



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

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Feedback Statement

Forthcoming Amendments to Primary Legislation

– Financial Services (Amendments) Bill

FS19-01/T20

Issue Date: 20 December 2019

Contents

Glossary.....	2
1. Background	3
2. Summary of Responses.....	3
3. Changes to the Proposals	7
4. Next Steps	7
Appendix A – List of Representative Groups to which this Feedback Statement has been sent	8

Glossary

Authority	Isle of Man Financial Services Authority
CIS	Collective investment schemes
CISA08	Collective Investment Schemes Act 2008
Controlled Function	Any of the functions set out at Appendix 2 of the Authority's Regulatory Guidance - Fitness and Propriety
DBROA15	Designated Businesses (Registration and Oversight) Act 2015
Draft Bill	Financial Services (Amendments) Bill
FSA08	Financial Services Act 2008
IA08	Insurance Act 2008

1. Background

This Feedback Statement is issued by the Isle of Man Financial Services Authority ('the Authority') following Discussion Paper DP19-01/T20¹.

The purpose of the Discussion Paper was to set out the Authority's policy intention to update some of the Island's primary legislation relating to the Authority and its functions. The Discussion Paper also included, at a high-level, the matters that are likely to be included in the Financial Services (Amendments) Bill ('the draft Bill'), and sought initial views from all interested parties in respect of these matters, in order to help the Authority refine its plans and considerations before drafting instructions for the draft Bill are issued.

2. Summary of Responses

The Authority received 11 responses to the Discussion Paper which primarily sought clarification, or looked forward to the detailed consultation, on certain topics.

The Authority will be publishing a detailed consultation on the draft Bill in due course. The main topics on which further information (within that detailed consultation) was requested included:

- details of to whom the proposed civil penalty regime for individuals may apply;
- the possible implications of proposed changes to certain definitions; and
- the effect on regulated entities of having to satisfy the Authority that persons seeking appointment in Controlled Functions are fit and proper.

Some of the questions asked in response to the Discussion Paper can be found below. These questions, and the answers to them, may be useful for the wider audience.

Question	Answer
Can it be made clear in the legislation to which Controlled Functions the civil penalties for individuals may apply?	Yes – we will make this clear. It will be limited to those individuals whose roles are responsible for making the key decisions of the regulated entity.
Is the ability to impose civil penalties on individuals a move towards a framework similar to that of the UK FCA's Senior Manager regime?	The ability to impose civil penalties is not a move towards a regime similar to the FCA's Senior Manager regime.

¹ <https://consult.gov.im/financial-services-authority/financial-services-amendments-bill-discussion-pape/consultation/download>

	<p>The Authority's proposed civil penalty regime for individuals aims to underline that fact that responsibility for a regulated entity's actions is held by those who are responsible for making the key decisions of that entity. The ability to impose civil penalties on individuals seeks to eradicate negative influences within regulated entities without sacrificing the whole.</p>
<p>We are interested in the nature and depth of the powers that might be afforded to the Authority through the potential changes (in 3.1.2 of the Discussion Paper) to the Authority's inspection powers.</p>	<p>The detailed consultation will cover these matters, and will include defining some powers explicitly, rather than implicitly. This will provide clarity for the Authority and also those subject to the powers.</p>
<p>What decision/control criteria and parameters will the Authority apply to an individual seeking appointment to a Controlled Function?</p>	<p>The Regulatory Guidance - Fitness and Propriety covers all criteria and parameters and no change to this is planned.</p>
<p>Which Act will be used as the main or default for the definitions and terms?</p>	<p>No single Act will be used as the default and the best of each will be used. Which Act is used will vary depending on the topic and in certain cases a definition could draw from more than one Act.</p> <p>For example, the definition of 'Associate' varies across the Acts. The proposed amendment will take elements from both FSA08 (the description of associates in relation to an individual) and IA08 (the description of associates in relation to a body corporate) to create a new definition which is made up of the best of each Act, as well as including other persons who may act 'in concert'.</p>

