

4.1. Designated Businesses (Registration and Oversight) Bill 2014 – Third Reading approved

Mr Teare to move:

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

The Speaker: We now turn to a Bill for Third Reading, the Designated Businesses (Registration and Oversight) Bill 2014. Again, I call on the mover of that Bill, Mr Teare.

Mr Teare: Thank you, sir.

As described in clauses, the Designated Business (Registration and Oversight) Bill 2014, seeks to provide the Financial Supervision Commission with new duties and powers relating to the oversight of anti-money-laundering legislation and countering the financing of terrorism, or AML/CFT compliance.

The Bill will enable the Financial Supervision Commission, which I will refer to as the FSC from now on, to oversee certain businesses and professions, which I will refer to as designated businesses, in respect of their compliance with the AML/CFT legislation by: (a) providing a system for designated businesses to register with the FSC; (b) empowering the FSC to assess designated businesses compliance with the AML/CFT legislation by means of on-site visits and annual returns; and (c) providing action and enforcement powers in the event of non-compliance with the AML/CFT legislation.

The provisions of this Bill address a deficiency in Island law which was identified by the International Monetary Fund relating to the need for AML/CFT oversight of designated businesses. It placed a duty on the FSC and provided it with the ability to oversee designated businesses compliance with important international standards on anti-money-laundering and countering the finance of terrorism; and will enable the Island to demonstrate its compliance with Financial Action Task Force (FATF), recommendations and avoid any potential international criticism when the Island is reviewed by Moneyval in 2016.

In moving the Third Reading I would like to thank Hon. Members for their support in taking the legislation forward this far.

Mr Speaker, the Hon. Member for Douglas South, Mrs Beecroft, asked for more information about how the FSC would regulate persons carrying on a designated business outside the Island, which I said I would provide at this Reading.

Clause 7 of the Bill prohibits the person from carrying on a designated business in or from the Island unless they are registered under the Bill. If a person is not carrying on business either *in* or *from* the Island then the Bill does not apply.

Clause 7 defines what constitutes the carrying on of a business in or from the Island. A person carrying on a designated business *in* the Island may do so via an Isle of Man company, or other business structure, or as a resident individual having a place of business in the Island – such business, for example a local estate agent, will have local clients and probably also some clients from overseas.

A business carried on from the Island requires a local company, or other business structure, or a locally-resident individual but the business will predominantly or fully be carried on outside the Island with clients based outside the Isle of Man. An example could be an Isle of Man tax adviser advising non-Island individuals and companies. In either case, whether in or from the Island, a designated business is required to register with the FSC and its records need to be maintained at its Isle of Man place of business. This therefore allows the FSC to assess compliance with the AML/CFT legislation, irrespective of whether its clients are local or from further afield.

In addition, the Hon. Member for Douglas East, Mrs Cannell, asked for more information about the possible revocation of a registration and the potential impact that could have on a person's

business if the FSC's decision to revoke a registration was overturned by the Financial Services Tribunal.

A revocation of registration would never be undertaken lightly and is a 'last resort' type of measure. Also, a revocation power is important – for example, if a registered person is convicted for money laundering, it will be very wrong for them to remain on the register. A revocation of registration would impact on registered persons in different ways, which depends on the definition of their particular designated business contained in schedule 1 to the Bill, which by necessity has to replicate certain definitions contained in schedule 4 to the Proceeds of Crime Act 2008 – for example, if an external accountant had his registration revoked, he or she would be unable to carry on any accountancy business. However, if a lawyer's registration was similarly revoked, he or she would be able to continue to undertake some legal activities – for example, some that do not involve the movement of money, but not others.

Clause 33(3) states that in the case of an appeal any decision by the tribunal to vary or revoke a decision made by the FSC does not affect the previous operation of that decision. This means that where the FSC has revoked a registration, any activity covered by schedule 1 of the Bill would be to cease. However, I reiterate that the FSC would only revoke registration as a last resort – for example, where there is significant risk that financial crime either has been or is being facilitated. Also, in any such case, it is probable that information will be passed by the FSC to the Attorney General's Chambers for consideration of potential prosecution. It is important for the Island's reputation that in the type of circumstances where the FSC would decide to revoke a registration, the designated business is prevented from continuing its designated business activities which may be connected to financial crime.

