judgement about the merits of participating in the scheme and the extent of the risks accepted by so participating; and

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- (b) which is within the knowledge of the operator or which the operator would have obtained by the making of reasonable enquiries.

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SCHEDULE 2

Schemes eligible for exemption under regulation 6

Column 1 Country or territory	Column 2 Class of Scheme	Column 3 Requirement of Schedule 1
United Kingdom	All recognised schemes	All the requirements of Schedule 1.
Bailiwick of Jersey	All recognised schemes	All the requirements of Schedule 1.
Bailiwick of Guernsey	All recognised schemes	All the requirements of Schedule 1.

Made this 15th day of August 1988.

David Cannan
Minister for the Treasury

These regulations were approved by Tynwald on 18th October 1988.