<p>We look forward to further consultation on any proposed change to the Financial Services Ombudsman Scheme.</p>	<p>The Financial Services Ombudsman Scheme is operated by the Office of Fair Trading, but its remit is set out in the FSA08. Any changes that the Office of Fair Trading wishes to make will be included in the detailed consultation paper, and any comments on those changes can be directed (at the time of the consultation) to that body.</p>
<p>What actions are anticipated in relation to those designated businesses who are already registered and do not have a physical presence on the Island?</p>	<p>The number of persons registered under the DBROA15 who have no physical presence on the Island is very small. Such businesses are likely to be permitted to continue their registration either under a 'grandfathering' arrangement or under transitional provisions.</p>
<p>It would be helpful to have a clear understanding from the Authority of the criteria and parameters which would be applied for the Authority to conclude that a designated business should not appoint a specified person.</p>	<p>No change is planned to the fitness and propriety provisions currently applicable to individuals within the DBROA15.</p> <p>The proposed change will address the onerous situation that now exists in that, if the Authority considers an individual is not fit and proper, it must revoke the registration of the entire Designated Business. In some cases this is appropriate (such as where a Designated Business is a sole trader), however in the case of larger firms this is not a proportionate response. The draft Bill proposes to allow the Authority to direct that the individual who is not fit and proper must not be appointed, without having to also revoke the registration of the Designated Business.</p> <p>This is a similar power to that under section 10 of the FSA08 and section 29 of the IA08.</p>

<p>Please provide more details about the powers for modifications and exceptions from the Corporate Governance Codes of Practice under the IA08?</p>	<p>The power to provide for modifications and exceptions is not used lightly, and is in relation to specific entities in specific situations. An example is where a figure contained in a Rule is not appropriate for a particular regulated entity, a modification could change the figure in that Rule (up or down) for that entity only.</p>
<p>Will the proposed changes include amending the threshold in limb (d) of the definition of “controller” from 15% to 10%?</p>	<p>No. If the threshold for controller is set at 15%, it will remain at 15%, and not be reduced to 10%.</p>
<p>We would ask whether guidance will be issued on the meaning of “significant influence” which appears at limb (e) of the definition of “controller” in the amended IA08, if this is now also to apply to those licensed under the FSA08 or registered under the DBROA15.</p>	<p>We do not intend to define “significant influence” because this is a matter of degree on a case by case basis. ‘Significant’ should be assessed according to its ordinary meaning. If a person does not fit into a specific definition of controller, yet is somehow able to control the regulated entity through their influence, that person will be a controller.</p>
<p>We would ask that, if changes are to be made, ‘grandfathering’ or transitional provisions are enacted. There may be instances where a person does not currently fall within such definitions but, once the definitions are changed, will do so through no action of their own.</p>	<p>We agree with applying transitional provisions and ‘grandfathering’ where appropriate. The circumstances in which we propose appropriate transitional provisions will be included within the draft Bill.</p>
<p>We consider that it would be useful for the definition of “chief executive” in the context of the definition of “controller” to be clarified across the Acts.</p>	<p>The definition of “chief executive” will be considered further.</p>
<p>Some CIS Regulations still refer to “long term business fund” despite its removal as a concept, and this should be addressed.</p>	<p>This is noted. The draft Bill will not rectify this situation because the relevant CIS Regulations are secondary legislation. However, changes to the secondary legislation will be addressed in due course.</p>

Can provisions addressing when a person is treated as carrying on business “in or from the Island” be harmonised across the IA08, FSA08 and DBROA15.	The issue of “in or from the Island” will be considered further.

3. Changes to the Proposals

There are no significant changes to the proposals at this stage.

4. Next Steps

The Authority will now take forward work to produce a draft Bill, which will be the subject of a Consultation Paper in due course.

In case of any query, please contact:

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Appendix A – List of Representative Groups to which this Feedback Statement has been sent

- Alliance of Isle of Man Compliance Professionals
- Association of Chartered Certificated Accountants (as oversight body)
- Association of Corporate Service Providers
- Chartered Institute for Securities and Investment
- Chartered Insurance Institute
- Finance Isle of Man
- Financial Planners & Insurance Brokers Association
- Institute of Certified Bookkeepers (as oversight body)
- Institute of Chartered Accountants In England and Wales (as oversight body)
- Institute of Directors
- Institute of Financial Accountants (as oversight body)
- International Association of Bookkeepers (as oversight body)
- Isle of Man Wealth & Funds Association
- Isle of Man Association of Chartered Certified Accountants
- Isle of Man Association of Pension Scheme Providers
- Isle of Man Bankers Association
- Isle of Man Captives Association
- Isle of Man Chamber of Commerce
- Isle of Man Insurance Institute
- Isle of Man Law Society (as oversight body)
- Isle of Man Society of Chartered Accountants
- London Institute of Banking and Finance
- Manx Actuarial Society
- Manx Insurance Association
- Society of Trust and Estate Practitioners