



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

Lught-Reill Shirveishyn Argidoil Ellan Vannin

CONSULTATION PAPER CP18-05/T17

**CONSULTATION REGARDING THE
DRAFT BENEFICIAL OWNERSHIP (CIVIL
PENALTIES) REGULATIONS 2018 FOR
CONTRAVENTIONS UNDER THE
BENEFICIAL OWNERSHIP ACT 2017**

Issue Date: 24 September 2018

Closing Date: 2 November 2018

CONSULTATION PAPER – CP18-05/T17

This consultation paper is issued by the Isle of Man Financial Services Authority ('the Authority'), which has responsibility for assessing compliance with the Beneficial Ownership Act 2017 ('the Act') by relevant persons. ***The contents of this paper are of importance to all relevant persons and in particular persons appointed as the nominated officer of legal entities to which the Act applies.***

The purpose of this paper is to obtain information, views and evidence regarding proposed introduction of civil penalties for contraventions of the Act.

The closing date for comments is **2 November 2018**.

Please send comments by email to Policy@iomfsa.im or alternatively by post to the following:

Mr Dan Johnson – Senior Manager, Policy and Authorisations
Isle of Man Financial Services Authority
PO Box 58, Finch Hill House
Bucks Road, Douglas
Isle of Man, IM99 1DT

Confidentiality and Data Protection

The information you send may be published in full or in a summary of responses. All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2018). If you want your response to remain confidential, you should explain why confidentiality is necessary. Your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding.

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If you have a query in relation to how this consultation has been carried out, please contact the Authority's Policy and Authorisations Division by email at Policy@iomfsa.im or by telephone on +44 (0) 1624 646000.

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GLOSSARY

Term	Meaning in this document
Act	The Beneficial Ownership Act 2017
Authority	Isle of Man Financial Services Authority
beneficial owner	Means a natural person who ultimately owns or controls a legal entity to which this Act applies, in whole or in part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in that entity, or who exercises control via other means
Database	The Isle of Man Database of Beneficial Ownership
Department	The Department for Enterprise
FSA2008	Financial Services Act 2008
Nominated officer	Means a person appointed in accordance with section 6 of the Act
Relevant person	means — (a) a legal entity to which the Act applies; (b) a nominated officer; (c) a legal owner; (d) a beneficial owner; (e) an intermediate owner (see section 10 of the Act); and (f) a registrable beneficial owner.

1 EXECUTIVE SUMMARY

1.1 Overview

In 2016, through an Exchange of Notes, the Governments of the Isle of Man and the United Kingdom committed to provide each other with beneficial ownership information in relation to legal persons incorporated in their respective jurisdictions, namely through their beneficial ownership databases. The Isle of Man Database of Beneficial Ownership is established and maintained by the Companies Registry of the Department for Enterprise (the 'Department') and is overseen by the Isle of Man Financial Services Authority (the 'Authority').

The Act entered into force in July 2017 and requires relevant persons to provide, retain or submit required details of the legal entity's beneficial owners. It is a responsibility of the nominated officer to maintain beneficial ownership information and submit registrable beneficial ownership information to the Department for inclusion within the Database and preserve the details of beneficial owners.

1.2 What is the purpose of this Consultation Paper?

The Authority intends to introduce civil penalties for some contraventions of the Act, and invites affected parties to consider the draft Regulations set out in this paper at Appendix A.

The Authority welcomes views in relation to the proposed draft Regulations. Comments should be submitted to the Authority prior to the consultation's closing date.

1.3 Who may be affected by this Consultation Paper?

This paper will be of particular interest to relevant persons under the Act, especially nominated officers.

2 CONSULTATION PROCESS

2.1 The Authority's regulatory objectives

The Authority's regulatory objectives are set out in section 2(2) of the FSA2008 as —

- (a) securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) the maintenance of confidence in the Island's financial services, insurance and pensions industries through effective regulation, thereby supporting the Island's economy and its development as an international financial centre.

The proposals in this consultation paper are relevant to objective (b). The Authority is required to give consideration to certain factors when discharging its functions in accordance with paragraph 3 of Schedule 1 to the FSA2008. The factors that are most relevant to this proposal are as follows:

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 proposed penalties allow the Authority to apply effective, proportionate and dissuasive sanctions to enforce the provisions of the Act.
The need to use resources in an efficient and economic way.	Currently the only sanctions for contraventions of the Act are criminal in nature. The costs associated with criminal sanctions are high for the Authority, the defendant and the courts.
The need to safeguard the reputation of the Island.	<p>The topic of beneficial ownership is attracting increasing scrutiny from international parties. The Act was brought into force to safeguard the Island's reputation as a responsible financial centre.</p> <p>Enforceability of the Act also is integral to the protection of the Island's reputation.</p>

2.2 Responding to the Consultation Paper

The Authority considers open dialogue with stakeholders as essential in developing its proposals and greatly appreciates comments on the proposals in this document. The purpose of this consultation is to gather views and evidence from which an informed decision will be made on the content of the draft legislation. However, please note that your comments may not result in a change to the proposals.

