

**A Consultative Paper  
Collective Investment Schemes Bill 2007**

**28<sup>th</sup> September 2007**



**Financial Supervision Commission Barrantee Oaseirys**

---

---

# CONTENTS

---

---

		Page No.
<b>Section 1</b>	<b>INTRODUCTION</b>	<b>2</b>
	1.1 Background	2
	1.2 Cost and Impact	2
	1.3 Consultation	3
<b>Section 2</b>	<b>SHAPE OF THE BILL</b>	<b>4</b>
<b>Section 3</b>	<b>MATERIAL MATTERS IN THE BILL</b>	<b>5</b>
	3.1 Collective Investment Scheme (Part 1)	5
	3.2 Establishment and Promotion (Part 2)	5
	3.3 Types of Scheme (Part 3)	5
	3.3.1 Authorised Schemes	
	3.3.2 International Schemes	
	3.3.3 Exempt Schemes	
	3.3.4 Recognised Schemes	
	3.4 Miscellaneous Requirements (Part 4)	6
	3.4.1 Managers and Administrators	
	3.4.2 Accounts and Audit	
	3.5 Supervision (Part 5)	6
	3.6 Supplementary (Part 6)	7
	3.6.1 Definitions	
<b>Appendix A -</b>	<b>The draft Collective Investment Schemes Bill 2007</b>	<b>8</b>

## ***SECTION I - INTRODUCTION***

### ***1.1 Background***

1.1.1 The Financial Supervision Commission (“the Commission”), as part of the current consolidation of regulatory legislation, has reviewed the overarching structure for collective investment schemes contained in the Financial Supervision Act 1988 (“the 1988 Act”).

1.1.2 Concurrently to this exercise, the Funds Review Group (“FRG”), in an initiative sponsored by Isle of Man Treasury, published a report in March 2007 which looked at the future opportunities for the Island’s funds industry. Amongst its recommendations, the FRG advocated a new Schemes Bill be introduced to modernise the legislation and provide the Commission with appropriate regulatory powers. The FRG report can be found at:

<http://www.gov.im/lib/docs/iomfinance/reports/isleofmanfundsreviewreportmar0.pdf>

1.1.3 In considering a new Bill the Commission’s primary objective was to consolidate the existing legislation for collective investment schemes and their functionaries. It was also intended that the resultant legislation should meet the following general objectives:-

- The regulatory regime should continue to meet the requirements for designated territory status under section 270 of the UK Financial Services and Markets Act 2000 (“FSMA”) in relation to Authorised Schemes;
- The Bill should provide a clear and transparent framework for the regulation of different types of scheme which may be established on the Island and overseas schemes which are managed, administered or promoted on the Island and the responsibilities of their functionaries;
- The consolidated regulatory framework should provide a platform for carrying into effect the recommendations of the FRG;
- The Bill should contain revised and updated powers for the Commission in relation to collective investment schemes, taking account of international standards and practice; and
- There should be sufficient flexibility to allow for the establishment of new or suitably adjusted regulations for of future scheme types.

### ***1.2 Cost and Impact***

The Commission has considered the benefits of introducing a Collective Investment Schemes Bill as part of the consolidation of the financial services regulatory framework and has tried to identify and address potential concerns that industry may have. The conclusions reached during this consideration are detailed below.

1.2.1 The main benefits of the Collective Investment Schemes Bill will be to:-

- Clarify, modernise, streamline and update existing schemes legislation;
- Meet both international standards and business needs; and
- Encourage and support innovation within the industry.

As part of its deliberations, the Commission has researched the legislative frameworks of other relevant jurisdictions.

1.2.2 On the basis of its deliberations and initial discussions with industry representatives, the Commission considers that the advantages of introducing a clear, flexible and modern Collective Investment Schemes Bill, with powers appropriate to the nature of the Island's current funds profile and the profile under the FRG proposals, outweigh the costs associated to developing and implementing the new framework.

1.2.3 Review of Powers - Under the Bill the Commission will have enhanced regulatory powers appropriate to a funds regime which relies upon disclosure and the quality of services provided by functionaries to the scheme as opposed to prescriptive scheme requirements.

1.2.4 Compliance with international trends and standards - The Commission believes, in line with FRG recommendations, that the Island's international reputation will be enhanced by modern and up-to-date schemes legislation. This will reflect well both on the Island as an international centre, and on those businesses operating in or from the Island.

### ***1.3 Consultation***

The Commission views open dialogue with Industry as an essential element in developing an optimal regulatory framework. The Commission therefore appreciates the time that respondents will spend in reading and commenting upon these proposals.

The draft Collective Investment Scheme Bill is contained in Appendix A to this consultation document.

The closing date for comments is **2<sup>nd</sup> November 2007**.

#### Responses to:

Claire Whitelegg - *Senior Adviser - Policy & Legal Division* Tel: (01624) 689332

Financial Supervision Commission

E-mail: [claire.whitelegg@fsc.gov.im](mailto:claire.whitelegg@fsc.gov.im)

PO Box 58, Finch Hill House

Bucks Road, Douglas IM99 1BT

## ***SECTION 2***

### ***2. SHAPE OF THE BILL***

A key objective of the new Bill is to simplify and clarify the structure of the primary legislative framework for schemes. The Bill will replace Part I of the 1988 Act which relates to Collective Investment Schemes as well as certain specific matters in Part II. Schedules 2, 3 and 4 to the Bill deal with consequential amendments, repeals and saving provisions.

The Bill has been organised into a logical user friendly form which follows the following structure:-

Part 1 Meaning of Collective Investment Scheme

Part 2 Establishment and Promotion

Part 3 Types of Scheme

- Authorised schemes
- International schemes
- Exempt schemes
- Recognised schemes

Part 4 Miscellaneous Requirements including

- Managers and administrators
- Documents
- Accounts and audit

Part 5 Supervision including

- Revocation of authorisation or recognition
- Other powers of intervention
- Subordinate legislation and guidance

Part 6 Supplementary matters including

- Offences and penalties
- Review rights
- Interpretation

## ***SECTION 3***

### ***3. MATERIAL MATTERS IN THE BILL***

The following matters are intended to highlight key changes and clarifications under the draft Collective Investment Schemes Bill contained in Appendix A. However, it should be noted that they are not an exhaustive exposition of all changes from the 1988 Act.

#### **3.1 Collective Investment Scheme (Part 1)**

Under the Bill the meaning of Collective Investment Scheme has been updated. Consultees will note that the current exclusions from the definition of scheme under S31 of the 1988 Act are not contained in the definition in SI. This will make the main definition clearer. Existing exclusions, together with any new exclusions will be prescribed separately in an exclusions order.

#### **3.2 Establishment and Promotion (Part 2)**

The main provisions of the Bill will deal with Isle of Man domiciled schemes which are Authorised Schemes, International Schemes or Exempt Schemes. The Act will also refer to Recognised Schemes, being schemes established off the Island that are promoted to the Manx public. With the exception of legacy business, the Bill will not explicitly deal with overseas schemes which are not promoted to the public and are not managed or administered on the Island. This is because the Commission does not intend to issue specific regulatory requirements for such schemes which are in any event subject to home jurisdiction regulatory requirements.

Functionaries to non domiciled schemes will however continue to be covered by the regulatory regime under the Financial Services Bill.

The majority of the Commission's powers of intervention under the Bill will continue to be exercisable for non Isle of Man domiciled schemes, as these may be required in support of a home regulator in the event of an issue at the fund level.

#### **3.3 Types of Scheme (Part 3)**

A general objective of the Bill is to ensure that there is a clear logical structure to the provisions setting out the types of schemes.

##### ***3.3.1 Authorised Schemes***

There are no material changes to the requirements relating to Authorised Schemes.

##### ***3.3.2 International Schemes***

The requirements for International Schemes have been updated to reflect the current Investment Business requirement that the Commission's prior approval is sought for a manager being appointed to act for a full International Scheme. A further requirement has

been introduced to allow the Commission to vet the directors of an International Scheme to establish whether they are fit and proper.

In relation to international schemes other than full International Schemes the Commission will disapply both of these provisions in line with current practice.

### ***3.3.3 Exempt Schemes***

The provisions for Exempt Schemes have been moved out of International Schemes and into a dedicated scheme type for clarity.

### ***3.3.4 Recognised Schemes***

There are no material changes to the requirements relating to Recognised Schemes.

## **3.4 Miscellaneous Requirements (Part 4)**

This section of the Bill sweeps up requirements with regards to keeping documents up to date and exclusion clauses and introduces specific requirements concerning managers and administrators, auditors and accounts.

### ***3.4.1 Managers and Administrators***

In line with some other jurisdictions, the Bill introduces a statutory requirement for the manager or administrator of a scheme to satisfy themselves about certain things prior to accepting an appointment. This is wholly appropriate in a regime where, for certain funds, the Commission is not approving the scheme and is relying upon licenceholders to satisfy themselves that the scheme and its functionaries are appropriate.

