



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

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Designated Businesses Registration Policy

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Glossary

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| 1931 Act company | a company constituted under the Companies Act 1931 |
| 2006 Act company | a company constituted under the Companies Act 2006 |
| AML Legislation | <p>means any of the following enactments:</p> <ul style="list-style-type: none"> • the Anti-Terrorism and Crime Act 2003; • Part 3 (money laundering) of the Proceeds of Crime Act 2008; • the Terrorism and Other Crimes (Financial Restrictions) Act 2014; • the Terrorism Anti Freezing etc Act 2010 (of Parliament) as applied to the Isle of Man; <p>any instrument, order or secondary legislation made under any of the enactments referred to above; and</p> <p>including any amendment or re-enactment of those Acts referred to above</p> |
| AML/CFT Code | means any Code currently in operation made under section 157 of the Proceeds of Crime Act 2008 and includes the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 |
| Applicant | the entity or individual applying for registration to undertake one or more designated businesses. Unless the context precludes, the term “applicant” should be read as including “designated business” |
| CODA | Company Officers (Disqualification) Act 2009 |
| Controller | <p>means any of the following —</p> <p>(a) a managing director of a body corporate of which the registered person is a subsidiary;</p> <p>(b) a chief executive of a body corporate of which the registered person is a subsidiary;</p> <p>(c) a person in accordance with whose directions or instructions one or more of the directors of a body corporate of which the registered person is a subsidiary are accustomed to act unless the director or directors are accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;</p> <p>(d) a person who either alone or with any associate is entitled to exercise or control the exercise of 15% or more of the voting power at any general meeting of the registered person or of another body corporate of which it is a subsidiary;</p> <p>(see section 3 of the DBRO Act for full definition)</p> |
| Designated Business | has the same meaning as Schedule 1 to the DBRO Act |
| Exempt persons / exemptions | persons that carry on designated business but have been exempted from the requirement to be registered. Details of exempted persons are set out in Part 2 |

of Schedule 1 to the DBRO Act

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| DBRO Act | Designated Businesses (Registration and Oversight) Act 2015 |
| Designated Businesses (Fees) Order | this reference will always be read as the version of the Designated Businesses (Fees) Order which is in effect at the relevant time |
| IOMFSA | the Isle of Man Financial Services Authority |
| IoM | the Isle of Man |
| Specified person | <p>in relation to an applicant or registered person, means —</p> <p>(a) a sole practitioner who is a registered person; or</p> <p>(b) a person employed or otherwise engaged by a registered person as any of the following in relation to the designated business carried on by that registered person —</p> <ul style="list-style-type: none"> (i) a director; (ii) a controller; (iii) a money laundering reporting officer; (iv) a deputy money laundering reporting officer; and (v) a compliance officer; |
| MLRO | the Money Laundering Reporting Officer |
| Person | includes individuals and any body of persons, corporate or unincorporate (see section 3 of the DBRO Act) |
| Registered person | a person who is registered under the DBRO Act |
| Relevant Act | <p>(a) the Advocates Acts 1976;</p> <p>(b) the Advocates Act 1995;</p> <p>(c) the Collective Investment Schemes Act 2008;</p> <p>(d) the Estate Agents Acts 1975;</p> <p>(e) the Financial Services Act 2008;</p> <p>(f) the Insurance Act 2008;</p> <p>(g) the Legal Practitioners Registration Act 1986;</p> <p>(h) the Moneylenders Act 1991;</p> <p>(i) the Online Gambling Regulation Act 2001;</p> <p>(j) the Retirement Benefits Schemes Act 2000;</p> <p>(k) any other Act that is relevant to the regulation of a designated business;</p> <p>(l) any legislation in any other country or territory that is equivalent to any of the above Acts.</p> |
| Spent Conviction | Has the same meaning as section 1(1) of the Rehabilitation of Offenders Act 2001. |
| Tribunal | means the Financial Services Tribunal established under section 32 of the <i>Financial Services Act 2008</i> |

Introduction

1. General Matters

This registration policy is guidance issued under section 9(6) of the DBRO Act.¹ It is intended to help those who conduct, or wish to conduct, designated business to understand the IOMFSA's registration process. It also applies to persons that are already registered. The IOMFSA cannot provide legal advice. Applicants should seek appropriate legal advice on their particular circumstances.

