

DESIGNATED BUSINESSES (REGISTRATION AND OVERSIGHT) BILL 2014

Explanatory Memorandum

1. This Bill is promoted by the Treasury on behalf of the Financial Supervision Commission (“the Commission”). The purpose of the Act resulting from the Bill (“the Act”) is to provide the Commission with powers and duties for the oversight of the adherence of certain businesses and professions with the Island’s anti-money laundering and countering the financing of terrorism legislation (“AML/CFT legislation”).
2. The core aspects of the Act are that it will –
 - a. provide a system obliging affected persons to register with the Commission;
 - b. empower the Commission to assess compliance with AML/CFT legislation by means of on-site visits and the submission of an annual return confirming the registered person’s level of compliance; and
 - c. provide powers of action and enforcement for failure to comply with the obligations imposed by the Act and AML/CFT legislation.

PART 1 – INTRODUCTORY

3. Part 1 of the Bill contains introductory provisions. These are the short title of the Act (*clause 1*) and the commencement provision, which provides for the Act to be brought into operation on a day or days appointed by the Commission (*clause 2*).
4. General definitions for the Act are set out in *clause 3*. This clause also defines the legislation that is included in the concept of AML/CFT legislation and “relevant Act”, providing for these definitions to be amended by subordinate legislation.
5. “Designated businesses” are required to register with the Commission under the Act. This concept is defined in *clause 4* by reference to *Schedule 1*, and can be amended by subordinate legislation.
6. *Clause 5* sets out the functions of the Commission under the Act, namely, to –
 - a. assess compliance with AML/CFT legislation by designated businesses; and
 - b. investigate potential breaches of that legislation that may give rise to criminal liability.
7. The Commission may delegate certain functions under the Act to a person it considers appropriate. *Clause 6* provides for this and provides for how such delegations operate. By virtue of the definition of “functions” in section 3 of the

Interpretation Act 1976, the concept of “functions” includes “powers” and “duties”.

PART 2 – REGISTRATION

8. It is an offence for a person to carry on a designated business unless the person is registered, acts in accordance with the person’s registration and complies with AML/CFT legislation (*clause 7*). This provision defines when a person is treated as carrying on a designated business, both in and from the Island.
9. *Clauses 8 to 12* provide for the system of registration for designated businesses. Registration remains effective until a person is de-registered or the person’s registration is revoked. *Clause 8* concerns applications for registration and *clause 9* concerns the grant or refusal of registration. *Clause 10* empowers the Commission to impose conditions on a person’s registration.
10. The Commission can revoke a person’s registration (*clause 11*) if the person ceases to be a fit and proper person, provides false, misleading or inaccurate information to the Commission or fails to do certain things. A person can be deregistered by the Commission (*clause 12*) if the person requests or if the Commission considers that the person’s registration is no longer required.

PART 3 – OVERSIGHT

Division 1 – Returns, inspections and investigation

11. Under Division 1, registered persons are obliged to submit an annual return and fee for each year of registration (*clause 13*).
12. The Commission is empowered under *clause 14* to carry out inspections and investigations to assess compliance with AML/CFT legislation by entering and accessing premises and inspecting, and taking possession of material on premises.
13. There are two processes by which the Commission can gather information that the Commission requires for the performance of its functions under the Act.
14. Firstly, the Commission may request information under *clause 15* and issue a direction under *clause 26* to make such a request enforceable. This power may also be used if the Commission suspects that an unregistered person is carrying on a designated business.
15. Secondly, the Commission may apply (*clause 16*) to a justice of the peace (which, by virtue of the Justices Act 1993 includes justices of the peace appointed by the Governor, along with the Deemsters and the High Bailiff) for authorisation to require a person to –
 - a. attend before the Commission to answer questions; or
 - b. provide documents to the Commission.
16. Powers under *clause 16* are exercisable to enable the assessment of compliance with AML/CFT legislation. A person who fails to comply with a requirement is guilty of an offence.

17. Search warrants may be issued under *clause 17* by a Judge where issuing or enforcing an authorisation under *clause 16* is not possible, is not practicable or might prejudice a relevant investigation. Warrants permit entry to premises by reasonable force and the power to seize material on the premises. A constable must accompany a person executing a warrant.
18. *Clause 18* provides for offences in connection with inspections and investigations.

Division 2 – Information

19. Registered persons are required to keep information held by the Commission in relation to registration up-to-date (*clause 19*). A person commits an offence if the person fails to comply with this obligation, or provides false or misleading information (*clause 20*).
20. The right to claim legal professional privilege in relation to information is not overridden by an obligation to provide information under this Act (*clause 21*).
21. *Clause 22* protects information about sensitive matters (such as business affairs) that is obtained under the Act. Such information (“restricted information”) may only be disclosed with consent or for a reason specified in *Schedule 2* to the Act, which relate to investigations and the performance of functions by specified entities.
22. Auditors carrying out functions under this Act or otherwise are obliged by *clause 23* to report prescribed matters to the Commission.
23. The Commission is obliged to keep and publish a register of information about registered persons by *clause 24*. The Commission may continue to include information about a formerly registered person for up to one year after the person ceases to be registered.

Division 3 – Action and enforcement

24. Under *clause 25* the Commission is empowered to make reports of findings resulting from onsite inspections and to require action to ensure compliance with AML/CFT legislation. A failure to comply may result in the Commission issuing a direction under *clause 26*.
25. *Clause 26* empowers the Commission to issue directions to persons to take action, to suspend or discontinue business or to have a report prepared for the Commission by an appropriately qualified person.
26. The Commission is also empowered (*clause 27*) to issue public statements about –
 - a. directions given under *clause 26*;
 - b. a person contravening requirements of this Act or AML/CFT legislation;
or
 - c. a person carrying on a designated business if it is in the public interest to issue the statement.

27. The Commission has obligations to notify affected persons before issuing the notice. *Clause 27(4)* contains the requirements as to the form of the notice. At least one month's notice must be given (*clause 28*). *Clause 28(2)* sets out the circumstances in which this period can be shorter. The statement may not be issued if an appeal to the Financial Services Tribunal determines that the statement not be issued before a specified date or event.
28. In order to prevent contraventions of this Act or AML/CFT legislation, the Commission may apply to the High Court for injunctions and remedial orders (*clause 29*).
29. Civil penalties (*clause 30*) can be imposed by notice by the Commission for carrying on a designated business without registration or failing to comply with certain obligations under the Act. A civil penalty may not be imposed if the person's registration is revoked or if criminal proceedings are commenced. The Commission can, by order, prescribe other circumstances in which a civil penalty can be imposed instead of the institution of criminal proceedings (*clause 30(4)*).

PART 4 – SUPPLEMENTARY

30. *Clause 31* empowers the Commission to publish information and advice about its functions and other relevant matters.
31. *Clause 32* empowers the Commission to issue and publish guidance for the purpose of establishing sound principles for compliance by registered persons with this Act or AML/CFT legislation. Compliance with the guidance is not compulsory, however the guidance is admissible as evidence in proceedings to determine whether a person's conduct contravenes this Act.
32. *Clause 33* provides for review of decisions on the merits by the Financial Services Tribunal (established under the Financial Services Act 2008) against the Commission's decisions under the Act. A decision of the Tribunal may be appealed on a question of law to the High Court.
33. If a body corporate is found guilty of an offence under this Act, in certain circumstances (provided for by *clause 34*), an officer of the body corporate can also be found guilty of that offence.
34. The Commission is empowered to make orders to prescribe matters throughout the Act. *Clause 35* provides for the formal requirements (including consultation) for the making of such orders.
35. *Clause 36* provides for a transitional period to permit existing designated business to register before being prosecutable for an offence under *clause 7*.
36. *Clause 37* gives effect to *Schedule 3*, which contains consequential amendments. The consequential amendments will be repealed after their provisions have taken effect.

Schedule 1

37. *Schedule 1* defines “designated businesses” for the purposes of *clause 4* of the Act and contains exemptions from the need to register under the Act.

Schedule 2

38. *Schedule 2* specifies the reasons for which disclosure of restricted information (as defined in *clause 22(3)*) is permitted for the purposes of *clause 22*.

Schedule 3

39. *Schedule 3* makes consequential amendments to the Financial Services Act 2008, Insurance Act 2008 and to the Proceeds of Crime Act 2008.

FINANCIAL EFFECTS OF THE BILL AND EFFECT ON HUMAN RESOURCES

40. The Act is not expected to increase the expenditure of Government or require any additional public service human resources as the Commission has prioritised the need to administer the regime and conduct the monitoring required under the Act and has diverted resources from other areas to undertake this work. The income of Government will increase by virtue of fees charged to those persons required to register under the Act.