This is supplemented by a new obligation for managers and administrators to notify the Commission if concerns arise about certain functionaries or the scheme itself. This early warning system is an essential element of the regime and will allow the Commission to make informed decisions and to take early intervention action where this is appropriate for the protection of investors etc.

### ***3.4.2 Accounts and Audit***

New whistleblower provisions have been introduced which provide a mechanism and obligation for auditors of schemes to report to the Commission in certain circumstances.

## **3.5 Supervision (Part 5)**

This Part of the Bill deals with powers of intervention including powers to revoke authorisation/recognition of an authorised/recognised scheme and other powers of intervention. The matters noted below are those where new powers have been introduced. Generally speaking, the powers of intervention will apply to all schemes under the Bill.

The powers for the Commission to direct a scheme have been extended to allow the Commission to require a special audit of the scheme be undertaken. Other new powers allow the Commission to appoint a person to advise on the scheme's affairs or to assume

control of the scheme. The Commission is also empowered, in certain circumstances to require the scheme to reorganise its affairs.

Under the 1988 Act there are only limited direction powers which are essentially to direct a scheme to cease the issue and redemption of units or wind up, both of which have been retained. The powers to apply to court for a scheme to be wound up or for the appointment of an inspector have also been retained.

### **3.6 Supplementary (Part 6)**

The majority of the supplementary provisions roll forward provisions in the 1988 Act. The Review provisions have been updated to take account of the Tribunals Act 2006 and to ensure all relevant Commission decisions are subject to the review process. The main changes in this Part of the Bill relate to new and updated definitions.

#### ***3.6.1 Definitions***

An important driver for the Bill has been the need to ensure that there are appropriate definitions in place to allow for a user friendly framework under which responsibilities of functionaries are clearly expressed. A number of definitions have been amended or added.

The definition of operator has been removed and responsibilities allocated to the governing body and/or the manager as appropriate.

## **APPENDIX A**

### **The Collective Investment Scheme Bill 2007**

## **Arrangement of Sections**

### **Section**

#### **PART 1**

##### **MEANING**

1. Meaning of collective investment scheme

#### **PART 2**

##### **ESTABLISHMENT AND PROMOTION**

2. Restriction on establishment
3. Restriction on promotion

#### **PART 3**

##### **TYPES OF SCHEME**

###### *Chapter I*

###### *Authorised schemes*

4. Applications for authorisation
5. Authorisation orders
6. Changes to authorised schemes
7. Restrictions on activities

###### *Chapter II*

###### *International schemes*

8. International schemes
9. Changes to international schemes

###### *Chapter III*

###### *Exempt schemes*

10. Exempt schemes

###### *Chapter IV*

###### *Recognised schemes*

11. Schemes authorised in designated countries
12. Individually recognised schemes
13. Changes to individually recognised schemes
14. Facilities and information in the Island

#### **PART 4**

**MISCELLANEOUS REQUIREMENTS**

***Chapter I***

***Managers and administrators***

15. Matters with which managers and administrators must be satisfied
16. Matters to be notified to the Commission

***Chapter II***

***Documents***

17. Documents to be kept up to date
18. Avoidance of exclusion clauses

***Chapter III***

***Accounts and audit***

19. Accounts
20. Matters to be communicated to the Commission by auditors

**PART 5**

**SUPERVISION**

***Chapter I***

***Revocation***

21. Revocation of authorisation or recognition

***Chapter II***

***Other powers of intervention***

22. Circumstances in which the Commission may intervene
23. Directions
24. Appointments
25. Notice of directions or appointment
26. Application to the court
27. Investigations

***Chapter III***

***Subordinate legislation***

28. Orders and regulations
29. Tynwald procedure

**PART 6**

**SUPPLEMENTARY**

***Chapter I***

***Offences and penalties***

- 30. False and misleading statements
- 31. Offences and penalties
- 32. Offences by bodies corporate

***Chapter II***

***General***

- 33. Guidance
- 34. Review of Commission decisions
- 35. Public registers
- 36. Financial provisions

***Chapter III***

***Final provisions***

- 37. Interpretation
- 38. Amendments
- 39. Repeals
- 40. Transitional and saving provisions
- 41. Short title and commencement

**SCHEDULES**

- Schedule 1—Subordinate legislation
- Schedule 2— Amendment of enactments
- Schedule 3— Repeal of enactments
- Schedule 4— Transitional and saving provisions



## A BILL

to repeal and replace with modifications the Financial Supervision Act 1988; and for connected purposes.

**W**E, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and 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 (that is to say):—

### **PART 1** **MEANING**

#### **Meaning of collective investment scheme**

42. P2000/8/235

1. (1) **“Collective investment scheme”** means arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of those profits or income.

(2) The arrangements must be such that the persons who are to participate (“participants”) do not have day to day control over the management of the property, whether or not they have the right to be consulted or to give directions.

(3) The arrangements must also have either or both of the following characteristics—

- (a) the contributions of the participants and the profits or income out of which payments are to be made to them are pooled;
- (b) the property is managed as a whole by or on behalf of the governing body of the scheme.

(4) If arrangements provide for pooling in relation to separate parts of the property, the arrangements are not to be regarded as constituting a single collective investment scheme unless the participants are entitled to exchange rights in one part for rights in another.

(5) The Commission may by order provide that arrangements do not amount to a collective investment scheme—

- (a) in prescribed circumstances; or

- (b) if the arrangements fall within a prescribed character of arrangement.

## **PART 2**

### **ESTABLISHMENT AND PROMOTION**

#### **Restriction on establishment**

2. (1) A scheme must not be established in the Island unless it is—
- (a) an authorised scheme;
  - (b) an international scheme;
  - (c) an exempt scheme; or
  - (d) a scheme which is exempted under this Act from the requirement to be an authorised scheme, an international scheme or an exempt scheme.
- (2) Subsection (1) does not preclude authorised persons from carrying on, in or from the Island, the management or administration of schemes established outside the Island.
- (3) For the purposes of this section, “established in the Island” includes—
- (a) the establishment of a trust governed by the laws of the Island;
  - (b) the formation or incorporation of a body corporate under the laws of the Island;
  - (c) the formation of a partnership under the laws of the Island; and
  - (d) any other prescribed method of establishment.

#### **Restriction on promotion**

43. 1988/16/1

3. (1) Subject to subsections (2) and (3) a person must not—
- (a) issue or cause to be issued in the Island any advertisement inviting persons to become or offer to become participants in a collective investment scheme or containing information calculated to lead directly or indirectly to persons becoming or offering to become participants in a scheme; or
  - (b) advise or procure any person in the Island to become or offer to become a participant in a scheme,

unless the scheme is an authorised scheme or a recognised scheme.

- (2) Subsection (1) does not apply if the advertisement is issued to or the person mentioned in paragraph (b) of that subsection is—
- (a) a licenceholder within the meaning of section 7 of the Financial Services Act 2008 whose licence permits the licenceholder to advise or procure any person in the Island to become or offer to become a participant in a scheme of the same class as the scheme to which the advertisement refers or in respect of which the advice or procurement under subsection (1) is given;
  - (b) an authorised insurer within the meaning of section [6][8] of the Insurance Act [1986][2007]; or

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

- (b) a person whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates.
- (3) Regulations may exempt any scheme or class of scheme or any person or class of persons from the provisions of subsection (1).
- (4) A person must not issue an advertisement which is false or misleading in a material particular.
- (5) An advertisement or other information issued outside the Island is to be treated as issued in the Island if—
  - (a) it is directed to persons in the Island; or
  - (b) it is made available to them otherwise than in—
    - (i) a newspaper, journal, magazine or other periodical publication published and circulating principally outside the Island; or
    - (ii) a sound or television broadcast transmitted principally for reception outside the Island.
- (6) In subsection (5)(b)(i), “published” includes published by any electronic means, including by way of email or the internet.

**PART 3**

**TYPES OF SCHEME**

*Chapter I*

*Authorised schemes*

**Applications for authorisation**

44. 1988/16/2

- 4. (1) An application for an authorisation order must be made by—
  - (a) the governing body or manager of the scheme (or the proposed governing body or manager); and
  - (b) the trustee or fiduciary custodian of the scheme (or the proposed trustee or fiduciary custodian),  
acting jointly.
- (2) An application under subsection (1) must—
  - (a) be made in the manner directed by the Commission;
  - (b) contain or be accompanied by the information required by the Commission to enable it to determine the application; and
  - (c) be accompanied by the prescribed fee.
- (3) At any time after receiving an application and before determining it the Commission may require the applicant to furnish additional information.
- (4) Directions and requirements under subsections (2) and (3) may differ as between different applications.
- (5) Information furnished under this section must be in the form and verified in the manner specified by the Commission.

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

(6) The applicant may withdraw an application by giving the Commission written notice at any time before the Commission determines it.

