

### 3.2. Designated Businesses (Registration and Oversight) Bill 2014 – Second Reading approved

Mr Teare to move:

*That the Designated Businesses (Registration and Oversight) Bill 2014 be read a second time.*

**The Speaker:** We turn now to the Second Reading of the Designated Businesses (Registration and Oversight) Bill. I call on the mover, Hon. Member for Ayre, Mr Teare.

**Mr Teare:** Thank you, Mr Speaker.

The Designated Businesses (Registration and Oversight) Bill 2014 seeks to provide the Financial Supervision Commission with new powers and duties relating to anti-money-laundering and countering the finance of terrorism. For ease, I will use the term 'AML/CFT'.

The new powers of the Financial Supervision Commission, which I will refer to as the FSC from now on, will enable that body to oversee certain businesses and professions, which I will refer to as 'designated businesses', in respect of their adherence to the AML/CFT legislation.

The core aspects of the Bill are that it will: (a) provide a system requiring designated businesses to register with the FSC; (b) empower the FSC to assess their compliance with the AML/CFT legislation, by means of on-site visits and annual returns; and (c) provide powers of action and enforcement, where these businesses have failed to comply with the legislation.

The Bill contains four parts and three schedules.

Part 1 is introductory and includes the power to delegate certain functions under the Bill to any person the FSC considers appropriate. It is envisaged that the FSC will only delegate the powers of inspection, and only to certain professional bodies.

Part 2 makes it an offence for a person to carry on a designated business in or from the Island unless the person is registered, acts in accordance with the registration and complies with the AML/CFT legislation.

Registration, which may be subject to conditions, remains effective until a person is deregistered or the registration is revoked. When assessing if a person is fit and proper for registration, the FSC will consider their integrity and matters relating to AML/CFT legislation. It will not otherwise consider the conduct of a designated business, or the competence of the persons involved in that business.

Part 3 contains three divisions. Division 1 requires registered persons to submit an annual return and fee each year of registration. It empowers the FSC to carry out on-site inspections and investigations, and to gather information from both registered persons and unregistered persons suspected of carrying on a designated business. The division contains a number of offences for failure to comply and for falsification or destruction of records.

Division 2 relates to information and requires the registered person to ensure that information held by the FSC is correct. It provides that sensitive or restricted information relating to registered persons is disclosed only with their consent or in accordance with schedule 2. Legal professional privilege is not overridden by the requirements of the Bill, and requires auditors to report prescribed matters to the FSC.

It also requires the FSC to maintain a register of registered persons.

Division 3 relates to action and enforcement, and empowers the FSC to make reports of its findings and to require remedial action is undertaken. It also empowers the FSC to issue directions, published statements and civil penalties. It enables the FSC, where necessary to apply to the High Court for injunctions and remedial orders.

Part 4 contains supplementary provisions relating to advice and guidance. It provides for reviews of the FSC's decisions by the Financial Services Tribunal. It also empowers the FSC to make orders to prescribe matters under the Bill and contains transitional provisions.

Schedule 1 relates to clause 4. It defines designated businesses and contains exemptions from the need to register under the Bill.

Schedule 2 relates to clause 22 and specifies the permitted reasons for disclosing sensitive or restricted information.

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

As a result of comments made by the assessors on behalf of the IMF, by which I mean the International Monetary Fund, following their last visit to the Island in 2008, it is apparent that the oversight of designated businesses in the Island is currently not sufficient to comply with international standards.

The Council of Ministers therefore agreed that the Department of Home Affairs and the Office of Fair Trading should cease to have responsibility for the oversight of designated businesses for AML/CFT purposes. Instead the Bill proposes that the FSC's experience of AML/CFT supervision should be utilised and its remit extended. The Bill gives the FSC responsibility for a new comprehensive regime of AML/CFT oversight, covering designated businesses as well as other businesses listed in schedule 4 to the Proceeds of Crime Act 2008 that do not yet fall within an existing regulatory framework. These businesses include those providing financial guarantees and commitments and financial leasing.

The Bill, which has been drafted to comply with Financial Action Task Force (FATF) recommendations empowers the FSC to undertake a role which will enable the Island to meet important international standards on anti-money-laundering and countering the finance of terrorism, and therefore avoid any potential international criticism of the Island, when the Island is reviewed by Moneyval in 2016.

