

# Proposed Regulation of Money Service Businesses

## A Consultative Paper

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Financial Supervision Commission Barrantee Oaseirys

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## **SECTION I**

### **I BACKGROUND**

In recognition of emerging international practice, Isle of Man Treasury has asked the Financial Supervision Commission (“the Commission”) to consider an appropriate regulatory regime for money service businesses (“MSBs”) operating in or from the Island.

Based on analysis of the regulations applying in other jurisdictions and discussions with a number of interested parties, this document sets out the proposed approach to regulation of MSBs. We would welcome your comments on these proposals.

#### **I.1 The current regime**

Currently, MSBs are not subject to a specific regulatory regime. Under the Anti-Money Laundering (Money Service Businesses) Regulations 2002 (“AML Regulations”), which came into force in August 2002, all MSBs must register with Isle of Man Customs & Excise (“Customs”).

Once registered, Customs are able to visit the premises of an MSB to ensure compliance with the regulations and the Anti Money Laundering Code, and can impose civil penalties for non-compliance. However there is:

- no restriction on who can register as an MSB,
- no vetting of key persons to consider whether they are suitable for such a position,
- no specific guidance in relation to Anti-Money Laundering or conduct of business matters, and
- no ability to remove an MSB from the register or to refuse entry onto the register.

#### **I.2 International expectations**

In 2002 the International Monetary Fund (IMF) undertook an “Assessment of the Supervision and Regulation of the Financial Sector in the Island”. In the resultant report, published in October 2003, it was recommended that the Isle of Man authorities “consider rationalising the existing regulatory arrangements for MSBs by enacting legislation under which the statutory responsibilities of Customs & Excise for MSBs would be transferred to the [Commission]”.

Recommendation 23 of the Financial Action Task Force (FATF) states that, as a minimum, “businesses providing a service of money or value transfer, or of money or currency changing, should be licensed or registered, and subject to *effective systems for monitoring and ensuring compliance with national requirements to combat money laundering and terrorist financing*”.

### 1.3 The current consultation

In the light of the international expectations, as illustrated by both the IMF and FATF, it is considered that the current regulations are inadequate and that an appropriate regime should be introduced under the auspices of the Commission.

The purpose of this document is to explain, at a high-level, the proposed regulatory approach to MSBs and to invite comment from interested parties on the proposals.

Subject to your comments on this initial document, the intention is to release a consultation paper during the second quarter of 2007 which will set out the proposed regime in more detail. It is intended that new regulations will be progressed through the legislative process in conjunction with the Financial Services Bill and related secondary legislation with a view to implementation early in 2008.

Your feedback will assist us in our consideration of an appropriate regulatory regime for MSBs. We would therefore welcome any comments that you may have on the proposals in this paper.

In addition to traditional money service businesses, in the absence of alternative regulations, e-money providers based on the Island have been required to register as MSBs. In parallel with the work on MSBs, the Commission is developing a regulatory regime for e-money providers. For more information on the e-money proposals we would draw your attention to the e-money discussion document issued in December 2006 which can be found at [http://www.gov.im/lib/docs/fsc/Consultative/emoneydiscussiondocumentv10\\_ve.pdf](http://www.gov.im/lib/docs/fsc/Consultative/emoneydiscussiondocumentv10_ve.pdf).

It would be much appreciated if we could have your response as soon as possible and at the latest by **17 June 2007**.

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## ***SECTION 2***

### ***2 PROPOSED REGULATIONS***

This paper sets out the Commission's proposed approach to the regulation of MSBs. The Commission's aim is to introduce a regulatory regime which addresses the potential reputational and money laundering risks to the Island. The Commission intends to manage such risks by validating the suitability of the people running MSBs and by ensuring that appropriate anti-money laundering requirements are satisfied.

#### **2.1 Licensing**

All persons carrying on money service business activities in or from the Isle of Man will need to be licensed by the Financial Supervision Commission.

An MSB is a business which carries out any of the following activities:

- bureau de change;
- money transmission; and/or
- cashing of third party cheques

Prior to conducting any business, an MSB will need to apply to the Commission for a licence and be successful in that application. For those already carrying on business when the proposed regulations are introduced, a transitional period will be provided, in which the business can continue to operate, whilst the application process is completed.