**Authorisation orders**

45. 1988/16/3

5. (1) The Commission may make an authorisation order if—
- (a) it has been furnished with—
    - (i) an application duly made under section 4 together with all the information it requires under that section;
    - (ii) a copy of the documents constituting the scheme; and
    - (iii) a certificate signed by an advocate to the effect that the documents constituting the scheme comply with requirements of regulations relating to their content;
  - (b) it appears to it that the scheme and the offering document comply with the requirements of regulations relating to—
    - (i) the constitution and management of the scheme; and
    - (ii) its offering document; and
  - (c) the remaining requirements of this section are satisfied.
- (2) An authorisation order may—
- (a) only be made in relation to—
    - (i) a unit trust scheme established under and governed by the laws of the Island;
    - (ii) an open-ended investment company incorporated under the Companies Acts 1931 to 2004; or
    - (iii) such other description of scheme as is prescribed; and
  - (b) include such conditions as the Commission thinks fit.
- (3) The scheme must—
- (a) if it is a unit trust, have a manager and trustee who are persons independent of each other;
  - (b) if it is an open-ended investment company, have a manager and fiduciary custodian who are persons who are independent of each other and of the scheme itself.
- (4) The manager and the trustee or fiduciary custodian must each be a body corporate which has a place of business in the Island.
- (5) The manager and the trustee or fiduciary custodian must each be an authorised person who is not prohibited from acting as manager, trustee or fiduciary custodian (as the case may be) under any enactment.
- (6) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully achieved.
- (7) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme.

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

(8) But a scheme is treated as complying with subsection (7) if it requires the manager to ensure that a participant is able to sell units on an investment exchange at a price not significantly different from that mentioned in that subsection.

(9) The Commission must be satisfied that each person comprising the governing body is a fit and proper person to act as such.

(10) In assessing whether a person is fit and proper under subsection (9), the Commission must have regard to the information before it as to the integrity, competence and financial standing of the person.

(11) The Commission may publish guidance setting out the criteria it will normally apply in assessing whether it is satisfied under subsection (9).

(12) The guidance is to be published in such form and manner as the Commission decides.

(13) The Commission must inform the applicant of its decision on the application not later than 6 months after the date on which the application was received.

(14) Where the Commission decides not to make an authorisation order it must give the applicant a written statement of the reasons for the decision and giving particulars of the rights conferred by section 34.

#### **Changes to authorised schemes**

46. 1988/16/7

6. (1) The manager of an authorised scheme must give written notice to the Commission of any proposal—

- (a) to alter the scheme; or
- (b) to replace its trustee or fiduciary custodian.

(2) Notice given in respect of a proposal to alter the scheme involving a change in the documents constituting the scheme must be accompanied by a certificate signed by an advocate to the effect that the change will not affect the compliance of the documents with regulations relating to—

- (a) the constitution and management of the scheme; and
- (b) its offering document.

(3) The trustee or fiduciary custodian of an authorised scheme must give written notice to the Commission of any proposal to replace the manager of the scheme.

(4) Effect is not to be given to any proposal under this section unless—

- (a) the Commission has given its approval to the proposal; or
- (b) one month, beginning with the date on which the notice was given under subsection (1) or (3), has expired without the Commission having notified the manager, trustee or fiduciary custodian that the proposal is not approved.

#### **Restrictions on activities**

47. 1988/16/8

7. (1) An open-ended investment company which is an authorised scheme must not carry on activities other than for the purposes of or in connection with the scheme.

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

(2) The manager of an authorised scheme must not carry on activities other than those mentioned in subsection (3) or such other activities as are agreed in writing by the Commission.

- (3) Those activities are—
- (a) acting as manager of a scheme;
  - (b) activities for the purposes of or in connection with acting as a manager of a scheme.

**Chapter II**

**International schemes**

**International schemes**

48. 1988/16/11(1) to (6)

8. (1) A scheme is an international scheme if—
- (a) the documents constituting the scheme and its offering document each state that it is an international scheme;
  - (b) it complies with regulations relating to international schemes; and
  - (c) the remaining requirements of this section are satisfied.
- (2) An international scheme must be—
- (a) a unit trust scheme established under and governed by the laws of the Island;
  - (b) an open-ended investment company formed or incorporated under—
    - (i) the Companies Acts 1931 to 2004;
    - (ii) the Companies Act 2006 [c.13]; or
    - (iii) the Limited Liability Companies Act 1996 [c.19];
  - (c) a limited partnership registered in the Island under Part II of the Partnership Act 1909 [VIII p.327]; or
  - (c) such other description of scheme as is prescribed.
- (3) An international scheme must—
- (a) if it is a unit trust scheme, have a manager and trustee who are different persons;
  - (b) if it is an open-ended investment company or a partnership, have a manager and fiduciary custodian who are different persons.
- (4) The name of the scheme must not be undesirable or misleading and the purposes of the scheme must be reasonably capable of being successfully achieved.
- (5) The manager and the trustee or fiduciary custodian must not be prohibited from acting as manager, trustee or fiduciary custodian (as the case may be) by or under any enactment.
- (6) The manager must be an authorised person.
- (7) The trustee or fiduciary custodian must be—
- (a) an authorised person; or

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

(b) authorised to act as trustee or fiduciary custodian (as the case may be) of a collective investment scheme under the law of any country or territory prescribed for the purpose of this section.

(8) The Commission must be satisfied that each person comprising the governing body is a fit and proper person to act as such.

(9) In assessing whether a person is fit and proper under subsection (8), the Commission must have regard to the information before it as to the integrity, competence and financial standing of the person.

(10) The Commission may publish guidance setting out the criteria it will normally apply in assessing whether it is satisfied under subsection (8).

(11) The guidance is to be published in such form and manner as the Commission decides.

(12) A person must not be appointed or act as manager of an international scheme unless written notice containing such particulars as are prescribed is served on the Commission by the proposed manager not less than 28 days before the intended appointment or such shorter period as the Commission agrees in writing.

(13) Where a person intends to cease to be appointed or act as manager of an international scheme, that person must serve on the Commission a written notice containing such particulars as are prescribed not less than 28 days before the intended cessation or such shorter period as the Commission agrees in writing.

(14) Regulations may extend or restrict the requirements of this section.

### **Changes to international schemes**

**9.** (1) The manager of an international scheme must give written notice to the Commission of any proposal—

- (a) to alter the scheme; or
- (b) to replace its trustee or fiduciary custodian.

(2) The trustee or fiduciary custodian of an international scheme must give written notice to the Commission of any proposal to replace the manager of the scheme.

(3) Effect is not to be given to any proposal under subsection (1) or (2) unless—

- (a) the Commission has given its approval—
  - (i) for the manager to continue to act in relation to the scheme to be altered in accordance with a proposal under subsection (1)(a); or
  - (ii) to a proposal under subsection (1)(b) or (2); or
- (b) one month, beginning with the date on which the notice was given under subsection (1) or (2), has expired without the Commission having notified the manager, trustee or fiduciary custodian that the proposal is not approved.

## **Chapter III**

### **Exempt schemes**

#### **Exempt schemes**

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

1988/16/11(7) to (10)

- 10.** (1) A scheme is exempted from the requirements of section 8 if—
- (a) it has less than 50 participants;
  - (b) the documents constituting the scheme—
    - (i) prohibit the making of an invitation in any part of the world to the public or any section of it to become or offer to become participants in the scheme; and
    - (ii) do not imply that the scheme is regulated under this Act or otherwise; and
  - (c) it complies with the requirements of subsection (2).
- (2) To comply with this subsection the scheme must be—
- (a) a unit trust scheme established under and governed by the laws of the Island;
  - (b) an open-ended investment company formed or incorporated under—
    - (i) the Companies Acts 1931 to 2004;
    - (ii) the Companies Act 2006 [c.13]; or
    - (iii) the Limited Liability Companies Act 1996 [c.19];
  - (c) a limited partnership registered in the Island under Part VI of the Partnership Act 1909 [VIII p.327]; or
  - (d) such other description of scheme as is prescribed.
- (3) The exemption provided by subsection (1) does not apply to a scheme where units are held by participants as a result of an invitation in any part of the world to the public or any section of it by any person.
- (4) The following are not to be treated as invitations to the public or a section of the public—
- (a) invitations issued to existing participants in a scheme inviting them to participate further in that scheme;
  - (b) invitations to persons whose ordinary business involves the acquisition and disposal of property of the same kind as the property, or a substantial part of the property, to which the scheme relates;
  - (c) invitations which are permitted by regulations.
- (5) Regulations may extend or restrict the requirements of this section.

***Chapter IV***

***Recognised schemes***

**Schemes authorised in designated countries**

49. 1988/16/12

- 11.** (1) Subject to subsection (4), a collective investment scheme which is managed in and authorised under the law of a designated country or territory outside the Island is a recognised scheme if the scheme is of a class specified by order.

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

(2) In this section, “designated country or territory” means the United Kingdom and any other country or territory designated for the purposes of this section by order.

(3) The Commission must not make an order under subsection (1) or (2) unless it is satisfied that adequate protection is afforded to participants.

(4) A scheme may not be a recognised scheme—

(a) unless the governing body of the scheme gives written notice to the Commission that the governing body wishes it to be recognised; or

(b) if, within such period from receiving the notice as is prescribed, the Commission notifies the governing body that the scheme is not to be recognised.