HUMAN RIGHTS COMPLIANCE

41. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



Ellan Vannin

DESIGNATED BUSINESSES (REGISTRATION AND OVERSIGHT) BILL 2014

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Ellan Vannin

DESIGNATED BUSINESSES (REGISTRATION AND OVERSIGHT) BILL 2014

1 **A BILL** to require the Financial Supervision Commission to monitor compliance
 2 on the part of certain non-financial businesses and professions with anti-money
 3 laundering and countering the financing of terrorism legislation; to make minor
 4 amendments to other enactments; and for connected purposes.

BE IT ENACTED by the Queen’s Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

5 **PART 1 – INTRODUCTORY**

6 **1 Short title**

7 The short title of this Act is the Designated Businesses (Registration and
 8 Oversight) Act 2014.

9 **2 Commencement**

- 10 (1) This Act (apart from this section and section 1) comes into operation on
 11 such day or days as the Commission, by order, appoints.
- 12 (2) The orders may make such transitional provision as the Commission
 13 thinks fit consequential upon or incidental to the coming into operation
 14 of any provision of this Act.

15 **3 Interpretation**

16 (1) In this Act —

17 “**applicant**” has the meaning given in section 8(1) (application for registration);

18 “**associate**” means —

- 19 (a) in relation to any individual —
 20 (i) the father, mother, spouse, civil partner, son, stepson,
 21 daughter, stepdaughter, brother or sister of the individual;

1 (ii) any body corporate of which that individual is a director;
2 and

3 (iii) a partner or employee of that individual;

4 (b) in relation to a body corporate —

5 (i) any subsidiary of that body corporate; and

6 (ii) any employee of the body corporate and any such
7 subsidiary;

8 “**auditor**” means a person eligible for appointment as auditor of a company
9 under section 14 (qualifications of individual for appointment as auditor)
10 of the *Companies Act 1982*;

11 “**body corporate**” includes a limited liability company constituted under the
12 *Limited Liability Companies Act 1996*;

13 “**chief executive**” means an individual who is employed by a registered person
14 and who either alone or jointly with others is or will be responsible
15 under the immediate authority of the directors for the conduct of the
16 registered person’s business;

17 “**Commission**” means the Financial Supervision Commission;

18 “**conditions**” includes restrictions;

19 “**controller**” means any of the following —

20 (a) a managing director of a body corporate of which the registered
21 person is a subsidiary;

22 (b) a chief executive of a body corporate of which the registered
23 person is a subsidiary;

24 (c) a person in accordance with whose directions or instructions one
25 or more of the directors of a body corporate of which the
26 registered person is a subsidiary are accustomed to act unless the
27 director or directors are accustomed so to act by reason only that
28 they do so on advice given by that person in a professional
29 capacity;

30 (d) a person who either alone or with any associate is entitled to
31 exercise or control the exercise of 15% or more of the voting
32 power at any general meeting of the registered person or of
33 another body corporate of which it is a subsidiary;

34 “**Court**” means the High Court;

35 “**designated business**” has the meaning given in section 4;

36 “**director**” includes any of the following —

37 (a) any person occupying the position of director by whatever name
38 called;

39 (b) any person in accordance with whose directions or instructions
40 one or more of the appointed directors are accustomed to act

- 1 unless the appointed director or directors are accustomed so to act
2 by reason only that they do so on advice given by that person in a
3 professional capacity;
- 4 (c) in relation to a limited liability company constituted under the
5 *Limited Liability Companies Act 1996*, a member, the company's
6 manager and the registered agent;
- 7 (d) in respect of any other body corporate, such persons as occupy a
8 position equivalent to that of director;
- 9 (e) in relation to a foundation within the meaning of the *Foundations*
10 *Act 2011*, a member of the council of the foundation;
- 11 “**documents**” includes information recorded in any form and, in relation to
12 information recorded otherwise than in legible form, references to its
13 production include references to producing a copy of the information in
14 legible form;
- 15 “**formerly registered person**” means a person who was, but is no longer, a
16 registered person;
- 17 “**holding company**” is to be construed in accordance with the definition of
18 “**subsidiary**”;
- 19 “**money laundering reporting officer**” means an individual appointed to
20 exercise the functions given to a person so described in any code issued
21 under AML/CFT legislation;
- 22 “**partnership**” has the same meaning as in the *Partnership Act 1909* and includes
23 similar relationships formed outside the Island;
- 24 “**prescribed**” means prescribed by order;
- 25 “**publish**” means publish in a manner that is likely to bring it to the attention of
26 those affected and other interested parties;
- 27 “**registered person**” means a person registered under section 9 (grant or refusal
28 of registration) and in Part 3 (oversight) includes a formerly registered
29 person in respect of, or in connection with, such transactions, matters or
30 circumstances occurring or in existence when the person was a registered
31 person;
- 32 “**specified person**”, in relation to an applicant or registered person, means —
- 33 (a) a sole practitioner who is a registered person; or
- 34 (b) a person employed or otherwise engaged by a registered person
35 as any of the following in relation to the designated business
36 carried on by that registered person —
- 37 (i) a director;
- 38 (ii) a controller;
- 39 (iii) a money laundering reporting officer;
- 40 (iv) a compliance officer;

1 “**subsidiary**” means a body corporate (whether or not incorporated under the
2 *Companies Acts 1931 to 2004* or the *Companies Act 2006*) that is a
3 subsidiary of another body corporate (whether or not incorporated under
4 those Acts) and in determining whether one body corporate is a
5 subsidiary of another, section 1 (holding and subsidiary companies) of
6 the *Companies Act 1974* applies with the necessary modifications; and

7 “**Tribunal**” means the Financial Services Tribunal established under section 32
8 of the *Financial Services Act 2008*.

9 (2) In this Act “**AML/CFT legislation**” means any of the following
10 enactments —

- 11 (a) the *Anti-Terrorism and Crime Act 2003*;
- 12 (b) Part 3 (money laundering) of the *Proceeds of Crime Act 2008*;
- 13 (c) the *Terrorism (Finance) Act 2009*;
- 14 (d) the Terrorist Asset-Freezing etc. Act 2010 (of Parliament) as
15 applied to the Island;
- 16 (e) any instrument of a legislative character made under one of the
17 Acts mentioned in paragraph (a) to (d).

18 (3) In this Act “**relevant Act**” means any of the following —

- 19 (a) the *Advocates Acts 1976*;
- 20 (b) the *Advocates Act 1995*;
- 21 (c) the *Collective Investment Schemes Act 2008*;
- 22 (d) the *Estate Agents Acts 1975*;
- 23 (e) the *Financial Services Act 2008*;
- 24 (f) the *Insurance Act 2008*;
- 25 (g) the *Legal Practitioners Registration Act 1986*;
- 26 (h) the *Moneylenders Act 1991*;
- 27 (i) the *Online Gambling Regulation Act 2001*;
- 28 (j) the *Retirement Benefits Schemes Act 2000*;
- 29 (k) any other Act that is relevant to the regulation of a designated
30 business;
- 31 (l) any legislation in any other country or territory that is equivalent
32 to any of the above Acts.

33 (4) The Commission may by order amend the lists of enactments in
34 subsections (2) and (3).

35 4 Designated businesses

- 36 (1) Schedule 1 has effect.
- 37 (2) Schedule 1 contains a list of —

- 1 (a) certain Designated Non-Financial Businesses and Professions
2 (“**designated businesses**”); and
- 3 (b) persons who are exempt from this Act or any of the provisions of
4 this Act.
- 5 (3) Schedule 1 may attach conditions to an exemption under subsection
6 (2)(b).
- 7 (4) The Commission, may by order, amend Schedule 1 so as to —
- 8 (a) vary the list of designated businesses;
- 9 (b) add or delete any exemptions; or
- 10 (c) impose, delete or vary conditions of exemption.

11 **5 Functions of Commission**

12 Without limiting its functions under any other enactment, the Commission is
13 responsible for —

- 14 (a) assessing compliance with AML/CFT legislation in relation to any
15 designated businesses; and
- 16 (b) where any breach of that legislation is found, conducting
17 investigations into any potential criminal liability arising from
18 that breach.

