

**Consultative Paper:**

**Draft Register of Recognised Auditors Regulations 2009  
Draft Public Oversight of Recognised Auditors Regulations 2009  
Draft Accounting (Recognised Auditors) Regulations 2009  
Draft Crown Dependencies' Audit Rules and Guidance**

**30 March 2009**



**Financial Supervision Commission Barrantee Oaseirys**

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## ***Section 1 – INTRODUCTION***

### ***1.1 Background***

#### **1.1.1 The EU Statutory Audit Directive (2006/43/EC) (“the Directive”)**

The draft Regulations appended to this consultation paper are required as a result of the Directive.

The Directive is not directly applicable to the Isle of Man, however, the effect of the Directive once transitional provisions have expired is to prevent Isle of Man auditors of Manx companies that are admitted to trading on any regulated market of an EU Member State (“market traded companies”) from being able to continue to undertake these audits unless they agree to be subject to the auditor registration and oversight regimes in place in each of the EU Member States in which such companies are admitted to trading.

For this purpose it is important to bear the definition of regulated market in mind. It refers to full listings, and does not apply to listings on AIM. The following link contains a list of the markets meeting the criteria of regulated markets in Directive 2004/39/EC : [http://mifidatabase.cesr.eu/Index.aspx?sectionlinks\\_id=23&language=0&pageName=REGULATE\\_D\\_MARKETS\\_Display](http://mifidatabase.cesr.eu/Index.aspx?sectionlinks_id=23&language=0&pageName=REGULATE_D_MARKETS_Display)

The Directive does however permit EU Member States to grant a derogation and to allow auditors to audit market traded companies admitted to trade on regulated markets in their jurisdiction if they are subject to an equivalent system of oversight in their own jurisdiction. Therefore the draft Regulations aim to set up an equivalent regime in the Isle of Man. Such a regime must include quality assurance, investigations and penalties and independent public oversight.

The draft Regulations are to be made under powers contained within the Companies (Amendment) Bill 2008, which is awaiting Royal Assent.

#### **1.1.2 Working with the other Crown Dependencies**

The Directive affects all three Crown Dependencies, and therefore we are working together to put in place equivalent oversight regimes in each Island that are as similar as possible across the Crown Dependencies.

The main way that this common framework is being achieved is by each Crown Dependency taking on the independent public oversight and register maintenance functions, and delegating the public oversight functions to the Professional Oversight Board of the UK’s Financial Reporting Council (“POB”) and the monitoring functions to the Institute of Chartered Accountants in England and Wales (“ICAEW”). It is more cost effective and practical to use the existing expertise of POB and the ICAEW than to attempt to set up new local agencies in each of the Crown Dependencies. Also, it is hoped that such a regime ought to be considered equivalent under Article 46 of the Directive, as it replicates the regime in the UK and uses the same bodies to provide those functions.

Additionally, the Crown Dependencies and POB and ICAEW have worked together to develop a common set of audit Rules – see 2.4 and Appendix D.

The draft Regulations intend on meeting the equivalence requirements of the EU but not going beyond them. There is no intention to 'gold plate' the requirements.

It is hoped that the three Crown Dependencies will be able to implement their regimes at the same time – being mid to late 2009. In this way the European Commission would be able to review a working regime rather than one only in a conceptual stage.

## ***1.2 Application***

The Regulations apply only to auditors, and are permissive. No auditor is bound to seek entry on the register; however they may choose to do so in order to carry on auditing market traded companies under a regime that should be EU equivalent and due to which an EU Member State may grant a derogation (see 1.1.1). Please note – it is a decision for each EU Member State to determine the extent to which it recognises the equivalence of third country regimes.

**The proposals do not impact on the audit arrangements of companies that are not market traded companies.**

The Commission cannot take on the costs of providing this service to the auditors and therefore the draft Regulations include an application fee and annual registration fee for entry onto the register, together with a statutory requirement that an auditor must pay the scale fees to the ICAEW / POB for the oversight regime in order to remain on the register.

## ***Section 2 – THE PROPOSALS***

### ***2.1 Draft Register of Recognised Auditors Regulations 2009 (“Register Regulations”)***

The Register Regulations deal with the establishment of a register of recognised auditors (“the register”) that will be maintained by the Financial Supervision Commission (“the Commission”). The content of the register is detailed in the Schedule, and the register would be available for public inspection.

Entry on the register will be subject to eligibility criteria, and the payment of an application fee in the first year of registration and an annual fee thereafter. An auditor that is entered on the register is known as a recognised auditor.