(5) The notice given under subsection (4)(a) must—

(a) contain the name and address of one or more persons in the Island authorised to accept on behalf of the governing body any process, notice or other documents required or authorised to be served on the governing body under this Act; and

(b) contain or be accompanied by such information and documents as are prescribed; and

(c) be accompanied by the prescribed fee.

(6) Orders and regulations may make provision under which compliance with a requirement imposed under the law of a designated country or territory is treated as compliance with a requirement of the order or regulations.

**Individually recognised schemes**

50. 1988/16/13(1) to (8)

**12.** (1) The Commission, on the application of the governing body of a scheme which—

(a) is managed in a country or territory outside the Island;

(b) is not managed in a country or territory designated for the purposes of section 11 or, if it is so managed, is not of a class specified in an order under section 11(1); and

(c) appears to the Commission to satisfy the remaining provisions of this section,

may make a recognition order.

(2) The scheme must afford adequate protection to participants.

(3) The arrangements for the scheme’s constitution and management must be adequate.

(4) In determining the matters mentioned in subsections (2) and (3), the Commission must have regard to any matters which are the subject of regulations applicable in relation to comparable authorised schemes.

(5) The manager must be a body corporate or the scheme must take the form of an open-ended investment company.

(6) Subject to subsection (7), any governing body, manager, trustee or fiduciary custodian must be fit and proper to act as governing body, manager, trustee

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

or fiduciary custodian (as the case may be); and for that purpose the Commission may take into account any matter relating to—

- (a) any person who is or will be employed by or associated with the governing body, manager, trustee or fiduciary custodian for the purposes of the scheme;
- (b) any director or controller of the governing body, manager, trustee or fiduciary custodian;
- (c) any other body corporate in the same group as the governing body, manager, trustee or fiduciary custodian and any director or controller of that other body.

(7) Subsection (6) does not apply to a governing body, manager, trustee or fiduciary custodian who is an authorised person and who is not prohibited from acting as governing body, manager, trustee or fiduciary custodian (as the case may be) by any enactment.

(8) The governing body must have a representative in the Island who is an authorised person and has power to act generally for the governing body and to accept service of notices and other documents on its behalf.

(9) The name of the scheme must not be undesirable or misleading; and the purposes of the scheme must be reasonably capable of being successfully achieved.

(10) The participants must be entitled to have their units redeemed in accordance with the scheme at a price related to the net value of the property to which the units relate and determined in accordance with the scheme.

(11) But a scheme is to be treated as complying with subsection (10) if it requires the governing body to ensure that a participant is able to sell units on an investment exchange at a price not significantly different from that mentioned in that subsection.

(12) Section 4(2) to (6) applies also to an application under this section.

(13) Where the Commission decides not to make a recognition order it must give the governing body a written statement of the reasons for the decision and giving particulars of the rights conferred by section 34.

(14) Regulations relating to offering documents have the same effect in relation to schemes recognised under this section as they have in relation to authorised schemes.

### **Changes to individually recognised schemes**

51. 1988/16/13(9)

**13.** (1) The governing body of a scheme recognised under section 12 must give written notice to the Commission of any proposal—

- (a) to alter the scheme; or
- (b) to replace its governing body, manager, trustee or fiduciary custodian..

(2) Effect is not to be given to any proposal under subsections (1) unless—

- (a) the Commission has given its approval to the proposal; or
- (b) one month, beginning with the date on which the notice was given, has expired without the Commission having notified the governing body that the proposal is not approved.

### **Facilities and information in the Island**

52. 1988/16/15

**14.** (1) Regulations may require governing bodies of recognised schemes to maintain in the Island such facilities as the Commission considers desirable in the interests of participants and as are prescribed.

(2) The Commission may by notice in writing require the governing body of a recognised scheme to include such explanatory information as is specified in the notice in any advertisement or other document or communication relating to the promotion of the scheme which is issued or caused to be issued by the governing body in the Island and in which the scheme is named.

## **PART 4**

### **MISCELLANEOUS REQUIREMENTS**

#### *Chapter I*

#### *Managers and administrators*

#### **Matters with which managers and administrators must be satisfied**

**15.** A person must not act as manager or administrator of a collective investment scheme unless the person is satisfied that—

- (a) the person has the required expertise to act as manager or administrator (as the case may be);
- (b) the following persons are suitable to act in relation to the scheme in the manner envisaged—
  - (i) any promoter, governing body, manager, administrator, trustee, fiduciary custodian, custodian or asset manager of the scheme; and
  - (ii) any person proposing to carry out any of the roles mentioned in subparagraph (i);
- (c) where the scheme is constituted or established under the laws of a jurisdiction outside the Island, the jurisdiction under which it is constituted or established is a suitable jurisdiction in which to constitute or establish the scheme; and
- (d) the arrangements comprising the scheme will be carried out in a proper manner.

#### **Matters to be notified to the Commission**

**16.** (1) The manager or administrator of a scheme who knows of, or has reasonable cause to believe, the occurrence of any of the matters mentioned in subsections (2) or (3) must immediately notify the Commission in writing of the occurrence, stating the reasons for the knowledge or belief.

(2) Notice must be given under subsection (1) if a scheme or any promoter, governing body, manager, administrator, trustee, fiduciary custodian or custodian—

- (a) is, or is likely to be, unable to perform its obligations as they fall due;
- (b) is carrying on business otherwise than in accordance with—
  - (i) the documents constituting the scheme;
  - (ii) the offering document in respect of the scheme; or
  - (iii) this Act;

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

- (c) is carrying on business in a manner that is or is likely to be prejudicial to participants.
- (3) Notice must be given under subsection (1) if a matter arises which has, or is likely to have, a material adverse effect on a scheme.
- (4) Without limiting subsection (3), matters having a material adverse effect include matters which—
  - (a) endanger the continued existence of the scheme; or
  - (b) reduce the protection of participants in the scheme.

***Chapter II***

***Documents***

**Documents to be kept up to date**

17. (1) The governing body of a scheme must ensure that—
- (a) the offering document; and
  - (b) the documents constituting the scheme,
- are kept up to date and in compliance with the requirements of this Act.

**Avoidance of exclusion clauses**

53. 1988/16/9

18. Any provision of any document constituting a scheme is void in so far as it purports to exempt the governing body, manager, administrator, trustee, fiduciary custodian or custodian from liability for any failure to exercise due care and diligence in the discharge of that person's functions in respect of the scheme.

***Chapter III***

***Accounts and audit***

**Accounts**

19. (1) The governing body of a scheme must ensure that the accounts for that scheme are prepared and audited in compliance with regulations.

**Matters to be communicated to the Commission by auditors**

20. (1) An auditor of a scheme who becomes aware of any matter which the auditor has reasonable cause to believe may be of material significance in relation to the Commission's functions under this Act must communicate that matter to the Commission.

(2) No duty of an auditor of a collective investment scheme is to be regarded as contravened by reason of the auditor communicating in good faith to the Commission, whether or not in response to a request made by the Commission, any information or opinion on a matter which the auditor reasonably believes is relevant to any function of the Commission under this Act.

(3) This section only applies to matters of which an auditor becomes aware in that person's capacity as auditor and which relate to the business or affairs of the scheme.

**PART 5**  
**SUPERVISION**

*Chapter I*

*Revocation*

**Revocation of authorisation or recognition**

54. 1988/16/4 and 5

**21.** (1) In the circumstances mentioned in subsection (2), the Commission may—

- (a) revoke an authorisation order or a recognition order;
- (b) direct that a scheme is to cease to be recognised by virtue of section 11.

(2) The Commission may take action under subsection (1) if it appears to it—

- (a) that any of the requirements for the making of the order are no longer satisfied;
- (b) that it is undesirable in the interests of the participants or potential participants that the scheme should continue to be authorised or recognised (as the case may be); or
- (c) without limiting paragraph (b), that the governing body, manager, trustee, fiduciary custodian or custodian of the scheme—
  - (i) has contravened any provision of this Act or the Financial Services Act 2008;
  - (ii) in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information; or
  - (iii) has contravened any condition, prohibition, direction or other requirement imposed under this Act or the Financial Services Act 2008.

(3) For the purposes of subsection (1)(b), the Commission may take into account any matter relating to—

- (a) the scheme;
- (b) the governing body, manager, trustee, fiduciary custodian or custodian of the scheme;
- (c) a director or controller of the governing body, manager, trustee, fiduciary custodian or custodian; or
- (d) any person employed by or associated with the governing body, manager, trustee, fiduciary custodian or custodian in connection with the scheme.

(4) The Commission may take action under subsection (1) at the request of the governing body, manager, trustee, fiduciary custodian or custodian of the scheme; but it may refuse to do so if it considers that—

- (a) any matter concerning the scheme should be investigated before determining whether the action should be taken; or
- (b) the action would not be in the interests of participants.

(5) Where the Commission decides to take action under subsection (1) otherwise than at the request of the governing body, manager, trustee or fiduciary custodian of the scheme, it must give the governing body, manager and trustee,

fiduciary custodian or custodian a written statement of the reasons for the decision and giving particulars of the rights conferred by section 34.

