

**Second CAROL Consultative Paper**  
**Regulated Activities, Exclusions and Exemptions**

**1<sup>st</sup> June 2006**



**Financial Supervision Commission Barrantee Oaseirys**

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# CONTENTS

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	Page No.
Section 1      INTRODUCTION	1
Section 2      EXECUTIVE SUMMARY	2
Section 3      THE CONSULTATIVE PROCESS	5
Appendix A -    REGULATED ACTIVITIES ORDER	
Appendix B -    FINANCIAL SERVICES (EXEMPTION) REGULATIONS	
Appendix C -    ROAD MAP	

## ***SECTION I***

### ***I. INTRODUCTION***

The first consultative paper on the CAROL project proposed that all regulated activities should be described in detail in subordinate legislation made under the new Financial Services Bill (a Regulated Activities Order (“the Order”)). This approach was supported by 75% of those responding to the first consultative paper. Work has been undertaken on the definition of regulated activities and an Order has been drafted which not only defines those activities which are regulated activities but also defines a person or activity which is excluded from the scope of the legislation because it was never intended to include such a person or activity (“exclusions”). Exemption Regulations (“the Regulations”) have also been drafted for those persons or activities which fall within the scope of a regulated activity but which are exempt from the requirement to hold a licence (“exemptions”). This consultation primarily consolidates the provisions contained in existing legislation. However, the Commission anticipates that licenceholders and their advisers, who have first-hand knowledge of the changes occurring in their sphere of expertise, may identify areas where further amendment would benefit the industry and we look forward to developing proposals for such areas through the consultative process and in dialogue the Legislative Liaison Group.

Whilst the first consultation process provided an opportunity to respond electronically to specific questions, given the scope of responses that could be received on the Order and Regulations, we would request that any comments you may have be submitted by letter or email. In particular, we would welcome your comments on the following:-

- The material changes identified in the RoadMap;
- Whether the “exclusions” and “exemptions” are categorised correctly;
- Whether the impact assessment is appropriate; and
- Any other business areas (or services and products) which could be included in the Order to facilitate new areas of business.

It would be much appreciated if we could have your response as soon as possible and at the latest by **31<sup>st</sup> July 2006**.

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## ***SECTION 2***

### ***2. EXECUTIVE SUMMARY***

#### **2.1 Regulated Activities Order and Financial Services (Exemption) Regulations**

Attached as Appendices A and B are the draft Regulated Activities Order (“the Order”) and the draft Financial Services (Exemptions) Regulations (“the Regulations”). To assist in your review of these documents, a RoadMap (Appendix C) is also attached. The RoadMap provides an audit trail of the current legislation and where its provisions are contained; the location of such provisions within the draft legislation; details of changes that have occurred and a brief rationale for the change and the impact to industry that is perceived by such changes.

As part of our review of regulated activities, research was undertaken into the regulatory regimes in the United Kingdom; Jersey; Guernsey; Australia; Ireland; Gibraltar; Dubai; Hong Kong; Malta; the British Virgin Islands; Mauritius and the Cayman Islands. We identified few material differences to the definition of regulated activities. However, where new concepts have been considered, reference is made to the jurisdiction of origin in the RoadMap.

The draft Order consolidates the activities contained within the Banking Act 1998, Investment Business Act 1991 – 93, Corporate Services Act 2000 and parts of the Financial Supervision Act 1988. In addition, the Order includes a number of “exclusions” (activities which will fall outside the scope of the Financial Services Bill) and defines specific terms used within the Order. The definitions in the new Order generally replicate current definitions but the opportunity has been taken to revise as appropriate. You will see from the Impact column of the RoadMap, that the majority of the draft legislation has been pure consolidation, with some amendment to wording to provide a consistent approach.

The draft Regulations contain most of the current exemptions granted under the Banking Act 1998 and the Investment Business Act 1991 – 93, with some outdated or unused ones being deleted. These deletions are identified in the RoadMap.

In recognition of the potential for regulatory risk, the opportunity has been taken to review whether it is more appropriate for an activity to be excluded or exempted and the extent to which a combination of individual exclusions and exemptions may be utilised by one entity.

