

Consultation

Treasury Shares

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Financial Supervision Commission Barrantee Oaseirys

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SECTION I – INTRODUCTION & CONSULTATION PROCESS

1.1 Background

The Companies (Amendment) Act 2009 introduced a power permitting the Financial Supervision Commission (“the Commission”) to make Regulations under section 25A of the Companies Act 1992 to enable Isle of Man companies to buy back and hold their own shares in treasury.

The Commission has explored the rationale for making these Regulations and has researched the use of treasury shares in neighbouring jurisdictions and discussed treasury shares with various interest parties. Given the positive industry support for the initiative it was determined to progress quickly with the production of draft Treasury Share Regulations.

This consultation seeks the opinions of interested persons on the draft treasury share Regulations, and subject to continuing industry support, the Commission aims to bring the draft Regulations into effect as quickly as possible.

1.2 High Level Rationale

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

It is considered that Treasury Share Regulations could support objective (c).

In discharging its functions, the Commission is required, under paragraph 3 of Schedule 1 to the Financial Services Act 2008, to have regard to certain factors. The table below lists those factors that have a bearing on treasury shares.

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.	The Commission seeks to ascertain whether permitting companies incorporated under the Companies Act 1931 to hold up to 10% of their issued share capital in treasury is considered to be an effective method of supporting the development of the Island’s company law, and in particular, its funds industry.
The need to safeguard the reputation of the Island.	The draft Regulations restrict the use of treasury shares to companies incorporated under the Companies Act 1931 which are admitted to trading on a market. This is similar to the situation in the UK and will enable benchmarking against similar provisions in a well respected EU jurisdiction.
The international character of financial services and markets and the desirability of maintaining the competitive position of the Island.	The proposal may enhance the Island’s competitive position by making market traded companies more attractive through increased flexibility in capital maintenance.

1.3 Consultation Process

The Commission views open dialogue with industry and other stakeholders as an essential element in developing an optimal framework. The Commission therefore appreciates the time that respondents will devote to consideration of this proposal.

Details of the proposal and draft Regulations, together with a series of important questions, are set out in section 2. While comments should cover the specific questions, any general comments will be welcomed.

We would be most grateful if comments could be received as soon as possible and no later than 19th February 2010.

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

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This consultation seeks to obtain the views and evidence needed to take an informed decision on whether to progress the draft Regulations. A response to this consultation will not necessarily result in a change to in the draft Regulations.

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

SECTION 2 - PROPOSAL

2.1 Treasury Shares

Treasury shares are the shares of a company which the company itself purchases in specific circumstances, and which it does not have to cancel, but may sell at a later date. As a general rule, all rights of treasury shares are suspended, (apart from certain limited exceptions). The exercise of voting or distribution rights in relation to treasury shares is expressly prohibited.

Permitting companies incorporated under the Companies Act 1931 to hold treasury shares allows greater flexibility in relation to capital maintenance. The current provisions that permit a company to purchase its shares require the shares to be cancelled. There are costs associated with the procedure for the repurchase of shares. Additional costs will be incurred by a company complying with the requirements associated with an initial public offering should the company subsequently find it needs to raise additional capital on the markets. Treasury shares can assist certain companies to reduce the costs of capital maintenance.

The Companies Act 2006 has a flexible and less prescriptive capital regime, permitting companies to purchase, cancel and reissue shares more easily and cheaply than companies incorporated under the Companies Act 1931. For this reason, this proposal does not cover companies incorporated under the Companies Act 2006.

Question

1. Do you agree that the ability to hold shares in treasury will be beneficial to companies incorporated under the Companies Act 1931 because of the associated time and cost savings?

2. Do you agree that treasury shares are not required for companies incorporated under the Companies Act 2006? If not, please explain your rationale.

2.2 Limitations

The draft Regulations prohibit a company from holding more than 10% of any class of shares in treasury.

Additionally, the draft Regulations restrict the ability of the company to deal with treasury shares to the following:

- Holding
- Sale
- Cancellation
- Transfer to employee share scheme

Since treasury shares are a new concept for Isle of Man companies, it considered prudent for the draft Regulations to initially restrict the maximum holding allowable to 10% of any share class (the limit that was previously imposed by the UK).

The scope of the draft Regulations is restricted to companies admitted to trade on a market which includes the Alternative Investment Market and other exchange regulated markets.

Questions

- 3. Are these limitations appropriate?***
- 4. Are further limitations required, and why?***
- 5. Are fewer limitations required, and why?***

2.3 Commercial Benefits

When considering resources and prioritisation of work, it is vital to determine what, if any, commercial benefits may result from a proposed change.

While there appears a general benefit in introducing treasury shares, it has been suggested that fund structures are likely to find the proposal particularly beneficial. The Commission would be interested to learn of any other commercial benefits that could flow from the introduction of treasury shares.

It is essential that proposed changes do not impact negatively on the Island. The Commission would welcome comments on any perceived risks associated with this proposal.

Questions

- 6. Please provide your views on whether there are any other commercial benefits to the Isle of Man in the proposal.***
- 7. Are there any concerns or risks associated with the proposal that could impact negatively on the Island? If so, please provide details.***

2.4 Draft Regulations

The draft Regulations follow. These provide further detail on the purchase of a company's own shares and the returns required by the Companies Registry in relation to treasury shares as well as the treatment of the proceeds of the sale of the shares.

Questions

- 8. Please provide any comments you may have on the text of the draft Regulations.***