

## **Policy Framework for considering applications to establish Common Investment Funds or Common Deposit Funds**

This policy arises from the new statutory framework made by the Charities Act 2006. It also recognises the investment climate in which charities are operating.

Under section 24 of the Charities Act 1993, the court or the Commission may by order make and bring into effect schemes (i.e. common investment schemes) for the establishment of common investment funds (CIFs) under trusts which provide-

- (a) for property transferred to the fund by or on behalf of a charity participating in the scheme to be invested under the control of trustees appointed to manage the fund; and
- (b) for the participating charities to be entitled (subject to the provisions of the scheme) to the capital and income of the fund in shares determined by reference to the amount or value of the property transferred to it by or on behalf of each of them and to the value of the fund at the time of the transfers.

Similar provisions relate to the establishment of Common Deposit Funds (CDFs) under section 25 of the 1993 Act. Subsequent reference to CIFs in this document includes, where appropriate, a reference to CDFs.

The Charity Commission is a statutory corporation and can only do what it is authorised to do, either explicitly or implicitly, by statute. The Commission's specific statutory objectives, statutory functions and statutory duties set parameters and define its role in creating common investment funds.

### **The Commission's Statutory Objectives**

In exercising its powers under sections 24 and 25, the Commission must so far as is reasonably practicable act in a way which is compatible with its objectives and which it considers most appropriate for the purpose of meeting those objectives. The relevant statutory objectives of the Charity Commission in establishing a CIF are as follows:

1. the public confidence objective  
i.e. "to increase public trust and confidence in charities"

A CIF is deemed by law to be a charity. Clearly, the existence of serious regulatory concerns about a CIF may have an impact on public trust and confidence in charities. With many widely differing charities investing in CIFs, the Commission needs to be satisfied that the likely operation of a CIF is sufficiently robust not to damage public trust and confidence.

2. the charitable resources objective  
i.e. "to promote the effective use of charitable resources"

CIFs are investment vehicles which permit charities to pool their funds, thus giving them access to a wide range of investments. They are particularly important to the smaller charities as, by themselves, those charities may not be able to achieve the degree of diversification of investments needed to reduce risks. CIFs may also enable smaller charities to reduce the costs of investment through economies of scale.

## **The Commission's Statutory Functions**

The relevant statutory general functions are as follows:

“encouraging and facilitating the better administration of charities”.

The Commission promotes good practice in the administration of CIFs by its use of the model Schemes which are regularly reviewed and amended to take into effect the best practices in the financial sector and developments in the Financial Services Authority's (FSA) guidance on collective investment schemes (COLL) for non-UCITS<sup>1</sup> retail schemes that appear to be relevant and appropriate to the regulation of CIFs and the specific circumstances of CIFs. The Commission must be satisfied that any amendment of the model Scheme or departure from it is in the interests of the charity sector.

## **The Commission's Statutory Duties**

The relevant statutory general duties are as follows:

- In performing its functions, the Commission must have regard to the need to use its resources in the most efficient, effective and economic way. (section 1D(2)3. of CA 1993)
- In performing its functions, the Commission must, so far as relevant, have regard to the principles of best regulatory practice (including the principles under which regulatory activities should be proportionate, accountable, consistent, transparent and targeted only at cases in which action is needed). (section 1D(2)4. of CA93)
- In performing its functions, the Commission must, in appropriate cases, have regard to the desirability of facilitating innovation by or on behalf of charities. (section 1D(2)5. of CA93) In an investment context the Commission will only facilitate innovation where it is satisfied that it is in the interests of the charitable sector to do so.

## **Use of the Statutory Power**

In the light of the above, the Commission's primary consideration in deciding whether to create a proposed CIF is the interests of subscribing and potentially subscribing charities. The Commission considers that the promoters / fund managers have to satisfy the Commission that a proposed CIF is in the interests of those charities. The Commission will have regard to the following factors in deciding whether a proposed CIF is in the interests of those charities:

(i) *Whether the proposed CIF is in the interests of the charitable sector generally*

Relevant factors include the following:

- The existing scope for choice and diversification by charities both within CIFs and the financial sector generally;
- Where the proposed CIF is different from all existing CIFs, the reasons that it is in the interests of charities to have access to such a product;

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<sup>1</sup> Undertakings for the Collective Investment of Transferable Securities

- Whether the establishment of the proposed financial product as a CIF offers to charities an advantage over its establishment in another form;
- The extent to which creation of the proposed CIF assists charities by providing choice and encouraging competition.

(ii) *The financial viability at creation of the proposed CIF--:*

Relevant factors include the following:

- Details of the amount required at the time of creation for the proposed CIF to be viable;
- Details of charities that will be willing and able to provide the initial investment;
- An indication of the amount which will be invested which is not currently held within an existing CIF or an authorised investment fund. What is reasonable here is likely to vary depending on the investment class in which the proposed CIF intends to invest.

(iii) *The appropriateness of the proposed CIF as a charity and an investment vehicle specifically for charities*

Relevant factors include the following:

- The risk profile of the proposed CIF must be appropriate for charities.
- Where the investment strategy of the proposed CIF would not be permitted for an authorised investment fund, the Commission will not create the proposed CIF, unless there are exceptional circumstances justifying the approach as being to the advantage of the charity sector.
- Where a financial product or a collective investment scheme is not permitted by the FSA, that product or scheme in the form of a CIF is likely to be refused by the Commission unless there is compelling evidence that it is in the interests of the charity sector.
- Where a financial product or a collective investment scheme is permitted by the FSA, the Commission may still refuse to create a CIF providing such a scheme unless the promoters / fund managers satisfy the Commission that the product or scheme is suitable or appropriate for investment by the charity sector.

N.B. The fact that a fund manager finds it convenient for its business purposes to provide a CIF is not a relevant factor;