The Authority wishes to encourage submission of views, but requests that comments are not submitted anonymously, as they will not be considered or included in the Consultation Response.

Professional bodies, trade associations and other representative groups are asked to provide a summary of the people and organisations that they represent when responding, as well as the methodology used to gain members' input.

3 APPLICATION OF CIVIL PENALTIES

The Act currently provides for criminal offences where persons contravene certain parts of the Act which apply to them.

The Act also provides for the application of civil penalties (as set out in Regulations) in certain circumstances, and the Authority has determined that its oversight function and the enforcement of adherence to the Act's requirements would be enhanced if civil penalties were applicable in certain circumstances.

The key benefit of civil penalties in this instance is that they can operate to encourage compliance with the Acts provisions. At the same time civil penalties provide a sanction for recalcitrant conduct that does not involve the time and expense of a criminal prosecution, and which will not result in the person subject to them being found guilty of a criminal offence.

Please note that with civil penalties in place, the Authority would still have the option to refer persons for prosecution if that is most appropriate in the circumstances.

There are two contraventions which the Authority proposes to introduce a civil penalty for non-compliance with:

A. Failure to disclose beneficial ownership information on receipt of a notice to do so

Section 15(2) of the Act requires that:

“The nominated officer must disclose, in accordance with the notice, any information the officer holds in respect of the beneficial ownership of the legal entity specified or referred to in the notice”

In lieu of seeking a criminal prosecution the Act provides that the Authority may require a person to pay a civil penalty where that person has contravened the above section.

B. Provision of false or misleading information

Paragraph 8(1)(c) of Schedule 1 to the Act allows for a civil penalty to be applied where a relevant person has:

“furnished the Authority or the Department, as the case may be, with false, inaccurate or misleading information”

The draft Regulations propose to narrow the application of a civil penalty in relation to this contravention, so that a civil penalty would be payable only when a relevant person has **knowingly or recklessly** provided information that is false or misleading **in a material particular**.

Introducing the requirement of “knowingly or recklessly” removes the risk of a person becoming liable to a civil penalty for a genuine mistake or where the person has perhaps been supplied (unknowingly) with false information themselves. Moreover including the caveat that the information is false or misleading as to “a material particular” removes the risk of a person becoming liable to a civil penalty for minor errors.

3.1 Level of penalty and early payment reduction

Given the seriousness of both contraventions, a penalty of £5,000 is considered to be effective, proportionate and dissuasive in both cases.

The draft Regulations also provide for reduction of 30% if the relevant person co-operates with the Authority, remedies the contravention and pays the civil penalty in full within 14 days of notice of it.

4 QUESTIONS

Question 1

Please provide any comments you may have on the proposed introduction of civil penalties as an alternative to criminal sanctions to enforce certain provisions of the Act?

Question 2

Do you consider that the early repayment discount of 30% is appropriate?

5 NEXT STEPS

Following the closure of the consultation period, the Authority will publish a summary of the comments received, which will be accessible through the Authority's website and the Isle of Man Government's Consultation Hub.¹

Subject to views expressed in response to the consultation, it is intended that the proposed legislative and procedural changes will come into effect in early 2019.

¹ <https://consult.gov.im/>

**APPENDIX A – DRAFT BENEFICIAL OWNERSHIP (CIVIL PENALTIES)
REGULATIONS 2018**

Statutory Document No. 20XX/XXXX

C*Beneficial Ownership Act 2017***BENEFICIAL OWNERSHIP (CIVIL PENALTIES)
REGULATIONS 2018***Approved by Tynwald:**Coming into Operation:*

The Isle of Man Financial Services Authority makes the following Regulations under paragraph 8 of Schedule 1 to the Beneficial Ownership Act 2017.

1 Title

These Regulations are the Beneficial Ownership (Civil Penalties) Regulations 2018.

2 Commencement

If approved by Tynwald, these Regulations come into operation on DATE.

3 Interpretation

In this Order –

“**the Act**” means the Beneficial Ownership Act 2017; and

“**relevant person**” has the same meaning as in section 30(2) of the Act.

4 Application

These Regulations apply to relevant persons.

5 Civil penalties

(1) Unless (3) applies, and subject to (2) a relevant person must –

(a) pay a civil penalty of £5,000 for each contravention of section 15(2) of the Act; and

-
- (b) pay a civil penalty of £5,000 for each contravention in which they have knowingly or recklessly furnished the Authority or the Department, as the case may be, with false, inaccurate or misleading information in a material particular.
- (2) The Authority may reduce a civil penalty by 30% if the relevant person has
 -
 - (a) cooperated with the Authority in respect of any proceedings or investigation into the contravention; and
 - (b) has remedied the contravention to the Authority's satisfaction, and paid the civil penalty in full, within 14 days of the written notice at paragraph 8(3) of Schedule 1 to the Act being given.
 - (3) The Authority may provide that no civil penalty is payable if it considers that the circumstances are so exceptional that it would be unfair to require the relevant person to pay the penalty.
 - (4) Any civil penalty due under this regulation must be paid to the Authority within 21 days of the civil penalty being imposed.