2. Exemptions from the Registration Requirements

Certain persons may benefit from an exemption from the oversight regime. An exemption means the activity is designated business but it can be performed without requiring registration. An exempt person may only avail themselves of an exemption where the designated business and the activity listed under Part 2 of Schedule 1 is undertaken in the same legal entity. Where a designated business is undertaken by a person in the same group as an exempted person, the designated business must still register under the DBRO Act.

3. Registration Requirement

It is an offence to undertake a designated business by way of business without being registered or under an applicable exemption².

4. Application of the Registration Policy

Where an applicant applies to the IOMFSA for registration, the IOMFSA must register that person, with or without attaching conditions to the registration, or refuse the application if the IOMFSA is satisfied that the person is not fit and proper.

The IOMFSA is required to refuse to register any person who it deems not fit and proper. A person may not be fit and proper if that person:

- (a) has been convicted of an offence —
 - (i) under AML/CFT legislation;
 - (ii) under the law of a country or territory outside the Island if the conduct giving rise to the offence would constitute an offence under sub-paragraph (i) if it had occurred in the Island;
 - (iii) involving dishonesty (whether under the law of the Island or elsewhere);
 - (iv) under a relevant Act; or
 - (v) of perjury or conspiracy to pervert the course of justice (whether under the law of the Island or elsewhere);
- (b) is or has been the subject of any action with respect to any breach of a relevant Act or AML/CFT legislation;
- (c) has knowingly or recklessly provided misleading or false information in the application for registration; or

¹ S9(6) DBRO Act: The IOMFSA may publish guidance setting out the criteria that it will normally apply in assessing whether or not to refuse, or apply conditions to an application.

² S7 of the DBRO Act

(d) is otherwise considered by the IOMFSA not to be fit and proper for reasons related to the risk of money laundering or the financing of terrorism.

The IOMFSA will objectively take into consideration the cumulative effect of the information before it in relation to the fitness and propriety of the applicant and any specified person related to the applicant. It is possible that single matters (which, taken in isolation, would not justify a refusal to register) may, when considered alongside other matters have the cumulative effect of being sufficient to refuse to register.

The circumstances of each applicant will not be identical. The IOMFSA examines all relevant matters and considers each application on its own merits. Having examined an application the IOMFSA may decide to make more extensive enquiries to satisfy itself about particular risks or concerns.

Where an applicant demonstrates that the risks associated with its business can be addressed in a different way, the IOMFSA may agree to modify the application of this policy for that applicant. In other cases, where there is a particular risk, the IOMFSA may put additional conditions/directions and requirements on registration to reflect the particular circumstances.

If a registered person has ceased to undertake a designated business for which it is registered, the IOMFSA expects the designated business to apply to deregister that element of its registration. For example if a large accounting firm chooses to no longer provide statutory audit services, but continue to offer external accountancy services, it should apply to deregister its audit business.

This document is not exhaustive or binding on the IOMFSA. The registration regime requires the IOMFSA to exercise discretion³; how it does this will depend on the applicant's particular circumstances.

5. The Registration Process and Review of Decisions

Applicants are required to submit a completed application with all necessary supporting documentation via the IOMFSA's website or at www.dnfbp.co.im.

The IOMFSA's current published service standard for processing an application, from receipt of a fully completed application, is 3 months. However, this service standard can only be met if all the required information is provided at the time the application form is submitted. The IOMFSA is not responsible for delays arising from the submission to it of incomplete or inaccurate forms. Please note that the processing of an application may take longer during periods of a high volume of applications.

If the application process is not completed within 6 months, due to outstanding items required from the applicant, then the IOMFSA can require a new application, a further application fee and updated supporting documentation.