19 **6 Delegation of functions of Commission**

- 20 (1) The Commission may authorise any person it considers appropriate to
21 exercise any of its functions under this Act.
- 22 (2) However —
- 23 (a) no power to make orders may be delegated; and
- 24 (b) no authority may be granted except for the purpose of inspecting
25 or investigating the affairs or any aspect of the affairs of the
26 person specified in the authority.
- 27 (3) Where such functions are to be exercised by another person that person
28 must disclose to the Commission any information obtained in the course
29 of exercising those functions.
- 30 (4) A person exercising any functions conferred by this section must, if
31 required to do so by a person in relation to whom a function is being
32 exercised, produce evidence of authority.
- 33 (5) A person is not bound to comply with a requirement imposed by a
34 person exercising powers conferred under subsection (1) unless, if
35 required, such evidence of authority is produced.

PART 2 – REGISTRATION

7 Prohibition on carrying on designated business if not registered

- (1) A person must not carry on, or hold itself out as carrying on, a designated business in or from the Island unless the person –
- (a) is registered under this Act or exempted from being so registered;
 - (b) is acting in accordance with the terms of that registration or any condition on exemption; and
 - (c) complies with AML/CFT legislation.
- (2) A person is treated as carrying on a designated business –
- (a) in the Island if the person –
 - (i) carries on a designated business from a permanent place of business maintained by that person in the Island; or
 - (ii) engages in the Island in one or more of the activities which constitute a designated business; or
 - (b) from the Island if the person is –
 - (i) a limited partnership registered in the Island under Part II (limited partnerships) of the *Partnership Act 1909*;
 - (ii) a company incorporated outside the Island that is registered under the *Foreign Companies Act 2014*;
 - (iii) a limited liability company formed under the *Limited Liability Companies Act 1996*;
 - (iv) a company incorporated in the Island under the *Companies Acts 1931 to 2004*;
 - (v) a company incorporated under the *Companies Act 2006*;
 - (vi) a foundation established under the *Foundations Act 2011*; or
 - (vii) an individual resident in the Island,and carries on a designated business outside the Island.
- (3) Without limiting subsection (1) a person is treated as holding itself out as carrying on, in or from the Island, a designated business if the person (whether inside or outside the Island) –
- (a) by means of any words in the name, title or address of a web site or page or an internet site or page;
 - (b) by means of any words in an email name or address or in the name, title or subject matter of an email; or
 - (c) by means of any words in a domain name,
- expressly or by implication indicates that the person, or another, carries on a designated business in, from or in connection with the Island, either

- 1 on the person's own or another's behalf or as an intermediary for
2 another.
- 3 (4) A person who contravenes this section is guilty of an offence and
4 liable –
- 5 (a) on summary conviction to a fine not exceeding £5,000 or to a term
6 of custody not exceeding 12 months, or to both; or
- 7 (b) on conviction on information to a fine or to a term of custody not
8 exceeding 2 years or to a fine, or to both.

9 8 Application for registration

- 10 (1) A person who intends to carry on a designated business (“**the**
11 **applicant**”) must apply to the Commission to be registered unless
12 exempted from the requirement to register.
- 13 (2) The application must –
- 14 (a) be in such form as the Commission may determine;
- 15 (b) contain or be accompanied by such information as the
16 Commission may reasonably require for determining the
17 application including –
- 18 (i) the applicant's name;
- 19 (ii) a description of the designated business;
- 20 (iii) any address from which the applicant carries on or intends
21 to carry on such business; and
- 22 (iv) details of any person who is a specified person in relation
23 to the applicant; and
- 24 (c) be accompanied by such fee as may be prescribed, which is non-
25 refundable.
- 26 (3) In particular the information required may relate to whether or not the
27 applicant or a specified person in relation to the applicant has been
28 convicted of any of the offences mentioned in section 9(4) (fit and proper
29 person test).
- 30 (4) To assist in determining the application the Commission may require the
31 applicant, or any person who is or is proposed to be a specified person in
32 relation to the applicant, to provide such additional information as the
33 Commission reasonably requires for determining the application,
34 verified in such manner as the Commission may require.
- 35 (5) The applicant must notify the Commission immediately of any alteration
36 or inaccuracy in any information supplied under this section or of any
37 event that may affect the application in a material respect that the
38 applicant becomes aware of prior to being notified of its determination.
- 39 (6) An applicant may withdraw an application under this section by written
40 notice to the Commission at any time before it is determined.

1 **9 Grant or refusal of registration**

- 2 (1) On an application under section 8 (application for registration) the
3 Commission must either register the applicant, with or without attaching
4 conditions to the registration, or refuse the application in accordance
5 with this section and inform the applicant of its decision.
- 6 (2) The registration remains effective until revoked under section 11 or until
7 a person is de-registered under section 12.
- 8 (3) The Commission must refuse to register an applicant if it is not satisfied
9 that the applicant or a specified person in relation to the applicant is a fit
10 and proper person.
- 11 (4) For the purposes of subsection (3), a person may not be a fit and proper
12 person if the person —
- 13 (a) has been convicted of an offence —
- 14 (i) under AML/CFT legislation;
- 15 (ii) under the law of a country or territory outside the Island if
16 the conduct giving rise to the offence would constitute an
17 offence under sub-paragraph (i) if it had occurred in the
18 Island;
- 19 (iii) involving dishonesty (whether under the law of the Island
20 or elsewhere);
- 21 (iv) under a relevant Act; or
- 22 (v) of perjury or conspiracy to pervert the course of justice
23 (whether under the law of the Island or elsewhere);
- 24 (b) is or has been the subject of any action with respect to any breach
25 of a relevant Act or AML/CFT legislation;
- 26 (c) has knowingly or recklessly provided misleading or false
27 information in the application for registration; or
- 28 (d) is otherwise considered by the Commission not to be fit and
29 proper for reasons related to the risk of money laundering or the
30 financing of terrorism.
- 31 (5) The Commission may refuse to register an applicant if the application is
32 not made in accordance with section 8.
- 33 (6) The Commission may publish guidance setting out the criteria that it will
34 normally apply in assessing whether or not to refuse, or attach
35 conditions to, an application.
- 36 (7) If the Commission refuses to register an applicant under this section it
37 must give written reasons for so doing.

1 **10 Conditions of registration**

- 2 (1) The Commission may attach conditions to any grant of registration
3 under this Act and may amend, vary, substitute or revoke any such
4 condition or attach new conditions.
- 5 (2) The Commission must give the registered person notification of, and
6 reasons for, the attaching of any condition under subsection (1) or any
7 change with respect to such a condition.

8 **11 Revocation of registration**

- 9 (1) The Commission may revoke a registration granted under this Act on
10 any of the following grounds —
- 11 (a) that the Commission is not satisfied that the registered person or a
12 specified person in relation to the registered person is a fit and
13 proper person;
- 14 (b) that the registered person, or a person acting on the registered
15 person's behalf, has provided the Commission with any false,
16 misleading or inaccurate information for the purposes of this Act;
- 17 (c) that the registered person has failed to comply with any condition
18 attached under section 10 (conditions of registration);
- 19 (d) that the registered person has failed to comply with AML/CFT
20 legislation;
- 21 (e) that the registered person has failed to comply with a direction
22 issued by the Commission under section 26;
- 23 (f) that the registered person has failed to pay the annual fee
24 required by section 13(1)(b).
- 25 (2) If the Commission revokes a registration under this section it must notify
26 the registered person in writing, giving reasons for its decision.
- 27 (3) As soon as practicable after revoking a registration under this section the
28 Commission must take such steps (if any) as it considers appropriate to
29 notify the public.
- 30 (4) If the registration was revoked on the grounds mentioned in subsection
31 (1)(d), the Commission may refer the matter to the Attorney General for
32 the purpose of obtaining the Attorney General's opinion as to whether
33 there is sufficient evidence to justify proceedings under AML/CFT
34 legislation.

35 **12 De-registration**

- 36 (1) The Commission may de-register a registered person on any of the
37 following grounds —

- 1 (a) that the registered person has notified the Commission under
2 section 19(b) (ceasing to carry on any designated business) and
3 has requested to be de-registered;
- 4 (b) that the Commission is satisfied that the registered person is no
5 longer required to be on the register.
- 6 (2) As soon as practicable after a person is de-registered under this section
7 the Commission must take such steps (if any) as it considers appropriate
8 to notify the public.

9 PART 3 – OVERSIGHT

10 DIVISION 1 – RETURNS, INSPECTIONS AND INVESTIGATION

11 13 Annual returns and fees

- 12 (1) A registered person must, for each year of registration, submit to the
13 Commission –
- 14 (a) an annual return as specified by the Commission; and
15 (b) such annual fee as may be prescribed.
- 16 (2) The annual return must include –
- 17 (a) a declaration as to the extent to which the registered person meets
18 the requirements of AML/CFT legislation; and
19 (b) such other information as the Commission may require.