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

The Speaker: Mr Henderson.

Mr Henderson: Gura mie eu, Vainstyr Loayreyder.
I beg to second, sir.

The Speaker: Mrs Beecroft.

Mrs Beecroft: Thank you, Mr Speaker.

I am wondering if the Minister could just give us some more information about what responses he received during the consultation process, because I am getting more and more representations from people within the industry that they are not happy with this Bill. I raised a query last time and it is obviously too late to be revising clauses and things at this stage and so it is unfortunate that I was not made aware of some of the concerns earlier.

But if he could clarify what responses and what areas of concern were raised at consultation it would possibly at least flag it up for Legislative Council when they get their turn to look at this in detail.

The Speaker: Mr Karran.

Mr Karran: Vainstyr Loayreyder, unfortunately I had to go, when I had your leave to go last week, but I would have preferred to have seen this Bill actually go to committee. My concern with this Bill is the fact of the Trojan horse effect. One of the reasons why I think it would have been good to go to a committee is because if we are talking about designated businesses taking £15,000 worth of euros in cash, then that is a reasonable reflection. I was thinking of suspending Standing Orders today, but as it is a CoMin Bill there is no chance, even with the most elementary ability as far as maths is concerned, and you simply are not going to be able to get your suspension of Standing

Orders in order to have this Bill put to a committee anyway. So really speaking, that is not the answer.

I put this down for the sake of the other place as far as this is concerned, because I have great concerns that we have already got problems with the FSC not being accountable for its actions... its inconsistencies as far as that is concerned. My concern is that it seems they can look to the minutiae, as far as some firms are concerned, and then you have the situation over the Louis Group, where they seem to have got away with an absolute scandal as far as the Louis Group is concerned and those poor depositors.

What I am concerned about with this Bill, and I do not think I will be supporting this Bill because I do not think there is enough audit and accountability as far as the FSC is concerned with the finance sector to be then giving them the ability, as far as designated businesses are concerned, in other areas that are not in the finance industry... I am concerned about the issue that there is no legislative protection in here as far as small businesses are concerned. We have been told that it is going to be passed over to the professional bodies, as far as that is concerned, and the professional bodies will regulate this piece of legislation; but my concern is that we have a long history in this Island as far as in the past – the old national saying is, ‘It’s not what you know, it’s who you know’ – that we could be developing a rod that could be used against legitimate business for other reasons than the initial idea, as far as Hon. Members are concerned. I just think this Bill should really not be put for the Third Reading stage unless the Minister can clarify what checks and balances there are going to be so that we do not have the Freedom to Flourish for a few and for the others to be fleeced as far as society is concerned.

I understand and I have talked to some people about this Bill and they say, ‘Oh, well, we do not feel there is a problem there. It won’t happen’. But we are there are legislators to make sure that we put the checks and balances in and I think the Members who are not part of Government should really be considering whether we should be giving sweeping powers, as far as this is concerned, to the FSC to have grace and favour on this issue, because I think it would be a mistake at the present time to do so unless the Treasury Minister can come up with reasons why they should be able to interfere with the minutiae as far as other businesses outside the finance sector. No one argues with the fact that there needs to be some sort of control as far as major cash advancements for services or for items of commodity – I understand that with money laundering and I have a lot of empathy with this – but I worry that this Bill might end up being used in other ways in order that it could be used as a weapon to stop people who are not singing from the same hymn sheet as the establishment, as it used to be in this place.

The Speaker: Mrs Cannell.

Mrs Cannell: Thank you, Mr Speaker.

I thank the Minister for coming back and explaining and answering some of the concerns that I raised, but there is one that is still outstanding and it is in respect of clause 33, to do with appeals, subclause (3), which falls on page 30. The Minister read it out and he tried to explain what is meant by:

‘Any variation or revocation of a decision does not affect the previous operation of that decision or anything duly done or suffered under it.’

My question to him was and still is that if for some reason it is found that the Financial Supervision Commission have in fact been unreasonable and as a consequence a revocation has taken place and that small business, which is not an advocates, has been unable to function for a period of time and has consequently lost business and therefore lost money, what would happen then?