(5) A revocation or direction under subsection (1) may be permanent or may apply for a specific period of time or until the occurrence of a specified event or until specified conditions are complied with.

## ***Chapter II***

### ***Other powers of intervention***

#### **Circumstances in which the Commission may intervene**

55. 1988/16/16(1)

22. The Commission may make a direction under section 23 or an appointment under section 24 if it appears to the Commission—

- (a) that any of the requirements for—
  - (i) the making of an authorisation order or a recognition order; or
  - (ii) the recognition of a scheme under section 11,are no longer satisfied;
- (b) that the exercise of a power under section 23 or 24 is desirable in the interests of participants or potential participants in the scheme;
- (c) that the scheme is or is likely to become unable to meet its obligations as they fall due;
- (d) that the operation, management or administration of the scheme has not been conducted in a fit and proper manner; or
- (e) without limiting paragraph (b), that the governing body, manager, trustee, fiduciary custodian or custodian of the scheme—
  - (i) has contravened any provision of this Act or the Financial Services Act 2008;
  - (ii) in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information; or
  - (iii) has contravened any condition, prohibition, direction or other requirement imposed under this Act or the Financial Services Act 2008.

#### **Directions**

56. 1988/16/16(1)

23. (1) In the circumstances mentioned in section 22 the Commission may make a direction—

- (a) requiring the governing body, manager or administrator of the scheme to cease the issue or redemption, or both, of units under the scheme on a date specified in the direction until a further date specified in that or another direction;
- (b) requiring the governing body of the scheme to instruct the auditor of the scheme to audit the accounts of the scheme and to submit them to the Commission within such time as the Commission specifies;
- (c) requiring the governing body, trustee or fiduciary custodian of the scheme to wind it up by the date specified in the direction or, if no date is specified, as soon as is practicable.

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

(2) The operation of a direction under subsection (1) which is already in force is not affected by—

- (a) the revocation under section 21(1) of an authorisation order or a recognition order; or
- (b) a direction under section 21(1) that a scheme is to cease to be recognised under section 11.

(3) A direction under subsection (1) may be given in relation to a scheme in respect of which—

- (a) an authorisation order or a recognition order has been revoked; or
- (b) a direction has been made that a scheme is to cease to be recognised under section 11,

if an earlier direction in relation to the scheme under subsection (1) is already in force at the time of revocation or direction (as the case may be).

(4) For the purposes of section 22(b), the Commission may take into account any matter relating to—

- (a) the scheme;
- (b) the governing body, manager, administrator, trustee, fiduciary custodian or custodian of the scheme;
- (c) a director or controller of the governing body, manager, administrator, trustee, fiduciary custodian or custodian; or
- (d) any person employed by or associated with the governing body, manager, administrator, trustee, fiduciary custodian or custodian in connection with the scheme.

(5) The Commission may—

- (a) of its own motion; or
- (b) on the application of the governing body, manager, administrator, trustee, fiduciary custodian or custodian of the scheme,

withdraw or vary a direction given under this section if it appears to the Commission that it is no longer necessary for the direction to continue in force or that it should continue in force in a different form.

### **Appointments**

**24.** (1) In the circumstances mentioned in section 22 the Commission may appoint—

- (a) a person to advise the scheme on the proper conduct of its affairs;
- (b) a person to assume control of the affairs of the scheme.

(2) A person appointed under subsection (1) has all the powers necessary, to the exclusion of the governing body, manager or administrator, to advise or to operate, manage and administer (as the case may be) the affairs of the scheme in the best interests of the participants or potential participants.

(3) The powers referred to in subsection (2) include the power to terminate the business of the scheme.

(4) A person appointed under subsection (1) must—

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

- (a) when requested by the Commission, supply to the Commission such information as is specified in the request;
- (b) within 3 months of appointment, or such other period as the Commission specifies, prepare and supply to the Commission a report on the affairs of the scheme making, where appropriate, recommendations in respect of the scheme; and
- (c) if the appointment is not terminated after supplying the report referred to in paragraph (b), subsequently supply to the Commission such other information, reports and recommendations as the Commission specifies.

(5) A person appointed under subsection (1) is appointed at the expense of the relevant scheme, and any expenses incurred by the Commission in respect of the appointment are recoverable from the scheme as a debt due to the Commission.

(6) On receipt of any information or a report under subsection (4) the Commission may—

- (a) require the scheme to reorganise its affairs in a manner specified by the Commission;
- (b) if the scheme is a unit trust established under and governed by the laws of the Island, apply to court for an order directing the trustee to wind up the scheme;
- (c) if the scheme is an open-ended investment company formed or incorporated under the laws of the Island, apply to court for an order that the company be wound up in accordance with the relevant statutory provisions applying to that company;
- (d) if the scheme is a partnership governed by the laws of the Island, apply to court for an order to dissolve the partnership,

and may take such action in respect of the appointment or continued appointment of the person appointed under subsection (1) as it considers appropriate.

(7) Where it considers it necessary or appropriate, and if it is practical to do so, the Commission may inform the participants of the scheme of any action it is taking or intending to take under this section.

(8) The Commission may—

- (a) of its own motion; or
- (b) on the application of the governing body, manager, administrator, trustee, fiduciary custodian or custodian of the scheme,

terminate an appointment made under this section if it appears to the Commission that the appointment is no longer necessary.

**Notice of directions or appointment**

57. 1988/16/17

25. (1) To exercise a power to give a direction under section 23 or to make an appointment under section 24, the Commission must give written notice to the governing body, manager, administrator, trustee, fiduciary custodian and custodian of the scheme.

(2) Where application is made under section 23(5)(b) or 24(8)(b), if the Commission refuses to withdraw or vary a direction or to terminate an appointment, it must give written notice of refusal to each applicant.

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

- (3) A notice—
  - (a) giving a direction or making an appointment;
  - (b) withdrawing or varying a direction otherwise than on application under section 23(5)(b);
  - (c) terminating an appointment otherwise than on application under section 24(8)(b);
  - (d) refusing to withdraw or vary a direction or to terminate an appointment on an application under section 23(5)(b) or 24(8)(b),

must state the reasons for which the direction was given, withdrawn or varied or the appointment was made or terminated or why the application was refused (as the case may be).

(4) The Commission may publish notice of any direction, appointment, withdrawal, variation, termination or refusal mentioned in this section in one or more newspapers published and circulating in the Island and in any other manner which appears to it to be necessary for informing the public.

(5) A notice under subsection (4) may, if the Commission thinks fit, state the reasons for which the direction was given, withdrawn or varied or the appointment was made or terminated or why the application was refused (as the case may be).

### **Application to the court**

58. 1988/16/18

**26.** (1) In circumstances where the Commission has power to give a direction under section 23 or to make an appointment under section 24, it may apply to the court—

- (a) for an order—
  - (i) removing any governing body, manager, administrator, trustee, fiduciary custodian or custodian of the scheme; and
  - (ii) replacing the person or persons removed with a person or persons nominated by the Commission and whose appointment does not infringe any other provision of this Act; or
- (b) if it appears to the Commission that no, or no suitable, person satisfying the requirements of paragraph (a)(ii) is available, for an order—
  - (i) removing any governing body, manager, administrator, trustee, fiduciary custodian or custodian; and
  - (ii) appointing a liquidator to wind up the scheme.

(2) On an application under subsection (1) the court may make such order as it thinks fit.

(3) The court may, on the application of the Commission, rescind an order mentioned in subsection (1)(b) and substitute an order mentioned in subsection (1)(a).

(4) The Commission must give written notice of the making of an application under this section to the governing body, manager, administrator, trustee, fiduciary custodian and custodian of the scheme concerned and take such steps as it considers appropriate for bringing the making of the application to the attention of participants.

(5) Section 7(2) does not apply to a liquidator appointed by an order made on application under subsection (1)(b).

## **Investigations**

59. 1988/16/19

**27.** (1) The court may, on the application of the Commission, appoint one or more competent inspectors to investigate and report, in such manner as the court directs, on the affairs of—

- (a) a scheme;
- (b) the governing body, manager, administrator, trustee, fiduciary custodian or custodian of a scheme,

if the court is satisfied that it is in the interests of participants to do so or that the matter is of public concern.

(2) An inspector appointed under subsection (1) who thinks it necessary for the purposes of that investigation may also investigate the affairs of any other scheme whose governing body, manager, administrator, trustee, fiduciary custodian or custodian is the same person as the governing body, manager, administrator, trustee, fiduciary custodian or custodian (as the case may be) of the scheme being investigated under subsection (1);

(3) Sections 134 and 135 of the Companies Act 1931 (powers of inspectors and proceedings on report by inspectors) apply in relation to an inspector appointed under this section as they apply in relation to an inspector appointed under section 134 of that Act, but with the modifications specified in subsection (4).

(4) In the provisions applied by subsection (3)—

- (a) a reference to a company or its affairs is to be construed as a reference to the scheme under investigation and the affairs mentioned in subsections (1) and (2); and
- (b) a reference to a director or officer of the company includes a reference to any director or officer of the governing body, manager, administrator, trustee, fiduciary custodian or custodian of the scheme.