20 14 On-site inspections and investigations

- 21 (1) The Commission may carry out inspections and investigations at a
22 registered person's premises to assess the extent to which the registered
23 person meets the requirements of this Act, AML/CFT legislation and its
24 own procedures for compliance with them.
- 25 (2) The Commission may inspect the books, accounts and documents and
26 investigate the transactions of a registered person.
- 27 (3) The Commission has every power of entry and access as may be
28 necessary for the purposes of subsection (1) and may take possession of
29 all such books, accounts and documents as, and for so long as, may be
30 necessary for those purposes.
- 31 (4) The Commission may take copies of all books, accounts and documents
32 in its possession for the purposes of an inspection and investigation
33 under this section.
- 34 (5) The rights of entry and access under subsection (3) may be exercised only
35 during reasonable hours.

- 1 (6) The powers provided by this section may be exercised in relation to a
2 person whom the Commission reasonably suspects of carrying on a
3 designated business when not a registered person.

4 **15 Requests for information**

- 5 (1) The Commission may request any person whom it reasonably believes
6 may hold information that the Commission reasonably requires for
7 performance of its functions under this Act to provide that information.
- 8 (2) In particular, the Commission may request information about —
9 (a) the affairs of a customer of a registered person;
10 (b) any body corporate that is or has at any relevant time been —
11 (i) a holding company, subsidiary or related company of the
12 registered person;
13 (ii) a subsidiary of a holding company of the registered
14 person;
15 (iii) a holding company of a subsidiary of the registered
16 person; or
17 (iv) a body corporate in the case of which a shareholder
18 controller of the registered person, either alone or with any
19 associate, is entitled to exercise, or control the exercise of,
20 more than 50% of the voting power at a general meeting or
21 a meeting of the board of directors; and
22 (c) any partnership of which the person is or has at any relevant time
23 been a member.
- 24 (3) If it has made a request of a registered person the Commission may issue
25 a direction under section 26 to that person to secure that effect is given to
26 a request under subsection (1) or (2) and the direction must include a
27 statement of reasons for its issue.
- 28 (4) A statement by a person in response to the direction may not be used in
29 evidence against that person in respect of any criminal proceedings
30 except proceedings alleging contravention of section 22(1) (restrictions
31 on disclosure of information).
- 32 (5) The powers provided by this section may also be exercised in relation to
33 a person who is, on reasonable grounds, suspected by the Commission of
34 carrying on, or having carried on a designated business when not a
35 registered person.

36 **16 Power of Commission to require information**

- 37 (1) If, on an application made by the Commission, a justice of the peace is
38 satisfied that there is good reason to do so for the purpose of
39 investigating the affairs, or any aspect of the affairs, of any person so far

1 as to do so is relevant to assessing compliance with AML/CFT legislation
2 in relation to any designated business that the person is or was carrying
3 on, or appears to be or to have been carrying on, the justice may by
4 written instrument authorise the Commission to exercise the powers
5 under this section, which powers are not otherwise exercisable.

6 (2) The Commission may, by notice in writing, accompanied by a copy of
7 the instrument issued by the justice of the peace under subsection (1),
8 require the person whose affairs are to be investigated or any other
9 person whom it has reason to believe has relevant information, to attend
10 before the Commission at a specified time and place to answer questions
11 or otherwise furnish information with respect to any matter relevant to
12 the investigation.

13 (3) The Commission may, by notice in writing, accompanied by a copy of
14 the instrument issued by the justice of the peace under subsection (1),
15 require any person to produce at a specified time and place any specified
16 documents or copies of documents that appear to the Commission to
17 relate to any matter relevant to the investigation or any information of a
18 specified class that appear to it so to relate.

19 (4) If documents or copies of documents are not produced as required under
20 subsection (3), the Commission may require the person who was
21 required to produce the information or copies to state, to the best of that
22 person's knowledge and belief, where they are.

23 (5) If any documents are produced as required under subsection (3), the
24 Commission may —

25 (a) take possession of all such documents for as long as the
26 Commission considers necessary;

27 (b) take copies or extracts from them; or

28 (c) require the person producing them to provide an explanation of
29 any of them.

30 (6) A statement by a person in response to a requirement imposed under
31 this section may not be used in evidence against that person in respect of
32 any criminal proceedings except proceedings alleging contravention
33 of —

34 (a) section 18(2)(a); or

35 (b) section 22(2) (offence for contravening restriction on disclosure of
36 information).

37 (7) Where a person claims a lien on a document, its production under this
38 section is without prejudice to the lien.

- 1 **17 Search warrants**
- 2 (1) Where, on information on oath laid by the Commission, a judge is
- 3 satisfied, in relation to any documents, that there are reasonable grounds
- 4 for believing —
- 5 (a) that —
- 6 (i) a person has failed to comply with an obligation under
- 7 section 16 (power of Commission to require information)
- 8 to produce them or copies of them;
- 9 (ii) it is not practicable to serve a notice under section 16(3) in
- 10 relation to them; or
- 11 (iii) the service of such a notice in relation to them might
- 12 seriously prejudice the investigation; and
- 13 (b) that they are on premises specified in the information,
- 14 the judge may issue such a warrant as is mentioned in subsection (2).
- 15 (2) That warrant is a warrant authorising any person named in it —
- 16 (a) to enter (using such force as is reasonably necessary for the
- 17 purpose) and search the premises; and
- 18 (b) to take possession of any documents appearing to be documents
- 19 of the description specified in the information, or to take in
- 20 relation to any documents so appearing any other steps which
- 21 may appear to be necessary for preserving them and preventing
- 22 interference with them.
- 23 (3) If, during the course of a search of premises for documents of a
- 24 description specified in the information, other documents are discovered
- 25 that appear to contain evidence in relation to any offence, the person
- 26 named in the warrant may —
- 27 (a) take possession of those documents; or
- 28 (b) take in relation to them any other steps which may appear to be
- 29 necessary for preserving them and preventing interference with
- 30 them.
- 31 (4) A person executing a warrant issued under subsection (1) must be
- 32 accompanied by a constable.

33 **18 Offences in connection with inspections and investigations**

- 34 (1) A person who —
- 35 (a) knows or suspects that —
- 36 (i) an inspection is being or is likely to be carried out under
- 37 section 14 (on-site inspections and investigations);
- 38 (ii) information is being or is likely to be requested under
- 39 section 15 (requests for information); or

(iii) information is being or is likely to be required under section 16 (power of Commission to require information) or 17 (search warrants); and

(b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, information that the person knows or suspects is or would be relevant to such an inspection or investigation or is or would be requested,

is guilty of an offence unless the person proves that the person had no intention of concealing facts disclosed by the information from persons carrying out such an inspection or investigation or requesting such information.

(2) A person who —

(a) without reasonable excuse fails to comply with a requirement imposed on the person under section 16; or

(b) intentionally obstructs a person exercising powers conferred by section 14, or section 17(2) or 17(3),

is guilty of an offence.

(3) A person guilty of an offence under this section is liable —

(a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 12 months, or to both; or

(b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both.

DIVISION 2 – INFORMATION

19 Supply of information

A registered person must notify the Commission within any period specified in an order under section 30 (civil penalties) —

(a) of any change in the information required to be given to the Commission under section 8 (application for registration); or

(b) if that person has ceased to carry on a designated business in respect of which the Commission registered that person.

20 Offences in connection with supply of information

(1) A person who fails to give a notice required under section 19(a) without reasonable excuse is guilty of an offence.

(2) A person who —

(a) furnishes or sends to the Commission for any purpose under this Act information that the person knows to be false or misleading in a material particular;

- 1 (b) recklessly furnishes or sends to the Commission for the purposes
2 of this Act information that is false or misleading in a material
3 particular; or
- 4 (c) in furnishing information to the Commission for the purposes of
5 this Act —
- 6 (i) makes a statement that the person knows to be false or
7 misleading in a material particular; or
- 8 (ii) recklessly makes a statement that is false or misleading in a
9 material particular,
- 10 is guilty of an offence.
- 11 (3) A person who, without reasonable excuse, fails to furnish information
12 that the person is required to furnish to the Commission under this Act is
13 guilty of an offence.
- 14 (4) A person guilty of an offence under this section is liable —
- 15 (a) on summary conviction to a fine not exceeding £5,000 or to
16 custody for a term not exceeding 12 months, or to both; or
- 17 (b) on conviction on information to a fine or to custody for a term not
18 exceeding 2 years, or to both.