There is nowhere within this Bill that I can find where someone whose grievance is upheld, if you like, that person can then fall back and put a claim in for some sort of compensation for that

unreasonable decision that was taken, which has forced them to close down and cease business for a period of time.

If the Minister can advise, I would appreciate it.

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

Mr Teare: Thank you, Mr Speaker.

I do detect a note of concern and really, it boils down to, is the FSC going to be heavy-handed here? This is not intended to be that and I have had discussions with the FSC. The way it has been framed and the guidance notes which were brought forward are intended to be light touch.

If I could just go through and respectfully remind Hon. Members why I am bringing this legislation before this place today, it is to enable us to fulfil one of the International Monetary Fund's recommendations which emanate from their 2009 Report. We are due a further review next year, and this is one of the issues that we need to deal with in preparation for that review.

The Hon. Member for Douglas South, Mrs Beecroft, asked what concerns have been raised. There was feedback to me from the banks and also the Law Society and those have now been dealt with because we did actually review this legislation again, bearing in mind their comments.

There was also comment about the fees. I can assure Hon. Members that this is not intended to be a fee generating exercise; this is just to cover costs. The fees, as well, will be subject to secondary legislation and consultation with the industry going forward.

The Hon. Member for Onchan, Mr Karran, asked again about appeals and I will just go through some briefing notes I have again on clause 33, which I hope will deal with some of the comments which were raised by the Hon. Member, Mrs Cannell.

Clause 33 of the Bill enables appeals to the Financial Services Tribunal in specific circumstances. The Tribunal may confirm, vary or revoke the relevant decisions, but may not affect the previous operation of that decision. Thus any previous decision of the FSC will stand until such time as the Tribunal varies or revokes it. This provision reflects section 32 of the Financial Services Act.

In other words, the measures in this Act are similar to the measures that we have in the Financial Services Act 2008, which has worked successfully for the past six or seven years. So it is not something that we are bringing in lately. This is something which has been in force for some time.

The current appeals procedure for the Tribunal is contained within the Financial Services Review Regulations 2001. The Cabinet Office is currently drafting revised Tribunal rules to replace the existing regulations in order to improve the appeals process in a number of areas.

One proposed change will enable the Tribunal to make an order to suspend the effect of the FSC's original decision, pending the determination of the appeal if this has been necessary under the circumstances.

What we are trying to do is to, in effect, strike a balance between preventing financial crime from taking place until the outcome of the appeal is known and also protecting the business interests of the appellant. What we have to do is we must recognise that if we do not handle this responsibly, we would not be dealing with a considerable risk to the reputation of the Isle of Man... *[Inaudible]*

Mr Karran also mentioned that the FSC were not accountable. I have just demonstrated that yes, they are, but also, they are answerable to the court through a petition of dolence. He also said this is disproportionate, that smaller businesses should not be overburdened with this regulation. I did say at the outset this is definitely light-touch, but we have to recognise that all businesses, regardless of their size, may be used by somebody whose motives are not particularly honest or trustworthy. So we have to help them, give them guidance, so that they can recognise when they may be vulnerable to money laundering or the finance of terrorism. I would respectfully suggest, Hon. Members, that the same standard should and must apply to all.

With that, I move that the Third Reading of this Bill now be taken.

The Speaker: Hon. Members, I put the motion that the Designated Businesses (Registration and Oversight) Bill be read for the third time. Those in favour, please say aye; against, no. The ayes have it.

A division was called for and electronic voting resulted as follows:

FOR

Mr Anderson
Mr Bell
Mr Cannan
Mr Cregeen
Mr Cretney
Mr Crookall
Mr Hall
Mr Henderson
Mr Houghton
Mr Karran
Mr Quayle
Mr Quirk
Mr Robertshaw
Mr Ronan
Mr Shimmin
Mr Skelly
Mr Teare
The Speaker
Mr Thomas
Mr Watterson

AGAINST

Mrs Beecroft
Mrs Cannell

The Speaker: There are 20 votes for, 2 votes against. The motion therefore carries.