(5) An inspector appointed under this section may, and if so directed by the court must, make interim reports to the court and, on the conclusion of the investigation, a final report to it.

(6) A report under subsection (5) must be in the form which the court directs.

(7) The court must provide a copy of the report to the Commission.

(8) The court may, if it thinks fit—

- (a) on request and on payment of the prescribed fee, provide a copy of the report to—
  - (i) the governing body, manager, administrator, trustee, fiduciary custodian or custodian of a scheme under investigation;
  - (ii) any participant of the scheme;
  - (iii) any other person whose conduct is referred to in the report;
- (b) cause the report to be published.

## **Chapter III**

### **Subordinate legislation**

**Orders and regulations**

60. 1988/16/27

- 28.** (1) The Commission may make orders and regulations—
- (a) in accordance with the provisions of this Act; or
  - (b) as are necessary to give effect to this Act.
- (2) Orders or regulations may include any of the provisions mentioned in Schedule 1.
- (3) Schedule 1 does not affect the generality of subsection (1).
- (4) Orders and regulations may provide for their contravention to be an offence.
- (5) Orders and regulations may exempt any scheme or class of scheme or any person or class of persons from any of the provisions of this Act.
- (6) Without limiting section 26 of the Interpretation Act 1976 [c.20], orders and regulations may provide for—
- (a) the circumstances under which the exemption operates;
  - (b) the conditions subject to which the exemption shall operate;
  - (c) the circumstances in which the Commission may withdraw the exemption from a scheme or person.
- (7) The Commission may, on the application or with the consent of any person to whom an order or regulation applies, direct that the order or regulation—
- (a) does not apply to that person in respect of a particular scheme; or
  - (b) applies to that person in respect of that scheme but with such modifications as are specified in the direction.
- (8) The Commission may, on the application or with the consent of the manager and trustee or manager and fiduciary custodian (as the case may be) of a particular scheme acting jointly, direct that the order or regulation—
- (a) does not apply to that scheme; or
  - (b) applies to that scheme but with such modifications as are specified in the direction.
- (9) Orders and regulations may make provision under which compliance with or contravention of any specified requirements imposed under the law of a country prescribed for this purpose is treated as compliance with or contravention of any specified requirement of this Act.
- (10) Orders and regulations are binding on the governing body, manager, administrator, trustee, fiduciary custodian and custodian of a scheme independently of the contents of the documents to which they relate.
- (11) If orders or regulations conflict with any rule of law (whether at common law or contained in any enactment) relating to—
- (a) the constitution, powers and management of bodies corporate;
  - (b) the powers and duties of the directors of bodies corporate;
  - (c) the rights and obligations of members of bodies corporate,
- the order or regulations (as the case may be) prevail.

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

(12) Orders and regulations may contain such supplementary and transitional provisions as the Commission considers necessary.

(13) Before making an order or regulations under this Act, the Commission must consult—

- (a) the Treasury;
- (b) such persons or bodies as appear to be representative of interests likely to be affected; and
- (c) such other persons or bodies as the Commission determines.

**Tynwald procedure**

29. Orders (other than court orders and orders under section 5(1), 12(1), 21(1) or 41(2)) and regulations made under this Act must be laid before Tynwald as soon as practicable after they are made and if Tynwald, at the sitting at which they are laid or at the next following sitting, fails to approve them they cease to have effect.

**PART 6**  
**SUPPLEMENTARY**  
*Chapter I*  
*Offences and penalties*

**False and misleading statements**

61. 1988/16/25

30. A person is guilty of an offence if that person—

- (a) furnishes or sends to the Commission for any purpose under this Act a document which the person knows to be false or misleading in a material particular; or
- (b) recklessly furnishes or sends to the Commission for the purposes of this Act a document which is false or misleading in a material particular; or
- (c) in furnishing information to the Commission for the purposes of this Act—
  - (i) makes a statement which the person knows to be false or misleading in a material particular; or
  - (ii) recklessly makes a statement which is false or misleading in a material particular.

**Offences and penalties**

62. 1988/16/26

31. (1) A person commits an offence if that person contravenes—

- (a) a provision of this Act;
- (b) a provision of an order or regulations made under this Act if contravention of that provision is expressed to be an offence in the order or regulations.

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

(2) A governing body, manager, trustee, fiduciary custodian or custodian who contravenes a condition imposed under section 5(2)(b) commits an offence.

(3) Sections 20 (injunctions etc.) and 26 (actions for damages) (with the exception of subsection (2)) of the Financial Services Act 2008 apply in respect of a contravention referred to in this section as they apply in respect of a contravention referred to in those sections.

(4) A person who commits an offence under this Act or any public document made under this Act is liable—

- (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
- (b) on conviction on indictment, to a fine or to custody for a term not exceeding 2 years, or to both.

(5) A person is not to be prosecuted for an offence under this Act without the consent of the Attorney General.

(6) In proceedings brought against a person for an offence under this Act it is a defence to prove that all reasonable precautions were taken and all due diligence was exercised to avoid the commission of the offence.

**Offences by bodies corporate**

**32.** (1) Subsections (2) to (4) apply where an offence under this Act is committed by a body corporate and it is proved that the offence—

- (a) was committed with the consent or connivance of an officer of the body, or
- (b) was attributable to neglect on the part of an officer of the body.

(2) The officer, as well as the body, commits the offence.

(3) Where an individual is convicted of an offence under this Act by virtue of subsection (2), that individual is liable to the same penalty as the body.

(4) In this section "officer" includes—

- (a) a director or secretary;
- (b) a person purporting to act as a director or secretary;
- (c) if the affairs of the body are managed by its members, a member; and
- (d) in relation to a limited liability company constituted under the Limited Liability Companies Act 1996 [c.19], a member, the company's manager, or registered agent.

**Chapter II**

**General**

**Guidance**

**33.** (1) The Commission may give guidance consisting of information and advice which it considers appropriate in connection with—

- (a) the operation of this Act;
- (b) matters relating to the Commission's functions under this Act;
- (c) matters about which it considers desirable to give information or advice.

(2) The Commission may—

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

- (a) publish its guidance; and
- (b) offer copies of its published guidance for sale at a reasonable price.

**Review of Commission decisions**

63. 1988/16/5A

- 34.** (1) A person who is aggrieved by a decision of the Commission to—
- (a) refuse authorisation of a scheme under section 5(1);
  - (b) make an authorisation subject to conditions under section 5(2)(b);
  - (c) revoke an authorisation under section 21(1);
  - (d) refuse to revoke an authorisation under section 21(4);
  - (e) refuse to approve alterations to a scheme or a change in the manager, trustee or fiduciary custodian of the scheme under section 6(4);
  - (f) refuse to agree to a manager engaging in other activities under section 7(2);
  - (g) refuse to recognise a scheme under section 11(4) or 12(1),
  - (h) revoke a recognition under section 21(1);
  - (i) refuse to revoke a recognition under section 21(4);
  - (j) make a direction under section 23(1);
  - (k) refuse to withdraw or vary a direction following an application under section 23(5);
  - (l) withdraw or vary a direction under section 23(5);
  - (m) make an appointment under section 24(1);
  - (o) refuse to terminate an appointment following an application under section 24(8);
  - (p) terminate an appointment under section 24(8),

may apply for a review of the decision.

(2) The application must be addressed in accordance with rules under section 8 of the Tribunals Act 2006 [c.1] and notice must be given to the Financial Supervision Commission at the same time.

(3) The review is to be conducted by 3 persons selected in accordance with regulations made under section 9(b) of the Tribunals Act 2006 from a panel appointed in accordance with that Act.

(4) The 3 persons are referred to in this section as the “Review Committee”.

(5) The members of the panel from which the Review Committee is selected must be persons—

- (a) who have appropriate experience; and
- (b) who are independent of both the Commission and the applicant.

(6) On the determination of a review under this section the Review Committee must confirm, vary or revoke the decision in question.

(7) The variation or revocation of a decision does not affect the previous operation of that decision or anything duly done or suffered under it.

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

(8) Without limiting any right of recourse to the court, a decision of the Review Committee on a review under this section is binding on the Commission and the applicant.

**Public registers**

64. 1988/16/24A

**35.** (1) The Commission must keep at its principal office registers of authorised schemes, international schemes and recognised schemes containing particulars and information as are prescribed.

(2) Any person is entitled to inspect the registers during ordinary office hours.

**Financial provisions**

65. 1988/16/29

**36.** (1) Expenses incurred under this Act by the Commission or a person appointed under section 27 are to be defrayed out of money provided by Tynwald.

(2) Fees received under this Act form part of the General Revenue of the Island.