19 **21 Legal privilege**

20 A person is not under an obligation under this Act to disclose any information
21 subject to legal privilege within the meaning of section 13 (meaning of “items
22 subject to legal privilege”) of the *Police Powers and Procedures Act 1998*.

23 **22 Restrictions on disclosure of information**

- 24 (1) If restricted information relating to the business or other affairs of any
25 person has been obtained it must not be disclosed by the primary
26 recipient, or by any person obtaining the information directly or
27 indirectly from the primary recipient unless —
- 28 (a) the person to whom it relates has consented; or
- 29 (b) the disclosure falls within the exceptions set out in Schedule 2.
- 30 (2) A person who contravenes subsection (1) is guilty of an offence and
31 liable on summary conviction to a fine not exceeding £5,000 or to custody
32 for a term not exceeding 12 months, or to both.
- 33 (3) In this section —
- 34 “restricted information” means information obtained by the primary recipient
35 for the purposes of, or in the discharge of the primary recipient's
36 functions by or under, this Act (whether or not by virtue of any
37 requirement to supply it made by or under this Act), other than
38 information made available to the public by virtue of its being disclosed

1 in any circumstances in which, or for any purpose for which, disclosure
2 is not precluded by this section; and

3 “primary recipient” means —

- 4 (a) the Treasury and its members;
- 5 (b) the Commission and its members; and
- 6 (c) any officer or employee of any such person.

7 **23 Auditors to report prescribed matters to Commission**

- 8 (1) If an auditor knows or becomes aware of prescribed matters while
9 discharging any of the auditor’s functions (whether under this Act or
10 otherwise) in relation to a registered person the auditor must report
11 those matters to the Commission.
- 12 (2) The Commission may, after consultation with the Treasury, the
13 Department of Home Affairs and such other body or bodies as appear to
14 the Commission to represent the interests of auditors in the Island,
15 prescribe the matters mentioned in subsection (1).

16 **24 Register and publication of information about registered persons**

- 17 (1) The Commission must keep a register of registered persons containing —
 - 18 (a) the name of each such person;
 - 19 (b) the description of the designated business carried on by such
20 person (whether currently or in the past); and
 - 21 (c) the principal address in the Island from which the person carries
22 on, or used to carry on, the business.
- 23 (2) However, the register may contain any information in respect of a
24 formerly registered person only for up to one year after that person
25 ceased to be registered.
- 26 (3) The Commission must publish the information contained in the register
27 on the Commission’s website.
- 28 (4) The Commission may offer for sale copies of information published
29 under this section at a reasonable charge.

30 DIVISION 3 – ACTION AND ENFORCEMENT

31 **25 Report and action to be taken**

- 32 (1) The Commission may make a report of its findings resulting from an on-
33 site inspection under section 14(1) (on-site inspections and
34 investigations).
- 35 (2) The report may specify —

- 1 (a) any failure to meet the requirements of this Act, AML/CFT
2 legislation or its own procedures;
- 3 (b) any action the registered person must take to rectify the failure;
4 and
- 5 (c) the timescale for the taking of such action.
- 6 (3) If the registered person fails to take the action to the satisfaction of the
7 Commission within that timescale the Commission may issue a direction
8 under section 26 directing the registered person to take the action within
9 a further timescale.

10 26 Directions

- 11 (1) The Commission may issue written directions under this section to a
12 registered person.
- 13 (2) A direction may —
- 14 (a) require the person to whom it is directed to take such action in
15 respect of a designated business as is specified in the direction;
- 16 (b) impose such requirements as are necessary to secure that any
17 designated business carried on by that person is in whole or in
18 part suspended or discontinued; or
- 19 (c) require the person concerned to provide to the Commission a
20 report on any other matter that the Commission considers
21 appropriate, in such form as specified in the direction, by a person
22 with relevant professional skills nominated by, or considered
23 acceptable to, the Commission,
- 24 and must include a statement of reasons for its issue.
- 25 (3) The Commission may revoke or vary a direction under this section and
26 the requirement in subsection (2) to give a statement of reasons applies to
27 a variation as it applies to the issue of a direction.

28 27 Public statements

- 29 (1) The Commission may issue public statements relating to any of the
30 following —
- 31 (a) with respect to, or setting out, any direction that it has given
32 under section 26;
- 33 (b) concerning a person if that person appears to the Commission to
34 have committed a contravention of any of the following —
- 35 (i) section 7 (prohibition on carrying on designated business if
36 not registered);
- 37 (ii) a condition attached under section 10 (conditions of
38 registration);
- 39 (iii) a direction given under section 26;

- 1 (iv) AML/CFT legislation;
- 2 (c) concerning a person that the Commission considers is carrying on
3 a designated business, whether in the Island or elsewhere, and it
4 appears to the Commission to be desirable to issue the statement
5 in the best interests of the public.
- 6 (2) If a public statement will identify any registered person, the Commission
7 must serve notice on the person before issuing the public statement.
- 8 (3) If a public statement will identify any person who is not a registered
9 person and at any time before the Commission issues the public
10 statement it is reasonably practicable for it to serve notice on the person,
11 the Commission must do so.
- 12 (4) A notice under subsection (2) or (3) must —
- 13 (a) give the reasons for issuing the statement;
- 14 (b) give the proposed or actual date of issue of the statement;
- 15 (c) contain a copy of the statement;
- 16 (d) give particulars of the right of appeal under section 33 (appeals) in
17 respect of the statement; and
- 18 (e) if the statement is issued, in accordance with a decision under
19 section 28(2)(b) (notice period for public statements), before the
20 day specified in section 28(1) in relation to the statement, give the
21 reasons for issuing it before that day.
- 22 (5) Subsection (4) does not require the Commission —
- 23 (a) to specify any reason that would in the Commission's opinion
24 involve the disclosure of confidential information the disclosure
25 of which would be prejudicial to a third party; or
- 26 (b) to specify the same reasons, or reasons in the same manner, in the
27 case of notices to different persons about the same matter.

28 **Notice period for public statements**

- 29 (1) If service is required under section 27(2) or 27(3) in relation to a public
30 statement, the Commission must not issue the public statement earlier
31 than one month after the date of that service.
- 32 (2) However, the Commission may issue the statement on or after an earlier
33 date if —
- 34 (a) each of the persons identified in the relevant public statement
35 agrees to that date; or
- 36 (b) the Commission decides on reasonable grounds that the interest
37 of the public in the issue of the relevant public statement on that
38 earlier date outweighs any detriment to the persons identified in
39 the statement as a result of such issue.

- 1 (3) In making a decision under subsection (2)(b), the Commission is not
2 prevented from choosing as the date of issue of a public statement the
3 date of service (if any) of notice of the statement.
- 4 (4) Despite this section, if an appeal is made to the Tribunal and the Tribunal
5 orders that the statement not be issued before any specified date or
6 event, the Commission must not issue the statement before the date or
7 event so specified.

8 **29 Injunctions and remedial orders**

- 9 (1) If, on the application of the Commission, the Court is satisfied that it is
10 likely that a person will contravene (or continue or repeat a
11 contravention of) —
- 12 (a) section 7 (prohibition on carrying on a designated business if not
13 registered);
- 14 (b) a condition of registration attached under section 10 (conditions of
15 registration);
- 16 (c) section 19 (supply of information);
- 17 (d) a direction given under section 26; or
- 18 (e) AML/CFT legislation,
- 19 the Court may if it thinks fit issue an injunction restraining that person
20 from committing (or, as the case may be, continuing or repeating) the
21 contravention.
- 22 (2) If, on the application of the Commission, the Court is satisfied that there
23 are steps that could be taken to remedy the contravention, the Court may
24 make an order requiring that person, or any other person who appears to
25 the Court to have been knowingly concerned, to take such steps as the
26 Court may direct to remedy the contravention.

27 **30 Civil penalties**

- 28 (1) If the Commission is satisfied that a person is in breach of section 7
29 (prohibition on carrying on a designated business if not registered) or
30 has failed to —
- 31 (a) comply with a condition attached under section 10 (conditions of
32 registration);
- 33 (b) submit the annual return required under section 13(1)(a) (annual
34 returns and fees) or any information to be submitted with the
35 return, as required by the Commission;
- 36 (c) pay the annual fee required by section 13(1)(b);
- 37 (d) give a notice required under section 19(b) (supply of information)
38 without reasonable excuse; or
- 39 (e) comply with a direction issued under section 26,

1 it may require the registered person to pay a penalty of such amount as
2 may be prescribed in respect of the contravention.