The Bill has been subject to wide consultation, and all comments received have been addressed. The Bill is not expected to increase the expenditure of Government or require any additional public service human resources.

The FSC prioritise the need to administer this regime and to conduct the monitoring required and so divert resources to other areas of work. However, the income of Government will increase by virtue of registration fees, which will be paid by all registered persons, and annual fees that will be paid by those persons directly overseen by the Commission.

The Bill will place some additional administrative and financial burden on the designated business sectors, but it is considered that this burden will be small compared to the likely cost to the Island's economy and reputation of not introducing such a change.

Mr Speaker, I beg to move that the Designated Businesses (Registration and Oversight) Bill 2014 be now read for the second time.

**The Speaker:** Mr Henderson.

**Mr Henderson:** Gura mie eu, Vainstyr Loayreyder.  
I beg to second, sir, and reserve my remarks.

**The Speaker:** Hon. Member, Mr Quirk.

**Mr Quirk:** Thank you, Mr Speaker.

Just one thing that the Minister for the Treasury mentioned in his speech there: he mentioned the destruction of records. I wonder whether there is another definition of 'data'. I wonder whether that will be included in that particularly clause as well or is there a definition of records which includes data held electronically?

**The Speaker:** Hon. Member, Mr Karran.

**Mr Karran:** Vainstyr Loayreyder, I think we all agree that we do not want the Island to be involved with financing terrorism or money laundering. I would like to know a couple of points as far as the Bill is concerned: the rationale behind the issue of why we are using the currency of euro, when we are still in the sterling area, within the Bill.

With the new fees, will these fees have to go to Tynwald for approval? What safeguards are we going to have that this legislation will not be used for fishing trips for other jurisdictions as far as this piece of legislation is concerned? Allowing for the fact that purely if there is a proven case as far as terrorism financing or money laundering, fair enough; but what safeguards will there be that we will actually protect Manx business on the Island as far as that is concerned?

Finally, there was something else I wanted to ask about this Bill. Can he just clarify as far as the setting up of this tribunal as far as people wanting to appeal the actions as far as this is concerned? What will the costs be as far as the individuals that want to go to this tribunal? How will this tribunal will be set up?

I think it is important that Members understand these points, instead of just nodding it through, so I just think it is important that the Hon. Minister does that, to make sure that there is a recognition that if we are bringing in more powers, there is a way of auditing. I think anything that will help... and I understand the Minister is in a very difficult position, when you look at other things like the Louis Group and the likes, when we have got to find ways of creating better powers for the FSC, but we must make sure that it does not create a power that is not audited and is not accountable for its actions, where it can have a serious detrimental effect as far as a legitimate business is concerned on the Island.

So I would be interested in the Minister's reply as far as that is concerned.

**The Speaker:** I call on the mover to reply, Mr Teare, please.

**Mr Teare:** Well, thank you very much, Mr Speaker.

I am pleased to confirm that the destruction of records, that is designed to prevent people, in effect, tampering with evidence. But the definition of data does include documents, which includes information which might be held in electronic form.

Going to the Hon. Member for Onchan, Mr Karran: why use the euro rather than the pound? It is linked to the use of schedule 4 to the Proceeds of Crime Act 2008.

He also asked about fishing trips for other jurisdictions. The access to information held within the Isle of Man is tightly controlled, and we do have various channels or conduits as to how this information can be shared, and it has to come from an appropriate authority in a relevant jurisdiction with whom we have an arrangement. The disclosure of information is restricted in a similar manner to those restrictions contained within the Financial Services Act.

In terms of the cost of the tribunal, for those who wish to proceed to a tribunal if they are aggrieved by an action or a decision of the FSC, the cost of that tribunal is free to the applicant.

With that, Mr Speaker, I beg to move that the Second Reading of the Designated Businesses (Registration and Oversight) Bill 2014 now be taken.

**The Speaker:** Hon. Members, I put the question that the Bill be read for the second time. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Hon. Members, that concludes the business of the House today. The House will now stand adjourned until the next sitting, which will take place at 10 o'clock in this Chamber on 11th November.