In the light of responses to the first consultative paper where no objections were raised, the exemption for “recognised persons” under s.4 of the investment Business Act 1991 has been removed.

In the case of the fiduciary services legislation, which contained detailed clarification of the regulated activities, this has resulted in a broader approach being taken in line with other regulated activities. However, the overall impact of this is minimal. You will see from the Impact column of the RoadMap, that the majority of the draft legislation has been pure consolidation, with some amendment to wording to provide a consistent approach.

Some, more material, amendments have been made to particular activities which have been highlighted in the Impact Column of the RoadMap by reference to “Material” and “Comments are welcomed/required”. These are –

- a) **Banking Business.** In the definition of Banking Business where a number of additions to the definition are suggested.
- b) **Investment Business.** A change to the definition of “giving investment advice” has been made to differentiate between “advice” and “promotion” (although not in relation to collective investment schemes) where there is confusion within the industry. This amendment may have a knock-on effect to the exclusion to legitimately solicited transactions with UK FSA regulated firms.
- c) **Collective Investment Schemes.** The section relating to “collective investment schemes” has been separated out from the general investment business section and now contains all activities (which have been expanded) relating to collective investment schemes including acting as an investment manager/adviser or undertaking incidental fiduciary services. In addition –
  - i) it is proposed that an “excluded scheme manager” of one exempt international collective investment scheme becomes “an exempted scheme manager”;
  - ii) a new concept of “an excluded domestic collective investment scheme” with less than 10 members is introduced which will have “an excluded scheme manager” provided that the manager acts solely for one excluded domestic collective investment scheme;
  - iii) the current incorporation of excluded scheme managers to exempt international collective investment schemes by a group is restricted by limiting the new exemption to one per economic group;
  - iv) the roles of custodian and trustee are clarified; and
  - v) the exclusion for trustees of collective investment schemes which are managed in and subject to the law of a jurisdiction other than the Island has been removed.
- d) **Fiduciary Services.**

Some exemptions contained in the current legislation have been changed to exclusions. Some references to partnerships have been removed as there are none currently licensed and it was considered preferable to not licence partnerships.

e) **E-Money**

This section has not been drafted in detail. The regulation of E-money providers in the EU is currently the subject of a substantial review, the likely outcome of which is not yet clear. Amendments to the EU regime will be implemented in the UK and will be highly relevant to the design of the Island’s regime, whether we propose to follow the EU regulatory model or not. It is intended that a separate consultation exercise will be undertaken with those persons likely to be affected by this section as soon as we are in a position to make meaningful proposals. We hope that such consultation will also enable the Commission to gain a better understanding of the types of businesses which may fall within the scope of the legislation, identify those which we should seek to regulate and those where regulation may not be

appropriate. This will assist us in drawing up an appropriate framework including exclusions and exemptions where appropriate. Persons who wish to contribute to this further consultation or who believe that they may be affected by the proposed regime for e-money providers are invited to contact the Commission by 30<sup>th</sup> June 2006.

## ***SECTION 3***

### ***3. THE CONSULTATIVE PROCESS***

The Bill will include a statutory requirement for the Commission to consult on particular issues, for example, any changes to the regulated activities, exemptions or regulatory codes. We will continue to endeavour to be as open and transparent as possible by publishing responses to any consultations and giving our response.

It may be helpful to clarify the scrutiny given to subordinate (delegated/secondary) legislation before it comes into operation. The Financial Services Bill will include a statutory requirement for the Commission to consult with industry and interested parties before making any changes. Such Regulations or Orders are then scrutinised by the Board of the Commission before being submitted to the Minister and Members of Treasury. Once approved by Treasury, the Commission “makes” the Regulations/Orders (i.e. they are signed by two Commissioners). They are then submitted to the Council of Ministers, who approve their submission to the next available sitting of Tynwald.

The Tynwald procedure for the Commission’s regulatory subordinate legislation is that it may come into operation ahead of receiving Tynwald’s approval but they still needs that positive approval vote in Tynwald, otherwise they will cease to have effect. Regulations/Orders are not always brought into operation ahead of Tynwald approval but where time is of the essence, this device has been used effectively and will continue to be to ensure that the regulatory regime can be adapted to meet challenges and take account of developments, as necessary.