- 3 (2) However, no penalty may be required under this section if –
- 4 (a) the Commission revokes or intends to revoke the registered
5 person's registration under section 11(1) (revocation of
6 registration); or
- 7 (b) criminal proceedings have been commenced in respect of the
8 contravention.
- 9 (3) If the Commission intends to impose a penalty, it must give notice in
10 writing to the registered person concerned giving notice of the decision,
11 the amount of the penalty it proposes to impose and the reasons for the
12 decision.
- 13 (4) The Commission may prescribe additional circumstances in which a civil
14 penalty may be imposed in lieu of criminal proceedings under this Act.
- 15 (5) An order under this section may make further provision about civil
16 penalties.
- 17 (6) Any amount received as a penalty is paid into and forms part of the
18 General Revenue of the Island.

19 PART 4 – SUPPLEMENTARY

20 31 Information and advice

- 21 (1) The Commission may provide such information and advice as it
22 considers appropriate with respect to –
- 23 (a) the functions of the Commission under this Act; and
24 (b) any other matters about which it appears to the Commission to be
25 desirable to give information or advice.
- 26 (2) The Commission may –
- 27 (a) publish the information and advice; and
28 (b) offer copies of it for sale at a reasonable price.

29 32 Guidance

- 30 (1) The Commission may –
- 31 (a) prepare and issue guidance for the purpose of establishing sound
32 principles for compliance by registered persons with this Act and
33 AML/CFT legislation;
- 34 (b) revise any such guidance by revoking, varying, amending or
35 adding to its provisions; and

- 1 (c) indicate in any such guidance if and to what extent it is or is not to
2 apply to any designated business carried on by registered
3 persons.
- 4 (2) The Commission must cause any guidance issued under this section to
5 be published, and may make such arrangements as it thinks fit for such
6 distribution, including causing copies of the guidance to be put on sale to
7 the public at a reasonable price.
- 8 (3) The Commission may issue different guidance in respect of different
9 types of designated businesses.
- 10 (4) Subject to subsections (5) and (6), a failure on the part of any person to
11 follow any aspect of the guidance issued under this section does not of
12 itself render any person liable to proceedings of any kind or invalidate
13 any transaction, but such guidance is admissible as evidence in any
14 proceedings.
- 15 (5) In determining whether a person's conduct amounts to a contravention
16 of any requirement of this Act, non-compliance by the person with any
17 aspect of the guidance or any relevant provision of a code issued under
18 AML/CFT legislation, may be relied on as tending to establish liability.
- 19 (6) In any proceedings under this Act or otherwise, any guidance issued
20 under this section is admissible in evidence if it appears to the court or
21 tribunal conducting the proceedings to be relevant to any question
22 arising in the proceedings, and must be taken into account in
23 determining any such question.
- 24 (7) A copy, certified in writing on behalf of the Commission to be an
25 accurate copy of the guidance or any aspect of it, is admissible in
26 evidence in all legal proceedings as the original and as evidence of any
27 fact stated in it of which direct oral evidence would be admissible.

28 **33 Appeals**

- 29 (1) A person aggrieved may appeal, in accordance with rules made under
30 section 8 (rules of procedure) of the *Tribunals Act 2006*, to the Tribunal on
31 the grounds that any of the following decisions of the Commission was
32 unreasonable having regard to all the circumstances of the case —
- 33 (a) refusal to register the person under section 9 (grant or refusal of
34 registration);
- 35 (b) attaching conditions to the grant of registration to the person or
36 amending, varying, substituting or revoking any condition so
37 attached under section 10 (conditions of registration);
- 38 (c) revocation of the person's registration under section 11(1)
39 (revocation of registration);
- 40 (d) de-registration of the person's registration under section 12(1)(b);
- 41 (e) issue of a direction to the person under section 26;

- 1 (f) refusal to revoke or vary a direction to the person under section
2 26(3);
- 3 (g) issue of a public statement to the person under section 27 (public
4 statements) (which appeal may be made before or after the issuing
5 of the statement); or
- 6 (h) imposition of a civil penalty on the person under section 30 (civil
7 penalties).
- 8 (2) On the determination of an appeal under this section the Tribunal must
9 confirm, vary or revoke the decision in question.
- 10 (3) Any variation or revocation of a decision does not affect the previous
11 operation of that decision or anything duly done or suffered under it.
- 12 (4) Without limiting subsection (3), a decision of the Tribunal on an appeal
13 under this section is binding on the Commission and the applicant.
- 14 (5) An appeal lies to the Court, in accordance with rules of court, on a
15 question of law from any decision of the Tribunal.

16 **34 Liability of officers of bodies corporate**

- 17 (1) Subsections (2) to (4) apply where an offence under this Act is committed
18 by a body corporate and it is proved that the offence —
- 19 (a) was committed with the consent or connivance of an officer of the
20 body; or
- 21 (b) was attributable to neglect on the part of an officer of the body.
- 22 (2) The officer, as well as the body, is guilty of the offence.
- 23 (3) If an individual is convicted of an offence under this Act by virtue of
24 subsection (2), that individual is liable to the penalty provided for the
25 offence.
- 26 (4) In this section “officer” has the meaning assigned by section 1(2) of the
27 *Company Officers (Disqualification) Act 2009*.

28 **35 Orders**

- 29 (1) The Commission may by order prescribe any matter that is to be, or may
30 be, prescribed under this Act.
- 31 (2) An order under this Act may contain such transitional, consequential,
32 incidental or supplementary provisions as appear to the Commission to
33 be necessary or expedient for the purposes of the order.
- 34 (3) Orders under this Act (other than an order under section 2) must be laid
35 before Tynwald as soon as practicable after they are made, and if
36 Tynwald at the sitting at which the regulations are laid or at the next
37 following sitting fails to approve them, they cease to have effect.

- 1 (4) Before making an order under this Act (other than an order under
2 section 23 (auditors to report prescribed matters to Commission), the
3 Commission must consult —
4 (a) the Treasury;
5 (b) the Department of Home Affairs; and
6 (c) any other body or person that the Commission considers
7 appropriate.

8 **36 Transitional provisions**

- 9 (1) Despite anything in this Act, no offence is committed under section 7 by
10 a person who carried on a designated business immediately before the
11 coming into operation of that section.
12 (2) Subsection (1) applies only —
13 (a) for 6 months following the coming into operation of section 7; or
14 (b) if the person applies for registration under section 8 (application
15 for registration) within that 6 month period, until the application
16 is finally determined (including as a result of an appeal under
17 section 33 (appeals)) or is withdrawn.

18 **37 Minor and consequential amendments**

- 19 (1) Schedule 3 has effect.
20 (2) This section and Schedule 3 are automatically repealed —
21 (a) on the day after the promulgation of this Act; or
22 (b) if all of this section and Schedule 3 are not in operation on its
23 promulgation, on the day after the last provision of this section or
24 that Schedule is brought into operation.
25 (3) However, the repeal does not affect the continuing operation of any
26 amendments to enactments made by this Act.

SCHEDULE 1

[Section 4]

DESIGNATED BUSINESSES AND EXEMPTIONS**PART 1 - DESIGNATED BUSINESSES**

- (1) The following are designated businesses for the purposes of this Act —
- (a) lawyers;
 - (b) the business of audit services in respect of a body corporate;
 - (c) the business of an external accountant;
 - (d) the business of lending including, but not limited to, consumer credit, mortgage credit factoring and the finance of commercial transactions;
 - (e) the business of financial leasing arrangements in respect of products other than consumer products;
 - (f) the business of providing financial guarantees and commitments;
 - (g) the business of an estate agent within the meaning of the *Estate Agents Act 1975*;
 - (h) the business of dealing in goods or services of any description (including dealing as an auctioneer) whenever a transaction or series of linked transactions involves accepting a total cash payment (in any currency) that is equivalent to at least €15,000.
- (2) However, a business mentioned in paragraph (1)(d), (e) and (f) is not a designated business if the only lending, leasing or provision of guarantees or commitments (as the case may be) is made in the circumstances set out in paragraph 1(2) of the relevant Schedule.
- (3) In this Schedule —
- “external accountant” has the same meaning as in paragraph 1(1)(f) of the relevant Schedule;
- “lawyer” means a person referred to in paragraph 1(1)(g) of the relevant Schedule when undertaking an activity referred to in paragraph 1(1)(h) of that Schedule; and
- “relevant Schedule” means Schedule 4 (regulated sector and supervisory authorities) to the *Proceeds of Crime Act 2008*.