The IOMFSA is only empowered by the DBRO Act to register those businesses which intend to undertake designated business. The IOMFSA has no power to register those persons who may undertake designated business at some undisclosed date in the future. As such a registered person is expected to commence designated business within 6 months of the date on which it is registered unless the IOMFSA has agreed otherwise in writing.

³ Section 9(4)(d) DBRO Act

6. Refusal to Register

Where the IOMFSA decides to refuse to register an applicant, the IOMFSA will provide the applicant with written reasons for its decision. If the applicant disagrees with the decision, they may appeal to the Tribunal.

Part I - The Designated Businesses “Fit and Proper” Criteria

1.1. General

Before registering an applicant, the IOMFSA will consider the factors at section 9(4) of the DBRO Act in relation to the business as a whole and also to the specified persons responsible for the management and control of the business (including owners).

Due to the important nature of the role, the IOMFSA will also consider the competence of the MLRO and where appointed, Deputy MLRO and/or Compliance Officer.

The fit and proper test is an initial test (at registration) and a continuing test (in the ongoing conduct of the designated business). The IOMFSA can take action including the suspension or revocation of registration if a designated business does not continue to satisfy the fit and proper criteria.

This document sets out the criteria the IOMFSA normally applies when assessing whether a person is “fit and proper”.

1.1.2 In assessing fitness and propriety the IOMFSA considers:

- the applicant’s integrity;
- the integrity of the applicant’s controllers and directors;
- the integrity and competence of the MLRO and where appointed, the Deputy MLRO and Compliance Officer; and
- the nature and scale of the designated business the applicant proposes to carry on;

1.1.3 When considering registration applications, the IOMFSA makes an assessment of the applicant’s ability to comply with:

- the [DBRO Act](#);
- the AML/CFT Code; and
- wider AML/CFT legislation.

1.1.4 Serious or repeated breaches of legislation in the Island, or in another jurisdiction by an applicant, its controllers or specified persons, will, prima facie, suggest a lack of competence and/or integrity.

1.1.5 A registered person must notify the IOMFSA of any changes in the information which was provided to the IOMFSA during the application for registration.

Part II - Structure and Organisation of the Applicant

2.1 Structure

The applicant's structure should enable the IOMFSA to identify –

- the ultimate beneficial owners of the business;
- the persons who exercise control over the appointment of the management team (directors and controllers); and
- specified persons.

As the exercise of options over a company's shares can impact on the company's controlling interests, the IOMFSA expects to be notified of any existing options and may wish to consider the terms of any such options.

2.2 Applicants that are part of Groups

Where the applicant is part of a group the IOMFSA reserves the right to ask for information about other group entities from the applicant, other regulators and, if necessary, the group entities themselves.

2.3 Changes to Ownership Structure once a Business is Registered

2.3.1 If a designated business wishes to make changes to its ownership or control structure, it should refer to section 19 of the Act as to whether the changes should be notified to the IOMFSA. Any such changes can alter the IOMFSA's assessment of the designated business as a fit and proper person.

2.3.2 Options – On an ongoing basis, a designated person must notify the IOMFSA of any proposed pledge of, offer of options over or options granted in respect of its shares.

Part III – Persons responsible for management and control

3.1 Directors, controllers and other specified persons

- 3.1.1** All persons with responsibility for management and control of the designated business (directors, principals or equivalent), must satisfy the IOMFSA that they are fit and proper persons. The IOMFSA's confirmation that it has no objection to the appointment should be obtained before proceeding with a new appointment or permitting a person to acquire a significant interest in the business.
- 3.1.2** The MLRO and where appointed the deputy MLRO and Compliance Officer, will always be treated as specified persons.
- 3.1.3** The directors, controllers and other specified persons must be and remain fit and proper persons, irrespective of whether their functions are directly related to the business's activity.
- 3.1.4** Where one or more nominees hold shares in an applicant, the relevant nominee agreement evidencing the identity of the shares' beneficial owners must be disclosed to the IOMFSA. The IOMFSA will apply the fit and proper test to both the nominee shareholders and the beneficial owners of the shares.
- 3.1.5** Persons must submit specified person questionnaires and undergo vetting to enable the IOMFSA to assess whether they are fit and proper. In addition, the IOMFSA may invite individuals to attend a personal interview to clarify any issues arising and/or to form an opinion regarding an individual's competence and/or integrity.
- 3.1.6** Section 19(a) of the Act requires a designated business or applicant, as well as its directors, controllers and other specified persons to notify the IOMFSA of any changes in information which was required to be given to the IOMFSA at application.

