

Government Circular No: 139/92



FINANCIAL SUPERVISION ACT 1988

FINANCIAL SUPERVISION (PROMOTION OF UNREGULATED SCHEMES) (EXEMPTION) REGULATIONS 1992

In exercise of the powers conferred on the Treasury by sections 1(3) and (4) and 27 of the Financial Supervision Act 1988(a), and of all other powers enabling it in that behalf, the following Regulations are made:-

Citation and commencement

1. These Regulations may be cited as the Financial Supervision (Promotion of Unregulated Schemes) (Exemption) Regulations 1992 and shall come into operation on the 31st March 1992.

Interpretation

2. In these Regulations -

"the Act" means the Financial Supervision Act 1988;

"established customer" means a person who has been and remains an actual customer in relation to investment business done with or through a permitted person;

"newly accepted customer" means a person with whom a permitted person has:-

(a) a written agreement whenever made, relating to investment business to be done between them; and

(a) 1988 c.16 (b) 1909 VII p.327 (c) 1991 c.18 (d) G.C. 113/89

(b) that agreement has been obtained without any contravention of section 1 of the Act;

"non-private investor" means a person who has specifically elected in writing to be treated as such;

"overseas person" means a person who:-

(a) does not carry on investment business from a permanent place of business maintained by him on the Island; and

(b) is not -

(i) a company incorporated in the Island under the Companies Acts 1931 to 1986; or

(ii) a company incorporated outside the Island which is registered under Part XI of the Companies Act 1931; or

(iii) a limited partnership registered in the Island under Part II of the Partnership Act 1909 (b).

"permitted person" has the same meaning given in section 5 of the Investment Business Act 1991(c);

"promote" shall be construed in accordance with section 1(1) of the Act;

"unregulated scheme" means a collective investment scheme which is neither an authorised scheme nor a recognised scheme.

Exemption

3. (1) Section 1(1) of the Act shall not apply to the promotion of unregulated schemes if they are promoted in accordance with regulations 4 to 7 and, as the case requires, paragraph (2) of this regulation.

(2) The exemption from section 1(1)(a) of the Act (issue etc. of advertisements relating to collective investment schemes) provided by regulations 4 and 7 applies only if the advertisement contains a statement either -

- (a) that participants in the scheme are not protected by any statutory compensation scheme; or
- (b) that participants are protected by a statutory compensation scheme, as the case requires.

(3) Where paragraph (2)(b) applies, the notice shall include particulars sufficient to identify the compensation arrangements.

Promotion to existing participants

4. A permitted person may promote to a person who is already a participant in an unregulated scheme either -

- (a) that scheme;
- (b) a scheme which is intended to absorb or take over the assets of that scheme; or
- (c) a scheme, units in which are being offered by its operator as an alternative to cash on the liquidation of that scheme.

Promotion to permitted persons

5. A permitted person may promote an unregulated scheme to another permitted person.

Promotion to non-private investors

6. A permitted person may promote an unregulated scheme to a non-private investor.

Promotion to customers

7. A permitted person may promote an unregulated scheme to a person:-

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- (a) for whom (after having sought information about his circumstances and investment objectives) the permitted person has taken reasonable steps to ensure that investment in the scheme is suitable; and
- (b) who is an established customer or newly accepted customer of the permitted person or, where the permitted person is a body corporate, of a body corporate in the same group.

Promotion by overseas persons

8. An overseas person shall not be regarded as having promoted an unregulated scheme to a person in the Island if such promotion is -

- (a) the direct result of an approach made to the overseas person by or on behalf of a person in the Island; and
- (b) was not in any way solicited by the overseas person.

Revocation

9. The Financial Supervision (Promotion of Schemes) (Exemption) Regulations 1989(d) are repealed.

Made this 11th day of March 1992

Minister for the Treasury

These Regulations were approved by Tynwald on 15th April 1992.

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations are made for the purpose of making exemptions from section 1(1) of the Financial Supervision Act 1988 (restriction on promotion of collective investment schemes which are not authorised or recognised under that Act). The Regulations will have the effect of permitting the limited promotion of such schemes eg. to existing investors or non - private investors.