In order to be eligible for entry on the register:

- a) the auditor must be qualified for appointment as an auditor under the provisions of the Companies Act 1982;
- b) all the responsible individuals of the auditor (those permitted to sign audit reports) must be members of a recognised accountancy body (as defined in the Companies Act 1982);
- c) the auditor and all of its responsible individuals must be bound by and comply with the Crown Dependencies’ Audit Rules and Guidance (“the Rules”) when auditing market traded companies; and
- d) all the responsible individuals of the auditor must have been designated by the auditor as competent to audit the accounts of a market traded company.

It can be seen that entry on the register is not contingent upon conducting audits of market traded companies, although it is likely that only those auditors conducting such business or wishing to be able to do so would seek registration due to the costs involved.

The Commission will determine eligibility for entry on the register, and may accept or refuse a registration, make a registration subject to conditions, withdraw or suspend a registration, etc. An auditor may appeal against these decisions to the Financial Services Tribunal.

The Register Regulations provide (at regulation 7) for the types of circumstances when the Commission may take action in connection with an entry on the register, and these include circumstances when it is discovered that the recognised auditor or any responsible individual is not eligible for entry, is not competent or fit and proper, has breached the Rules or has not paid the costs of oversight.

The Register Regulations also require annual confirmations to the Commission regarding the continuing accuracy of the details on the register, and also require that the Commission be immediately notified of certain important events.

## ***2.2 Draft Public Oversight of Recognised Auditors Regulations 2009 (“Oversight Regulations”)***

The Oversight Regulations make it clear, in regulation 4, that only those auditors that are entered on the register under the Register Regulations may audit a market traded company or hold themselves out in any manner that they are permitted to do so. The only exception to this is for auditors subject to oversight in the EU under the Directive or those of a third country deemed equivalent in the EU under the Directive, where that oversight regime would be of sufficient scope to include in its remit the audit of the (Manx) market traded company.

They also deal with the appointment by the Commission of the POB to provide the public oversight of recognised auditors on the Commission’s behalf, and with the appointment by the Commission of the ICAEW to provide the monitoring of recognised auditors on the Commission’s behalf.

The Oversight Regulations go on to define what the public oversight and monitoring will entail – which include the quality assurance, investigations and penalties of the POB and ICAEW – which are the key requirements of the Directive.

Both the POB and ICAEW are required by the Oversight Regulations to report annually to the Commission regarding their work undertaken on the Commission’s behalf.

The Oversight Regulations make it a condition of being a recognised auditor that the public oversight system of POB and the monitoring by ICAEW must be complied with. Additionally, when auditing the accounts of market traded companies the recognised auditors must be bound by and comply with the Rules.

The Oversight Regulations also detail matters that the POB and ICAEW must notify to the Commission immediately – and these include loss of a recognised auditor’s eligibility to be entered on the register.

## ***2.3 Draft Accounting (Recognised Auditors) Regulations 2009 (“Qualification Regulations”)***

The Qualification Regulations are necessary to make it clear that despite an auditor being qualified under sections 14 to 14H of the Companies Act 1982 or section 80C of the Companies Act 2006, only a recognised auditor entered on the register and who is bound by the Rules is qualified for appointment to a market traded company.

Regulation 4 also makes provision for statutory auditors under the Directive to be qualified if they are subject in an EU Member State to a system of oversight, quality assurance, investigations and penalties meeting requirements of the Directive, as well as a person qualified as auditor of a market traded company in a third country and subject to such systems considered equivalent (pursuant to Article 46 of the Directive) to the systems required in the Directive and, very importantly, where that oversight regime would be of sufficient scope to include in its remit the audit of the (Manx) market traded company.

## ***2.4 Draft Crown Dependencies' Audit Rules and Guidance ("the Rules")***

The Rules only govern the conduct of the audit of market traded companies and are consistent across all three Crown Dependencies and are heavily based on those of the ICAEW, and indeed are to be issued by the ICAEW.

It is a condition of eligibility for entry on the register that the auditor and all responsible individuals of the auditor are bound by and must comply with the Rules when auditing the accounts of a market traded company. In being bound by the Rules, the recognised auditor would also be subject to the ICAEW's disciplinary process. In addition, the Commission can remove an auditor from the register should this become necessary.

### ***Section 3 – CONSULTATION***

Comments in writing are requested on the proposals in this consultation paper.

It would be appreciated if we could have your comments on the proposals as soon as possible, and at the very latest the closing date for comments is 8<sup>th</sup> May 2009.

Where comments are made by a body or association, that respondent should also provide a summary of the number and type of individuals and / institutions it represents.

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