**Chapter III**  
**Final provisions**

**Interpretation**

66. 1988/16/31

**37.** (1) In this Act—

“**administration**”, in relation to a scheme, includes the following functions (insofar as they are relevant)—

- (a) accounting services;
- (b) handling of administrative enquiries from participants;
- (c) valuation of assets and pricing of units;
- (d) maintenance of the register of participants;
- (e) distribution of income;
- (f) issues, transfers and redemptions of units; and
- (g) record keeping;

“**administrator**” means a person appointed by the governing body of a scheme who is responsible for the conduct of the administration of the scheme;

“**advertisement**” includes every form of advertising and includes advertising—

- (a) in any form of publication;
- (b) by the display of notices;
- (c) by means of circulars or other documents;
- (d) by means of business cards;

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

- (e) by an exhibition of photographs or cinematograph films;
- (f) by means of broadcasting sounds or pictures (including transmission by cable), telecommunications or any electronic media;

**“advocate”** includes a person who is registered under the Legal Practitioners Registration Act 1986 [c.15];

**“asset manager”** means a person appointed by the governing body of a scheme who is responsible for investment management in accordance with the investment objectives and policy of the scheme;

**“associate”** means –

- (a) in relation to an individual –
  - (i) the father, mother, wife, husband, son, stepson, daughter, stepdaughter, brother or sister of the individual;
  - (ii) a body corporate of which that individual is a director; and
  - (iii) a partner or employee of that individual;
- (b) in relation to a body corporate –
  - (i) a subsidiary of that body corporate; and
  - (ii) an employee of any such subsidiary;

**“authorisation order”** means an order made by the Commission under section 5(1) declaring a scheme to be an authorised scheme;

**“authorised person”** means a person who is licensed under section 7 of the Financial Services Act 2008 to carry out the activity to be carried out by that person under the respective provision of this Act where the expression is used;

**“authorised scheme”** means a scheme authorised under section 5;

**“body corporate”** includes a body corporate constituted under the law of a country or territory outside the Island;

**“collective investment scheme”** has the meaning given in section 1 and **“scheme”** is to be construed accordingly;

**“Commission”** means the Financial Supervision Commission;

**“condition”** includes limitation;

**“controller”**, in relation to a person which is a body corporate, means –

- (a) a managing director of a body corporate of which the person is a subsidiary;
- (b) a chief executive of a body corporate of which the person is a subsidiary;
- (c) an individual in accordance with whose directions or instructions one or more of the directors of a body corporate of which the person is a subsidiary are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that individual in a professional capacity;
- (d) an individual who either alone or with any associate or associates is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the person or of another body corporate of which the person is a subsidiary;

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

**“court”** means the High Court of Justice of the Isle of Man;

**“custodian”** means a person appointed by the governing body of a scheme who—

- (a) is entrusted with the custody of, or procuring safe custody of, the property of the scheme; or
- (b) where prescribed in relation to a scheme or class of schemes, provides prime brokerage services in relation to the scheme;

**“director”** includes—

- (a) any person occupying the position of director by whatever name called;
- (b) any person in accordance with whose directions or instructions one or more of the appointed directors are accustomed to act unless the appointed director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity; and
- (c) in relation to a limited liability company constituted under the Limited Liability Companies Act 1996 [c.19], a member, the company’s manager and the registered agent;
- (d) in respect of any other body corporate such persons as occupy a position equivalent to that of director;

**“documents constituting the scheme”** means—

- (a) the trust deed of a unit trust scheme; or
- (b) the memorandum and articles of association of an open-ended investment company; or
- (c) the partnership agreement of scheme which is a partnership; and
- (d) each material agreement relating to the scheme;

**“exempt scheme”** means a scheme which is exempted under section 10 from the requirements of section 8;

**“fiduciary custodian”** means the person responsible for the custody of the property of a scheme constituted as an open-ended investment company or partnership and who also has fiduciary responsibility for that property;

**“governing body”** means the person or body of persons responsible for the general supervision of the affairs of the scheme and includes—

- (a) the directors of a body corporate which is the trustee of a unit trust scheme;
- (b) the directors of a scheme which is an open-ended investment company;
- (c) the directors of a body corporate which is the general partner of a scheme which is a partnership;

**“group”**, in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company;

**“holding company”** is to be construed in accordance with the definition of subsidiary;

**“international scheme”** means a scheme within the meaning of section 8;

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

**“investment adviser”** means a person appointed by the governing body of a scheme who is responsible for advising the governing body about investments in the scheme in accordance with the investment objectives and policy of the scheme;

**“manager”** means a person appointed by the governing body of a scheme who is responsible—

- (a) for ensuring that the scheme is managed in accordance with the documents constituting the scheme and its offering document;
- (b) for the conduct of the administration of the scheme; and
- (c) in relation to an authorised scheme, for investment management in accordance with the investment objectives and policy of the scheme;

**“material agreement”** means an agreement in relation to a scheme which—

- (a) establishes a relationship between—
  - (i) the governing body of the scheme; and
  - (ii) the manager, administrator, trustee, fiduciary custodian, custodian, asset manager or investment adviser; or
- (b) is prescribed as being a material agreement;

**“offering document”** means a document, by whatever name called, which is aimed to inform prospective participants about the scheme;

**“open-ended investment company”** means a collective investment scheme under which—

- (a) the property in question belongs beneficially to, and is managed by or on behalf of, a body corporate having as its purpose the investment of its funds with the aim of spreading investment risk and giving its members the benefit of the results of the management of those funds by or on behalf of that body; and
- (b) the rights of the participants are represented by shares in or securities of that body which—
  - (i) the participants are entitled to have redeemed or repurchased by, or out of funds provided by, that body; or
  - (ii) the body ensures can be sold by the participants on an investment exchange at a price calculated by reference to the value of the property which the shares or securities represent;

**“order”** means an order made by the Commission under this Act;

**“participant”** has the meaning given in section 1;

**“prescribed”** means prescribed by an order or regulations made by the Commission;

**“promoter”** means a person (wherever located) who prepares or distributes, or who causes the preparation or distribution of, an offering document, advertisement or marketing material relating to a scheme, but does not include a professional adviser acting for or on behalf of that person;

**“recognised scheme”** means a scheme recognised under section 11 or 12;

**“recognition order”** means an order made by the Commission under section 12(1) declaring a scheme to be a recognised scheme;

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

**“regulations”** means regulations made by the Commission under this Act;

**“subsidiary”** means a body corporate (whether or not incorporated under the Companies Acts 1931 to 2004) that is a subsidiary of another body corporate (whether or not incorporated under those Acts) and in determining whether one body corporate is a subsidiary of another the provisions of section 1 of the Companies Act 1974 [c.30] apply with the necessary modifications, and “holding company” is to be construed accordingly;

**“trustee”** means the person holding the property of a unit trust scheme on trust for the participants;

**“units”** means the rights or interests (however described) of the participants in a collective investment scheme and include—

- (a) units in a unit trust scheme;
- (b) shares or securities in an open-ended investment company; and
- (c) interests in a scheme which is a partnership;

**“unit trust scheme”** means a collective investment scheme under which the property in question is held on trust for the participants.

(2) The Commission may prescribe services which it considers to be prime brokerage services for the purposes of this Act.

(3) Unless the context otherwise requires, in orders or regulations made under this Act “fund” means “scheme”.

### **Amendments**

38. The enactments specified in Schedule 2 are amended in accordance with that Schedule.

### **Repeals**

39. The enactments specified in Schedule 3 are repealed in accordance with that Schedule.

### **Transitional and saving provisions**

40. The saving and transitional provisions in Schedule 4 have effect.

### **Short title and commencement**

41. (1) This Act may be cited as the Collective Investment Schemes Act 2008.

(2) This Act comes into operation on such day as the Treasury by order appoints and different days may be appointed for different provisions and for different purposes.

(3) An order under subsection (2) may make such transitional and saving provisions as the Treasury considers necessary or expedient.

**SCHEDULE 1**

Section 27

67. 1988/16/6 and 10

**SUBORDINATE LEGISLATION**

*Part 1*

*Constitution and management*

1. Provisions as to—
  - (a) the constitution and management of any scheme;
  - (b) the constitution, powers and duties of the promoter, governing body, manager, administrator, trustee, fiduciary custodian, custodian or asset manager of any scheme;
  - (c) the documents constituting a scheme;
  - (d) the submission to the Commission by the governing body, manager, administrator, trustee, fiduciary custodian or custodian of information (including, but not limited to, accounting and statistical information), statements, returns, reports or certificates which relate to—
    - (i) the scheme;
    - (ii) its promoter, governing body, manager, administrator, trustee, fiduciary custodian, custodian or asset manager;
    - (iii) the affairs of it or any of them;
  - (e) the time within which, and the occasions when (including on a request by the Commission), information or documents required to be produced to the Commission under paragraph (d) is to be produced;
  - (f) the form, content and verification of any information or document required to be produced to the Commission under paragraph (c) or (d);
  - (g) the powers and duties of the directors of the governing body, manager, administrator, trustee, fiduciary custodian or custodian which is a body corporate;
  - (h) the payment by the scheme, governing body, manager, administrator, trustee, fiduciary custodian or custodian of such application and periodical fees as are prescribed;
  - (i) the circumstances, times and occasions when the functions of the governing body, manager, administrator, trustee, fiduciary custodian or custodian of a scheme may be delegated;
  - (j) the management of potential and actual conflicts of interests between any of the following —
    - (i) persons acting as manager, administrator, trustee, fiduciary custodian or custodian of a scheme;
    - (ii) other persons acting as manager, administrator, trustee, fiduciary custodian or custodian of that scheme;
    - (iii) participants of a scheme;
    - (iv) other participants of that scheme;
    - (v) the scheme itself;

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

- (k) the persons or class of persons who may be participants in a scheme (including the requirement for participants to satisfy prescribed criteria in order to become eligible to participate in a scheme);
- (l) the rights and obligations of participants of any scheme; and
- (m) the winding up of any scheme.