PART 2 – PERSONS EXEMPT FROM THIS ACT

- (1) This Act does not apply to a person whilst acting in his or her capacity as any of the following —

- (a) a person licensed under the *Financial Services Act 2008*;
- (b) a person which is regarded as constituting a collective investment scheme established under, and conducted in compliance with, the *Collective Investment Schemes Act 2008*;
- (c) an authorised insurer within the meaning of the *Insurance Act 2008*;
- (d) a foreign insurer to whom the Supervisor has issued a permit under section 22 of the *Insurance Act 2008*;
- (e) a registered insurance manager or registered insurance intermediary under Part VI of the *Insurance Act 2008*;
- (f) a person registered as an authorised or recognised scheme under the *Retirement Benefits Schemes Act 2000*;
- (g) a trustee or retirement benefits scheme administrator of a retirement benefit scheme registered under the *Retirement Benefits Scheme Act 2000*;
- (h) the holder of a certificate granted in respect of specific premises under the *Gaming (Amendment) Act 1984*;
- (i) the holder of a licence granted under the *Gaming (Amendment) Act 1984*;
- (j) the holder of a licence granted under the *Online Gambling Regulation Act 2001*;
- (k) the holder of any of the following —
 - (i) a bookmaker's permit granted under section 14 of the *Gaming, Betting and Lotteries Act 1988*;
 - (ii) a betting office licence granted under section 15 of the *Gaming, Betting and Lotteries Act 1988*;
 - (iii) a racecourse licence granted under section 22 of the *Gaming, Betting and Lotteries Act 1988*;
 - (iv) a licence to operate a totalisator on an approved racecourse granted under section 24 of the *Gaming, Betting and Lotteries Act 1988*;
- (l) the holder of a casino licence granted under the *Casino Act 1986*.

SCHEDULE 2

[Section 22(1)(b)]

EXCEPTIONS TO PROHIBITION ON DISCLOSURE

1 Specific exceptions

- (1) Section 22 does not preclude the disclosure of information —
- (a) to the Attorney General with a view to the institution of or otherwise for the purposes of criminal proceedings whether in the Island or elsewhere;
 - (b) to the Attorney General for use as evidence in criminal proceedings whether in the Island or elsewhere and whether or not the information is comprised in documents;
 - (c) to any constable for the purpose of enabling or assisting the Isle of Man Constabulary to discharge its functions;
 - (d) with a view to the institution of or otherwise for the purposes of any civil proceedings arising under or by virtue of this Act or any relevant Act;
 - (e) for the purpose of enabling or assisting the Treasury to discharge its functions under this Act or under the enactments relating to companies, insurance companies or insolvency or for the purpose of enabling or assisting any inspector appointed by the Court under the enactments relating to companies to discharge the functions of inspector;
 - (f) for the purpose of enabling or assisting the Department of Economic Development under enactments relating to the regulation and registration of companies, limited partnerships and other similar bodies;
 - (g) for the purpose of enabling or assisting the Department of Home Affairs to discharge any of its functions under AML/CFT legislation;
 - (h) for the purpose of enabling or assisting a body administering a scheme under section 25 (compensation schemes) of the *Financial Services Act 2008* to discharge its functions under the scheme;
 - (i) for the purpose of enabling or assisting the Commission to discharge its functions under this Act, the *Financial Services Act 2008*, the *Collective Investment Schemes Act 2008* or any other of its functions;
 - (j) for the purpose of enabling or assisting the Commission to discharge its functions under any enactment with respect to a possible breach of AML/CFT legislation;

- (k) by any person in order to provide the Commission with a report under section 26(2)(c) (report by person with appropriate professional qualifications) to enable the Commission to pass information to that person to assist the person in fulfilling the person's functions under that provision;
- (l) for the purposes of enabling or assisting any person to whom the Commission has delegated any of its functions under section 6(1) (delegation of functions of Commission) to carry out any such function or in meeting the person's obligations under section 6(3);
- (m) for the purposes of enabling the following tribunals to carry out their functions —
 - (i) the Financial Services Tribunal established under section 32 of the *Financial Services Act 2008* (regardless of the enactment under which the function is conferred);
 - (ii) the Collective Investment Schemes Tribunal established under section 21 of the *Collective Investment Schemes Act 2008*;
 - (iii) the Insurance Tribunal established under section 45 of the *Insurance Act 2008*;
 - (iv) the Retirement Benefits Schemes Tribunal established under section 38 of the *Retirement Benefits Schemes Act 2000*;
- (n) for the purpose of enabling or assisting the Insurance and Pensions Authority, the Insurance Supervisor and the Retirement Benefits Schemes Supervisor to discharge their functions under the *Insurance Act 2008* and the *Retirement Benefits Schemes Act 2000*;
- (o) for the purpose of enabling or assisting the Assessor of Income Tax to discharge functions under enactments relating to income tax;
- (p) for the purpose of enabling or assisting an official receiver (whether appointed in the Island or elsewhere and whether in respect of a person in the Island or elsewhere) to discharge the functions of official receiver under the enactments relating to insolvency;
- (q) for the purpose of enabling or assisting a receiver or liquidator (whether appointed in the Island or elsewhere and whether in respect of a person in the Island or elsewhere) to discharge the functions of receiver or, as the case requires, liquidator;
- (r) with a view to the institution of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise by an advocate, registered legal practitioner (within the meaning of the *Legal Practitioners Registration Act 1986*) or other legal professional, auditor, accountant, valuer or actuary of their professional duties;

- (s) for the purpose of enabling or assisting any person appointed or authorised to exercise any powers under section 15 of, and Schedule 2 to, the *Financial Services Act 2008* or section 16 of the *Collective Investment Schemes Act 2008* to discharge those functions;
 - (t) for the purpose of enabling or assisting in the discharge of the functions of the auditor of a registered person;
 - (u) for the purpose of enabling or assisting the Isle of Man Office of Fair Trading and any adjudicator to discharge their functions under Schedule 4 (mediation and adjudication) to the *Financial Services Act 2008* or for the purpose of enabling or assisting any person exercising equivalent functions outside the Island;
 - (v) for the purpose of enabling or assisting the Isle of Man Office of Fair Trading to discharge its functions under the enactments listed in sub-paragraph (2);
 - (w) for the purpose of enabling or assisting the Collector of Customs and Excise to discharge the Collector's functions under enactments relating to customs and excise or in relation to any assigned matter (as defined in section 184 (interpretation) of the *Customs and Excise Management Act 1986*);
 - (x) for the purpose of enabling or assisting the Gambling Supervision Commission in the discharge of its functions under enactments relating to all forms of gambling;
 - (y) if the information is or has been available to the public from other sources;
 - (z) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained; or
 - (aa) for the purpose of enabling the Civil Service Commission to investigate the conduct of members of the Isle of Man Civil Service.
- (2) The enactments referred to in sub-paragraph (1)(v) are —
- (a) the *Auctions Act 1985*;
 - (b) the *Chapmen's Act 1971*;
 - (c) the *Consumer Protection Act 1991*;
 - (d) the *Consumer Protection (Trade Descriptions) Act 1970*;
 - (e) the *Fair Trading Act 1996*;
 - (f) the *Moneylenders Act 1991*;
 - (g) the *Non-Resident Traders Act 1983*;
 - (h) the *Timeshare Act 1996*;
 - (i) the *Trade Marks Act 1994* (of Parliament);
 - (j) the *Unsolicited Goods and Services (Isle of Man) Act 1974*; and

- (k) the *Video Recordings Act 1995*.
- (3) The Treasury may by order amend the list in sub-paragraph (2).
- (4) When the *Public Services Commission Act 2015* comes into operation for subsection (1)(aa) substitute –
 - (aa) for the purpose of enabling the Public Services Commission to investigate the conduct of its employees (within the meaning of section 7(1) of the *Public Services Commission Act 2015*).

2 Designated authorities

- (1) Section 22 does not preclude the disclosure of information for the purpose of enabling or assisting any public or other authority in the Island for the time being designated for the purposes of this paragraph by an order made by the Treasury to discharge any functions which are specified in the order.
- (2) An order under sub-paragraph (1) designating an authority for the purposes of that sub-paragraph may –
 - (a) impose conditions subject to which the disclosure of information is permitted by that sub-paragraph; and
 - (b) otherwise restrict the circumstances in which that sub-paragraph permits disclosure.

