

Consultation on the Proposed Establishment of a separate Financial Intelligence Unit for the Isle of Man

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A. Executive Summary

1. This consultation paper seeks opinion on the proposed establishment of an independent Financial Intelligence Unit (FIU), with enhanced information gathering powers.
2. The Cabinet Office believes that a FIU created in statute will put the unit on the same footing as those in other jurisdictions and better enable it to meet its international obligations.
3. The split of the current functions of the Financial Crimes Unit (FCU) into a separate FIU and a separate criminal investigations unit will ensure that the FIU is independently adequately staffed and have its own governance arrangements.
4. The enhanced information gathering powers of the FIU will allow the unit to ask for additional information from both the initial provider or a person who is not the initial provider but who is a) mentioned in or is otherwise identifiable from the information received or b) to the reasonable knowledge or belief of the FIU from a person who, holds information that is relevant to the information received.
5. All the other functions powers etc. in the FIU Bill are already carried out by the FIU part of the FCU.

B. Background to the Consultation

1. The Isle of Man has a mature and sophisticated financial services sector and is considered to be in the top drawer of offshore centres. To maintain this status it needs to ensure that it combats financial crime and money laundering in line with internationally recognised standards.
2. In 1998-99 a FCU was established which comprised both a FIU and a Serious Fraud Unit.
3. The FCU has twice been subject to inspection by the International Monetary Fund (IMF) during its review of the Island's regulatory and enforcement regimes. Those inspections broadly found the FCU to be effective and largely compliant with international standards.
4. The FCU is a member of the Egmont Group of financial intelligence units, which effectively set standards for such units across the world. As well as offering a network of FIUs, the Egmont Group also provides a forum for the development of best practice. Membership of the Egmont Group is recommended in the Interpretive Notes of the Financial Action Task Force (FATF) 40 recommendations. The Egmont Group define an FIU as

"A central national agency responsible for receiving (and, as permitted requesting), analysing and disseminating to the competent authorities, disclosures of financial information:

- (i) Concerning suspected proceeds of crime and potential financing of terrorism,*
or,
- (ii) National legislation or regulation*

In order to counter money laundering and terrorism financing".

5. There are four models of FIU:
 - (a) **Judicial model** – sits with the judicial branch of government and works alongside existing law enforcement agencies
 - (b) **Law enforcement model** – sits alongside or directly alongside existing law enforcement agencies and reports directly to the head of law enforcement, **which to all intent and purpose is the current Isle of Man model.**
 - (c) **Administrative model** – a centralised, independent administrative body that receives and disseminates information to existing law enforcement agencies.
 - (d) **Hybrid model**- combines at least two other models.

However nowhere in the world is there an FIU which is similar to the Isle of Man FCU, in that the responsibility for financial intelligence and the investigation of serious fraud and complex fraud are found in the same body.

6. The work of the FIU within the FCU has often been the subject of adverse comment that its operational capacity and performance has been compromised by not having a workforce all of whom are totally dedicated to carrying out the work of the unit i.e. as police constables in the FCU are often required to carry out more high priority duties in the constabulary.
7. The Island is to undergo a MONEYVAL assessment by the World Bank in April/ May 2016. Jersey has already had a similar assessment in January 2015 and as part of their preparations decided to put in place legislation introducing an enabling power to make regulations for the specific purpose of establishing a FIU in legislation. MONEYVAL agreed that it was necessary to ensure that Jersey's FIU was on a statutory footing with its own governance etc. and also as part of their evaluation identified that Jersey needed to provide its FIU with powers to obtain additional information when gathering intelligence. The absence of a) and independent FIU established on a statutory footing and b) the absence of the broader information gathering powers in the FCU will likely be commented on in the Island's MONEYVAL evaluation in 2016.

C. The Proposal: An FIU established on a statutory footing with additional information gathering powers.

There are three key proposals covered in this legislation

- To create an independent FIU as a body corporate.
- To separate the information gathering work concerning the proceeds of crime or financing of terrorism from the criminal investigations unit
- To increase the information gathering powers of the FIU in line with other international jurisdictions.

D. Questions

- 1. Do you believe the FIU unit should be put on a statutory footing with its own governance arrangements?**
- 2. What do you agree or disagree with the benefits of creating the new statutory FIU? If you disagree please express your reasoning for consideration**
- 3. Do you agree or disagree that the proposed provisions of the FIU Bill will provide the necessary powers to the FIU as to information gathering and sharing to carry out its full role in the international arena?**
- 4. Are there any additional powers you feel the proposed separate FIU should have?**

F. CONSULTATION PROCESS

1. Comments are invited on the proposals in the consultation document. The consultation is being conducted by the Cabinet Office.
2. The Cabinet Office undertook, as part of the initial research process, a review of other jurisdictions to consider the most appropriate statutory framework for the Financial Intelligence Unit on the Isle of Man. Comments are welcomed from anybody who may be affected by the proposed legislation.
3. Comments should be submitted in writing, by post or email to the following:

Mrs Yvette Mellor
Cabinet Office
Third Floor
Government Offices
Bucks Road
Douglas
Isle of Man
IM1 3PG
yvette.mellor@gov.im

The consultation closes on **18th September 2015.**

4. When submitting your views please indicate whether you are responding on behalf of an organisation.
5. Additional copies of the consultation document can be obtained from the Cabinet Office (address as above).
6. To ensure that the process is open and honest and in line with the Government's Code of Conduct on Consultation responses can only be accepted if you provide your name with your response.
7. Unless specifically requested otherwise, any responses received may be published either in part or in their entirety. Please mark your response clearly if you wish your response and name to be kept confidential. Confidential responses will be included in any statistical summary and numbers of comments received.
8. A summary of the responses received will be published within 3 months of the closing date for this consultation, and will be made available on the Government website or by contacting the above named officer.
9. The purpose of consultation is to gather information, views and evidence which will allow an informed decision to be made regarding the proposals. As in any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

APPENDIX 1 – CODE OF PRACTICE ON CONSULTATIONS

It is the intention of the Cabinet Office to carry out this consultation in accordance with the Government's Code of Practice on Consultation.

The Code sets out the following six criteria:

- Consult widely throughout the process, allowing a minimum of six weeks for a minimum of one written consultation at least once during the development of the legislation or policy;
- Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses;
- Ensure your consultation is clear, concise and widely accessible;
- Give feedback regarding the responses received and how the consultation process influenced the policy;
- Monitor your Office's effectiveness at consultation; and
- Ensure your consultation follows best practice, including carrying out an Impact Assessment.