

**A Consultative Paper on the draft  
Financial Services (Appointment of a Manager) Order 2008**

**1<sup>st</sup> September 2008**



**Financial Supervision Commission Barrantee Oaseirys**

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## ***Section 1 – INTRODUCTION***

### ***1.1 Background***

Section 22 of the Financial Services Act 2008 provides that the Financial Supervision Commission (“the Commission”) may, in certain circumstances, apply to the High Court for the appointment by the Court of a person to manage the affairs of persons, insofar as those affairs relate to carrying on of a regulated activity:

“22. (1) The Commission may, by order, prescribe circumstances in which the Commission may apply to the High Court for the appointment by the Court of a person as a manager to manage the affairs of persons in so far as those affairs relate to the carrying on of a regulated activity.

(2) An order made under subsection (1) may contain such incidental or supplementary provisions as the Commission considers necessary or expedient, and may contain different provisions for different types of regulated activity.

(3) The Court may, on an application made to it by the Commission in circumstances prescribed in an order made under subsection (1), appoint, on such terms as it considers to be appropriate, a person to manage the affairs of a person in so far as those affairs relate to the carrying on of a regulated activity.

(4) The Court may make such orders as are necessary to give effect to the appointment of a manager under this section and for dealing with any property connected with the regulated activity.”

The circumstances in which the Commission may make such an application have to be prescribed by order. This consultation paper sets out a draft Financial Services (Appointment of a Manager) Order 2008 which prescribes such circumstances.

Prior to the introduction of the Financial Services Act 2008, the power to appoint a manager as a regulatory action was contained in the Corporate Service Providers Act 2000 (section 16) and it referred to the appointment of receiver and manager. The Corporate Service Providers Act 2000 did not require circumstances to be prescribed.

As circumstances have not been prescribed previously, research has been undertaken of the situation in other relevant jurisdictions.

- ~ Guernsey, Gibraltar, Hong Kong and Mauritius do not have detailed legislation prescribing the circumstances of the appointment of a manager.
- ~ In Ireland, the power available to the financial regulator exists in statute in form of a power of the regulator to petition the court for the appointment of an Examiner. This process would be similar to the UK's administration process rather than identifying regulatory circumstances where a manager may be appropriate.
- ~ The UK does not have the power to appoint a manager but does have powers in relation to voluntary arrangements, administration orders, receivership, voluntary winding up, winding up by the Court and bankruptcy.

The draft order has therefore been broadly based on Jersey's Financial Services (Appointment of a Manager) (Jersey) Order 2000, as the most relevant starting point.

## *1.2 Application*

The power to appoint a manager applies to anyone conducting a regulated activity, and in connection with that activity, and therefore it will apply not only to licenceholders of the Commission but also those operating under exemptions and indeed those who may be operating illegally without a licence or an appropriate licence.

The Commission recognises that the circumstances listed in the Schedule to the order are fairly broad and may not be appropriate in all situations where the circumstances could be mitigated by other factors. To this end, the order relates to circumstances where the Commission **may** consider seeking the appointment of a manager, and not circumstances that are mandatory for this action to be considered. In addition, there are several prescribed circumstances where there are alternative types of action that may be taken by the Commission, however by including the circumstances in the Schedule the Commission gains the option to seek the appointment of a manager by the Court if the particular circumstances warrant it. At all times it will be the Court that makes any appointment, not the Commission.

## *Section 2 – CONSULTATION*

It would be appreciated if we could have your comments on this draft order as soon as possible, and at the very latest the closing date for comments is 10<sup>th</sup> October 2008.

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