2. Provisions—

- (a) as to contribution levels by participants (including requirements for minimum levels of contribution);
- (b) as to the valuation of the property of a scheme;
- (c) as to the issue and redemption of units under a scheme;
- (d) as to the expenses of a scheme and the means of meeting them;
- (e) for the appointment, removal, powers and duties of an auditor of a scheme;
- (f) prescribing who may act as auditor of a scheme and the qualifications an auditor must have;
- (g) requiring an auditor to hold a policy of professional indemnity insurance in a prescribed form, indemnifying the auditor to such sum, in such manner, in respect of such matters and valid for such period as is prescribed;
- (h) restricting or regulating the investment and borrowing powers exercisable in relation to a scheme;
- (i) requiring the keeping of records with respect to the transactions and financial position of the scheme, for the keeping of records in the Island and for the inspection of records;
- (j) for the preparation of accounts and other financial records of a scheme, their form, content, inspection and audit and the submission of copies or extracts to the Commission and to participants at such times and on such occasions as are prescribed;
- (k) requiring the provision of information to the Commission and to participants to supplement the information provided under paragraph (j) at such times and on such occasions as are prescribed;
- (l) requiring the preparation of periodical reports concerning a scheme and the furnishing of those reports to the Commission and to participants; and
- (m) as to the amendment of any scheme.

3. Provisions relating to the preparation and auditing of accounts of schemes may require compliance with standards or the adoption of practices recommended by a prescribed body and may, in particular, require compliance with standards or the adoption of practices recommended by that body from time to time (that is, after as well as before the provisions are made).

4. Provisions as to the contents of the documents constituting the scheme may require any of the matters mentioned in paragraph 1 or 2 to be dealt with in such documents.

**Part 2**

***Offering document***

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

7. Provisions requiring the governing body of a scheme to—
- (a) submit to the Commission; and
  - (b) publish or make available to the public on request,
- an offering document containing such information about the scheme and complying with such requirements as are prescribed.
8. Provisions requiring the governing body of a scheme to submit and publish or make available a revised or further offering document if—
- (a) there is a significant change affecting any matter contained in the offering document previously published or made available and which is required to be reflected in a revised or further document; or
  - (b) a significant new matter arises the inclusion of information in respect of which would have been required in previous offering document if it had arisen when that document was prepared.
9. Provisions requiring the manager or administrator of a scheme to notify the Commission if there is a significant change or a significant new matter arises which requires the submission, publication or making available of a further or revised offering document but the governing body refuses to prepare such document.
10. Provisions requiring the payment of compensation by the person who is treated as responsible for the offering document to a person —
- (a) who is or has agreed to become a participant in the scheme; and
  - (b) has suffered loss as a result of—
    - (i) an untrue or misleading statement in that document; or
    - (ii) the omission from that document of a matter required to be included.

***Part 3***

***Advertisements***

11. Provisions regulating the issue, form and content of advertisements and other documents relating to the promotion of schemes and in particular—
- (a) prohibiting the issue of advertisements—
    - (i) in respect of schemes or classes of scheme;
    - (ii) by persons or classes of persons; and
  - (b) as to matters which must be, or which must not be, included in advertisements.

***Part 4***

***Submission of information***

12. Provisions as to the method of submission of information and documentation to the Commission under this Act.

## **SCHEDULE 2**

### Section 36

#### **AMENDMENT OF ENACTMENTS**

##### *Partnership Act 1909 (VIII p.327)*

1. In section 49A(2A), for “section 30 of the Financial Supervision Act 1988” substitute “section 1 of the Collective Investment Schemes Act 2008”.

##### *Stock transfer Act 1965 (XIX p. 1505)*

2. In section 1(4)(c), for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

3. In section 4(1), in the definition of “securities”, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

##### *Income Tax Act 1970 (XXI p.260)*

4. In section G108(3)(a), for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

5. In section 119C(8), in the definition of “unit trust scheme”, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

##### *Income Tax Act 1989 (1989 c.10)*

6. In section 1(1), in the definition of “collective investment scheme” and “unit”, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

##### *Companies Act 1992 (c.4)*

7. In section 26(3)(c)(i), for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

8. In section 28(1), in the definition of securities, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

##### *Value Added Tax Act 1996 (1996 c.1)*

9. In paragraph 14(9) of Schedule 7, in the definition of “company”, for “section 31(1) of the Financial Supervision Act 1988” substitute “section 37 of the Collective Investment Schemes Act 2008”.

10. For item 9(b) of Group 5 (Finance) in Part II of Schedule 10, substitute—

“(b) an international scheme, including a professional investor fund, an experienced investor fund, a continuing EIF, a qualifying fund or a specialist fund (but excluding other schemes exempted from the requirements of section 8 of the Collective Investment Schemes Act 2008, whether under section 10 of that Act or otherwise.”.

11. In note (6) to Group 5 in Part II of Schedule 10, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

##### *Companies (Transfer of Domicile) Act 1998 (c.6)*

12. In section 1(2), for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

*Collective Investment Schemes Bill*  
*Draft 28 September 2007*

13. In section 7(2), for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

14. In section 17, in the definition of “securities”, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

*Retirement Benefits Schemes Act 2000 (c.14)*

15. In section 31(4)(b)(iv) and 31(4)(c), for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

*Trustee Act 2001 (c.18)*

16. In section 37(2), for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

*Tribunals Act 2006 (c.1)*

17. In paragraph 6(g) of Part 2 of Schedule 2, for “section 5A of the Financial Supervision Act 1988” substitute “section 34 of the Collective Investment Schemes Act 2008”.

*Companies Act 2006 (2006 c.13)*

18. In section 48(2)(a), for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

*Financial Services Act 2008*

19. In section 30(1)(a), for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

20. In section 33(4), in the definition of “specified enactment”, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

21. In paragraph 2(2)(p) of Schedule 1, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

22. In paragraph 1(2) of Schedule 5, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

23. In paragraph 1(3)(c) of Schedule 5, for “section 19 of the Financial Supervision Act 1988” substitute “section 27 of the Collective Investment Schemes Act 2008”.

24. In paragraph 2(1)(c) of Schedule 5, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

25. In paragraph 2(1)(f) of Schedule 5, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

26. In paragraph 2(1)(l) of Schedule 5, for “section 19 of the Financial Supervision Act 1988” substitute “section 27 of the Collective Investment Schemes Act 2008”.

27. In paragraph 2(5)(b)(iii) of Schedule 5, for “Financial Supervision Act 1988” substitute “Collective Investment Schemes Act 2008”.

**SCHEDULE 3**

Section 37

**REPEAL OF ENACTMENTS**

<b>Reference</b>	<b>Short Title</b>	<b>Extent of repeal</b>
1988 c.16	Financial Supervision Act 1988	The whole Act.
1999 c.10	Limited Liability Companies and Financial Supervision (Amendment) Act 1999	Section 3.
2000 c.14	Retirement Benefit Schemes Act 2000	Entry 8 of Schedule 2 and the cross-heading relating to that entry.
2001 c.26	Fair Trading (Amendment) Act 2001	Section 17.
2003 c.16	Companies, etc (Amendment) Act 2003	In Schedule 1, the entry relating to the Financial Supervision Act 1988 and the cross-heading relating to that entry.
2005 c.5	Fiduciary Services Act 2005	Entries 4, 5, 6 and 10 of Schedule 3 and the cross-heading relating to those entries.
2006 c.13	Companies Act 2006	In Schedule 1, the entry relating to the Financial Supervision Act 1988 and the cross-heading relating to that entry.

**SCHEDULE 4**

Section 38

**TRANSITIONAL AND SAVING PROVISIONS**

1. When section 8 comes into operation, an existing scheme which is an international scheme (within the meaning of section 11 of the Financial Supervision Act 1988) does not cease to be an international scheme (within the meaning of section 8) by reason only that it does not comply with section 8(2).
2. When section 10 comes into operation, an existing scheme which is exempted under section 11(7) of the Financial Supervision Act 1988 from the requirements of section 11 of that Act, does not cease to be a scheme which is exempted under section 10 from the requirements of section 8 by reason only that it does not comply with section 10(1)(a)(ii), 10(1)(b)(ii) or 10(2).
2. Paragraphs 1 and 2 do not affect the operation of section 16 of the Interpretation Act 1976 [c.20](which relates to the effect of substituting provisions).

CONSULTATION DRAFT