Once licensed, an MSB will need to demonstrate compliance with the regulations on an ongoing basis.

Other financial services companies already licensed by the Commission who offer MSB services as part of their business, for example banks, will not be required to be licensed separately under the MSB regulations but will be required to notify the Commission that they are carrying on a Money Service Business and will be subject to the requirements of the MSB regulatory regime in relation to their MSB activities.

#### **2.2 Fit and proper test**

The Commission will not grant a licence unless it is satisfied that each controller, director, Nominated Manager and, if different, Money Laundering Reporting Officer (see below) of the MSB is a fit and proper person. In appraising the fitness and propriety of an individual, the Commission will consider both integrity and solvency.

Integrity – in assessing the integrity of an individual, the Commission will take account of all relevant circumstances including, amongst other things, any criminal conviction, adverse personal reference or failure to disclose relevant information in the application.

Solvency – in addition to requiring a completed Banking Questionnaire, other items of relevance to the Commission will include declarations of bankruptcy or money judgements which have not been satisfied in full.

The fit and proper test is both an initial test, at the time of granting a licence, and a continuing test, in relation to the conduct of the regulated activities. If subsequent to approval a person ceases to be fit and proper to act as a key person for an MSB, the Commission will have the power to declare the person not fit and proper so to act.

### **2.3 Solvency**

A licenceholder will need to ensure that at all times it is able to meet its liabilities as they fall due.

At the time of applying for a licence, and annually after receiving a licence, there will be a requirement to confirm the solvency of the business. This will be achieved by providing the Commission with a statement signed by the directors.

### **2.4 Nominated Manager**

An MSB will need to designate a person as a “Nominated Manager” who has responsibility for the day to day running of the business and for compliance with the regulations. The Nominated Manager will be required to be resident on the Island.

### **2.5 AML requirements**

A licenceholder will be required to comply with appropriate Anti-Money Laundering (AML) requirements. The requirements will include:

- **Internal controls and record keeping** – MSBs will be required to establish procedures for the purposes of preventing money laundering and to retain records providing an audit trail for all transactions.
- **Money Laundering Reporting Officer (MLRO)** – MSBs will have to appoint a member of staff as the MLRO for the business, with responsibility for receiving and assessing all internal suspicious transaction reports and for ensuring the business complies with the AML regulations. The MLRO may be the same person as the Nominated Manager.
- **Customer due diligence** – MSBs will need to confirm the identification of customers and complete “know your customer” checks in order to establish, where appropriate, the source of funds and the purpose of a transaction.
- **Suspicious transaction reporting** – MSBs should have appropriate procedures in place for staff to report suspicious transactions and for the suitable handling of all suspicious transaction reports.
- **Staff awareness and training** – MSBs will be required to ensure that relevant employees are aware of their obligations in respect of the prevention of money

laundering and that they are trained in the identification and reporting of activities that give grounds for suspicion.

## **2.6 Segregation of clients' money**

MSBs who act as money transmitters will be required to hold money received from customers for transmission in a dedicated client's money account, separate from the business's own assets. The client's money account should be reconciled on a regular basis.

## **2.7 On-site visits**

The Commission will have the power to undertake visits to the premises of MSBs. A risk based approach will be taken for deciding the appropriate frequency of on-site visits. During a visit the Commission will require access to appropriate records to evidence that AML procedures are followed, records are retained in accordance with the regulations, clients' money is properly segregated and the clients' accounts are reconciled on a regular basis.

## **2.8 Enforcement powers**

The Commission will have powers to issue directions to or impose Civil Penalties on MSBs in order to secure compliance with the proposed regime. Ultimately, the Commission may remove the licence or, in an extreme case, petition the Court for the winding up of an MSB if the key persons fail to meet the fit and proper test on an ongoing basis.

## **2.9 Fees**

In line with other regulated businesses, fees will be levied by the Commission for applying for a licence and on an annual basis. The level of fees has yet to be determined, but will be commensurate with the nature of the regulatory regime and may vary based on turnover.