3 Notices and registers

Section 22 does not preclude the disclosure of any information contained in –

- (a) any notice or copy of a notice, notice of the contents of which has not been given to the public, by the person on whom it was served or any person obtaining the information directly or indirectly from the person on whom it was served; or
- (b) any register maintained under this Act.

4 Competent authorities

- (1) Section 22 does not preclude the disclosure of information to a competent authority.
- (2) The following are competent authorities for the purposes of sub-paragraph (1) –
 - (a) any person having supervisory, regulatory or disciplinary functions in relation to financial services, any profession or any area of commercial activity;
 - (b) any person having functions corresponding to any of the functions of a person mentioned in paragraph (a) under the law of any country or territory other than the Island.

- (3) However, sub-paragraph (1) does not permit the disclosure of any information relating to the affairs of a customer unless —
 - (a) the customer consents; or
 - (b) the Commission has given its written consent to the disclosure in accordance with the following provisions of this paragraph.
- (4) The Commission may consent to a disclosure of information to which sub-paragraph (3) applies if the Commission is satisfied that disclosure is appropriate having regard to its functions, the confidential nature of the information and the purpose for which it is required.
- (5) In deciding whether to consent to a disclosure of information under sub-paragraph (3)(b), the Commission must take the following factors into account —
 - (a) the seriousness of the circumstances of the particular case;
 - (b) whether the disclosure is (either itself or when taken with other material) likely to be of substantial value to the body to which it is made;
 - (c) whether the information could be obtained by other means;
 - (d) the standards of confidentiality and information security which will be applied by the recipient;
 - (e) whether the making of the disclosure is proportionate to what is sought to be achieved by it;
 - (f) whether reciprocal assistance would be given in the country or territory concerned.
- (6) The factors set out in sub-paragraph (5) are neither exhaustive nor definitive.

SCHEDULE 3

[Section 37(1)]

MINOR AND CONSEQUENTIAL AMENDMENTS

1 Financial Services Act 2008

- (1) The *Financial Services Act 2008* is amended as follows.
- (2) In section 4(2)(b) (when a person is treated as carrying on a regulated activity) delete “omit”, at the end of paragraph (v) insert “; or” and after paragraph (v) insert —
 - “vi) a foundation established under the *Foundations Act 2011*,”.
- (3) In the definition of “specified enactment” in section 33(4) (statutory indemnity) after paragraph (j) insert —
 - “; and (k) the *Designated Businesses (Registration and Oversight) Act 2014*.”.
- (4) For section 34(1) (mutual assistance) substitute —
 - “(1) Subject to subsection (2), the Commission may, in relation to functions conferred on the Commission under an enactment, enter into mutual assistance agreements with any regulatory authority.”.
- (5) For section 40(3) (offences in connection with information) substitute —
 - “(3) A person is not under an obligation under this Act to disclose any information subject to legal privilege within the meaning of section 13 (meaning of “items subject to legal privilege”) of the *Police Powers and Procedures Act 1998*.”.
- (6) For section 42(4) (offences by bodies corporate) substitute —
 - “(4) In this section “officer” has the meaning assigned by section 1(2) (disqualification orders: introduction) of the *Company Officers (Disqualification) Act 2009*.”.
- (7) In section 48(1) (interpretation) after the definition of “advertisement” insert —
 - ““**AML/CFT legislation**” has the same meaning (for the time being) as in section 3(2) (interpretation) of the *Designated Businesses (Registration and Oversight) Act 2014*;”.
- (8) In paragraph 2 of Schedule 1 —
 - (a) after sub-paragraph (1)(b) insert —

- “(ba) the conduct of investigations into any potential liability arising from breach of AML/CFT legislation by persons undertaking regulated activities;”;
- (b) at the end of sub-paragraph (2) add –
- “; and (zd) the *Designated Businesses (Registration and Oversight) Act 2014*.”.
- (9) In paragraph 3 of Schedule 2 –
- (a) for sub-paragraph (1) substitute –
- “(1) If, on an application made by the Commission, a justice of the peace is satisfied that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person so far as to do so is relevant to assessing compliance with AML/CFT legislation in relation to any regulated activity that the person is or was carrying on, or appears to be or to have been carrying on, the justice may by written instrument authorise the Commission to exercise the powers under this section, which powers are not otherwise exercisable.”; and
- (b) for sub-paragraph (9) substitute –
- “(9) In this paragraph “documents” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include reference to producing a copy of the information in legible form.”.
- (10) In paragraph 2(1) of Schedule 5 –
- (a) for head (a) substitute –
- “(a) to the Attorney General with a view to the institution of or otherwise for the purposes of criminal proceedings whether in the Island or elsewhere;
- (aa) to the Attorney General for use as evidence in criminal proceedings whether in the Island or elsewhere and whether or not the information is comprised in documents;”;
- (b) after head (f) insert –
- “(fa) for the purpose of enabling –
- (i) a receiver appointed under section 21;
- (ii) a business manager appointed under section 22; or
- (iii) a reporting accountant appointed under section 23, to carry out the functions for which he or she has been appointed;
- (fb) for the purpose of enabling or assisting the Commission to discharge its functions under any enactment with respect to a possible breach of AML/CFT legislation;”;

- (c) at the end of head (s) add “; or” and after that sub-paragraph insert —
- “ (t) for the purposes of enabling the following tribunals to carry out their functions —
- (i) the Financial Services Tribunal established under section 32 of the *Financial Services Act 2008* (regardless of the enactment under which the function is conferred);
 - (ii) the Collective Investment Schemes Tribunal established under section 21 of the *Collective Investment Schemes Act 2008*;
 - (iii) the Insurance Tribunal established under section 45 of the *Insurance Act 2008*;
 - (iv) the Retirement Benefits Schemes Tribunal established under section 38 of the *Retirement Benefits Schemes Act 2000*.”.

2 Insurance Act 2008

- (1) The *Insurance Act 2008* is amended as follows.
- (2) In Schedule 5 —
- (a) in paragraphs 1(1), 2(1), 3(1) and 4(3) for “this Act or the *Retirement Benefits Schemes Act 2000*” substitute “a relevant Act”;
 - (b) for paragraph 5(6) substitute —

“ (6) In paragraphs 1 to 4 —

“ **document**” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form; and

“ **relevant Act**” means this Act, the *Retirement Benefits Schemes Act 2000* or AML/CFT legislation within the meaning (for the time being) of section 3(2) (interpretation) of the *Designated Businesses (Registration and Oversight) Act 2014*.”; and
 - (c) in paragraph 6(1)(e) after “criminal” insert “investigation or”.
- (3) In paragraph 2(1) of Schedule 6 —
- (a) for head (a) insert —

“ (a) to the Attorney General with a view to the institution of or otherwise for the purposes of criminal proceedings whether in the Island or elsewhere;

(aa) to the Attorney General for use as evidence in criminal proceedings whether in the Island or elsewhere and whether or not the information is comprised in documents;

- (ab) to any constable for the purpose of enabling or assisting the Isle of Man Constabulary to discharge its functions (regardless of the enactment under which the function is conferred);”; and
- (b) at the end of head (s) delete “or”, at the end of head (t) insert “; or” and after head (t) insert —
 - “(u) for the purposes of enabling the following tribunals to carry out their functions —
 - (i) the Financial Services Tribunal established under section 32 of the *Financial Services Act 2008* (regardless of the enactment under which the function is conferred);
 - (ii) the Insurance Tribunal established under section 45 of this Act;
 - (iii) the Retirement Benefits Tribunal established under section 38 of the *Retirement Benefits Schemes Act 2000*.”.

3 Proceeds of Crime Act 2008

For section 157(5)(a) of the *Proceeds of Crime Act 2008* substitute —

- “(a) any civil proceeding other than civil proceedings brought by one of the following —
 - (i) the Financial Supervision Commission;
 - (ii) the Insurance and Pensions Authority;
 - (iii) the Isle of Man Gambling Supervision Commission;
 - (iv) the Isle of Man Office of Fair Trading;
 - (v) the Supervisor (within the meaning of the *Insurance Act 2008*); or”.

IN THE KEYS

**DESIGNATED BUSINESSES (REGISTRATION AND
OVERSIGHT) BILL 2014**

A **BILL** to require the Financial Supervision Commission to monitor compliance on the part of certain non-financial businesses and professions with anti-money laundering and countering the financing of terrorism legislation; to make minor amendments to other enactments; and for connected purposes.

Approved by the Council of Ministers
for introduction in the House of Keys.

MR TEARE

OCTOBER 2014