



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

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Designated Businesses Registration Policy

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Glossary

1931 Act company	a company constituted under the Companies Act 1931
2006 Act company	a company constituted under the Companies Act 2006
AML/CFT 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 Terrorist Asset-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>
CVC	means convertible virtual currency including crypto-currencies or similar concepts where the concept is accepted by persons as a means of payment for goods or services, a unit of account, a store of value or a commodity
CVC business	the business of issuing, transmitting, transferring, providing safe custody or

storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies, including crypto-currencies or similar concepts where the concept is accepted by persons as a means of payment for goods or services, a unit of account, a store of value or a commodity, as defined in paragraph 1(l) of Part 1 of Schedule 1 to the DBRO Act

Designated Business	has the same meaning as in Schedule 1 to the DBRO Act
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
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
ICO	in relation to CVC business means initial coin offering, or similar issuance of any CVC
IOMFSA	the Isle of Man Financial Services Authority
IoM	the Isle of Man
Specified person	in relation to an applicant or registered person, means — (a) a sole practitioner who is a registered person; or (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 — (i) a director; (ii) a controller; (iii) an MLRO; (iv) a deputy MLRO; and (v) a compliance officer
MLRO	the Money Laundering Reporting Officer
Money Laundering Reporting Officer	means an individual appointed under paragraph 25 of the AML/CFT Code
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	has the same meaning as section 3(3) of the DBRO Act.

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 *Financial Services Act 2008*

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 to the DBRO Act is undertaken by the same legal entity. Where a designated business is undertaken by a person in the same group as an exempted person, or is managed by an exempted person the designated business must 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 that 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
Version 2

(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.

4.1 Additional provisions relating to CVC business

4.1.1 Real presence / substance

In order for the IOMFSA to be able to successfully undertake its statutory duty of overseeing the compliance of designated businesses with the AML/CFT legislation, designated businesses must have sufficient real presence to facilitate oversight.

Given the nature of CVC business, and in order to ensure oversight can effectively take place, with effect from 5 October 2018 the IOMFSA will not register a CVC business unless the following two conditions of registration are met:

- a) the CVC business must have (and continue to have) at least 2 IoM resident directors; and
- b) management and control of the CVC business must be in the Island.

Because of the limitation of the IOMFSA's ability to oversee CVC businesses which lack substance or real presence on the Island, such a characteristic is considered to pose an unacceptably high risk of money laundering and terrorist financing.

4.1.2 Issuance of CVC of any type

³ Section 9(4)(d) DBRO Act
Version 2

It is the IOMFSA's policy to refuse to register an applicant which engages in the CVC business of issuing a CVC (of whatever type) where the CVC issued provides no benefit to the purchaser other than the CVC itself.

Examples of this include, but are not restricted to:

- ICOs which convey —
 - limited or no rights to the income generated from a project;
 - limited or no rights to use the assets developed, purchased or acquired from the funds raised by the ICO;
- ICOs where there is no reasonable basis for any expected capital growth of the value of the CVC.

Such characteristics are generally considered by the IOMFSA to pose an unacceptably high risk that the money raised from the CVC issuance could be used for unanticipated and illegal purposes, as well as posing a risk to consumers. It is because of these risks that it is the policy of the IOMFSA to refuse to register this type of business.

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 <http://www.iomdnfbp.co.im/>

The IOMFSA's current published service standard for processing an application, from receipt of a fully completed application, is 3 weeks. However, this service standard can only be met upon receipt of all the required information, including any further information requested by the IOMFSA. 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 information 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.

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 this policy and the factors at section 9(4) and 9(5) 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 this policy and:

- 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 DBRO 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 fitness and propriety assessment to enable the IOMFSA to determine 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** It is a condition of registration that CVC businesses are required to have two Isle of Man resident directors and be managed and controlled in the Island (see 4.1.1 of the Introduction section for further information).
- 3.1.7** Section 19(a) of the DBRO 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.