

Consultative Paper

Draft Authorised Collective Investment Schemes Regulations 2010

This consultation will be of particular interest to managers, fiduciary custodians and trustees of authorised schemes and their advisers.

Issue date: 1st March 2010

Closing date: 7th May 2010



Financial Supervision Commission Barrantee Oaseirys

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SECTION I - INTRODUCTION

1.1 Background

Authorised schemes are retail schemes that may be promoted to the general public in the Isle of Man and the UK (subject to “recognition” by the UK Financial Services Authority (“UK FSA”)). Investors in such schemes are covered by statutory compensation arrangements.

The Island is a designated territory for the purpose of Section 270 of the UK Financial Services and Markets Act 2000, which means that Isle of Man Authorised Schemes can be marketed to the public in the UK as if they were UK Authorised Schemes. In order to maintain this designated territory status the Isle of Man regime for Authorised Schemes must, in most respects, be equivalent to the prevailing UK regime.

Year on year, the amendments to the UK Authorised Schemes regime have tended to be minimal and this is likely to be the situation going forward. However, as a result of the EU UCITS III regime the UK materially updated its regime for authorised type schemes. It is therefore important that a full review of the entire Authorised Schemes Regime be undertaken in order to update the regime in respect of sizeable changes to the UK COLL Sourcebook and to assist in preserving the existing business undertaken using Isle of Man Authorised Schemes.

1.2 High Level Rationale

The Commission’s regulatory objectives are set out in section 2 to the Financial Services Act 2008. These are:

- (a) securing an appropriate degree of protection for the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) supporting the Island’s economy and its development as an international finance centre.

The proposals in this paper support objectives (a) and (c).

In addition to this, under paragraph 3 of Schedule I to the Financial Services Act 2008, the Commission is required to give consideration to certain factors.

The table below sets out the list of factors contained in paragraph 3 of Schedule I that have a bearing on the proposals.

FACTOR	INFORMATION
The need for the regulatory, supervisory and registration regimes to be effective, responsive to commercial developments and proportionate to the benefits which are expected to result from the imposition of any regulatory burden.	In order to maintain the Island's designated territory status, the Isle of Man regime for Authorised Schemes must, in most respects, be equivalent to the prevailing UK regime. This equivalence allows them to be marketed directly to the public in the UK in the same way as UK Authorised Schemes.
The desirability of implementing and applying recognised international standards.	In order to continue to market Isle of Man Authorised Schemes directly to the public in the UK, it is critical that the Island maintains its designated territory status.
The desirability of co-operating with governments, regulators and others outside the Island.	It is desirable to co-operate with the UK regulators and maintain the Island's designated territory status.
The need to safeguard the reputation of the Island.	By maintain the Island's designated territory status, the Commission is safeguarding the reputation of the Island.
The international character of financial services and markets and the desirability of maintaining the competitive position of the Island.	In order to continue to market Isle of Man Authorised Schemes directly to the public in the UK, the Island must maintain its designated territory status.

1.3 Consultation Process

The Commission views open dialogue with industry and other stakeholders as an essential element in developing an optimal regulatory framework. The Commission therefore appreciates the time spent reading and commenting upon these proposals.

The proposal, together with a series of important questions, is set out in section 2. While comments should cover the specific questions, any general comments and observations will be welcomed.

The closing date for comments is Friday, 7th May 2010.

We would be most grateful if comments could be received as soon as possible and **no later than the above date**.

Responses should be sent in writing or by e-mail to:

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The purpose of consultation is to obtain views and gather evidence from which to take an informed decision on the content of proposed legislation. A response to this consultation will not necessarily result in a change to in the proposals.

A summary of the comments received along with the Commission's response will be published on the Commission's website after all comments have been considered.

Anonymous submissions will not be considered or included in the summary of comments. Being mindful that public identification of respondents is likely to serve as a deterrent to submission, **no respondents will be publicly identified.**

SECTION 2 - PROPOSALS

2.1 Main Considerations

In order to maintain equivalence, the Regulations have generally adopted most of the UK FSA's requirements but with amendments to take account of the Island's Collective Investment Schemes Act 2008. The main points of note are -

- As the existing UK requirements are significantly different from the Commission's current Regulations, there has been a major re-write of the requirements and therefore it has not been possible to produce a "Road Map" of changes.
- Following informal consultation with existing market participants, it would appear that the view of the industry is that, whilst welcoming any initiative to enhance disclosure of key information to potential investors, the UCITS Simplified Prospectus regime is viewed as being of limited success in achieving its aim of improving investor disclosure. CESR and the EU Parliament appear to have accepted this by proposing a new regime, the Key Information Document (KID), as part of the package of changes for UCITS IV although this has not been finalised by them. It has therefore been decided to introduce an optional simplified prospectus regime rather than require it in all cases.
- The UK FSA is considering whether to permit Authorised Schemes to be structured as protected cell companies ("PCCs"). If such arrangements are permitted in the UK, the Commission would be keen to allow this. Therefore, as part of the review, the opportunity has been taken to include reference to PCCs to ensure that, if the UK does decide to extend their legislation, it will be possible to maintain equivalence with them. The Commission will be liaising with the FSA on developments in this area and should they not be progressed, then all references will be removed.