Part IV - Integrity

4.1 Integrity

4.1.1 To a large extent, an applicant's integrity is a reflection of the persons employed by or associated with the applicant. In assessing the integrity of an applicant or designated business and its directors, controllers and other specified persons, the IOMFSA will consider whether any of their past actions or conduct indicate a lack of integrity. The IOMFSA will consider all relevant circumstances, on a case-by-case basis. ***A list of matters the IOMFSA may have regard to is set out at Appendix 1.***

4.1.2 As part of the vetting procedure, the directors, controllers and other specified persons of an applicant are required to disclose any convictions that are not spent convictions to the IOMFSA. The IOMFSA will consider, on a case-by-case basis, whether a previous conviction is relevant to its current assessment of whether a person is fit and proper.

4.1.3 Persons responsible for the management and control of an applicant's business should ensure that, by their conduct and by providing appropriate supervision and training to others within the organisation, the applicant's business is conducted with integrity.

4.1.4 An applicant and all connected persons should co-operate in an open and honest manner with the IOMFSA and any other body which regulates or oversees them and should promptly inform the IOMFSA of anything relevant to its task. Failure to do so may be relevant to an assessment of a person's integrity.

This includes the failure to complete a form or supply information required from an applicant or designated business in an honest manner, or the omission of any relevant information. The provisions in section 18 and 20 of the DBRO Act in respect of false statements should be noted.

Part V – Competence

5.1 Competence

- 5.1.1** An MLRO and where appointed, Deputy MLRO and/or Compliance Officer must be competent to undertake the role.
- 5.1.2** The competence of the MLRO and where appointed, Deputy MLRO and/or Compliance Officer is demonstrated by holding relevant qualifications, having sufficient experience and being appropriately supervised and trained to competently fulfil their functions and legal responsibilities.
- 5.1.3** The size and type of business and jurisdictions in which designated business is offered are relevant when assessing the competence of an MLRO and where appointed, Deputy MLRO and/or Compliance Officer.

APPENDIX 1

Matters of relevance in determining integrity

The following are examples of matters the IOMFSA may have regard to in determining whether an individual, applicant or a designated business is fit and proper – the list is not exhaustive: -

- a conviction by a court, including a civil or military court, in the Island or in another jurisdiction;
- any failure to comply with a direction or order of a court in the Island or in another jurisdiction;
- any criticism or adverse comment about the individual, applicant or a designated business made by a court, tribunal or enquiry, in the Island or elsewhere, in the context of proceedings before it, including where the individual, applicant or a designated business was called or attended voluntarily as a witness;
- information received from law enforcement or other supervisory agencies under “gateways” equivalent to those established under section 22 of the DBRO Act;
- a disqualification order or undertaking in relation to section 4 CODA (unfit persons), section 5 CODA (unfit officers of insolvent companies), a disqualification order in terms of section 9 CODA (participation in fraudulent trading) or any equivalent legislation in any jurisdiction;
- expulsion from membership, a disciplinary finding against or any similar form of censure of an individual by his professional body in relation to dishonesty or AML/CFT matters;
- the effectiveness of compliance with rules, standards, principles and guidance of any relevant professional, governing, regulatory or supervisory authority in relation to AML/CFT matters;
- evidence of engaging in business practices (whether unlawful or not) appearing to the IOMFSA to be deceitful or oppressive or otherwise improper;
- disciplinary action taken by a previous employer or professional body relating to dishonesty or AML/CFT matters; or
- failure to disclose to the IOMFSA any matters relevant to the application, including giving incomplete, misleading or untruthful answers to the questions in the vetting forms.

This list is illustrative only and the IOMFSA will also consider any other relevant matter in addition, or alternatively, to the matters listed.