

## Comments

- Some NPOs may pose a risk, which should be tackled by this Bill.
- No NPOs, on the Island, are currently supervised, by anyone.
- All NPOs could become supervised by the Commission by including them in Schedule 1 as was proposed in the first draft of this Bill.
- Lumping all NPOs into one basket, then excluding them from supervision is inherently dangerous to the public and contradicts best practice in risk management.
- Merely saying there may be an outreach program to educate/supervise NPOs in the future is acknowledging there is a risk but putting off dealing with it now.
- If the objective of the final Bill is to strengthen the control of money transfers in order to prevent possible funding of terrorism or criminal activity then automatically excluding all NPOs, without justification, would leave the entire rationale of the Commission's supervisory role open to question.
- Were all NPOs required to submit to a compliance risk assessment then there already exists mechanisms within this Bill for dealing with those NPOs which pose little risk due to their size, scope or structure. Any financial cost could be minimised by setting fees to NPOs at zero. Some administration burden is the price all must pay for living in a safer society.
- The Commission, as an agent of the State, is tasked with protecting the public from harm. Some NPOs are known to pose a threat of money laundering or financing terrorism, the Vatican Bank<sup>1</sup> for example. The Commission, we believe, has the capacity to act as financial supervisor to all NPOs; therefore the Commission must revert to its original position by including all NPOs in the list of possible designated businesses.
- The criteria for granting exemption, including exclusion from the list, should be published and those granted exemption must be listed in Schedule 1.

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<sup>1</sup><http://www.ft.com/intl/cms/s/0/361ad458-9d6e-11e3-a599-00144feab7de.html#axzz2v4X7yxnA> accessed 5/3/14

By way of elaboration of our comments above:

The automatic granting of the privilege of exemption to some groups is unjust, unreasonable and ultimately, we reason, unsafe.

1. Unjust:

Your notice of the 20<sup>th</sup> February 2014 stated “Note: the designated businesses in italics are new to Schedule 1 and non-profit organisations, which were included in the original consultation, have been removed from the Schedule”

Specifically, we are concerned that an exemption will be granted to all persons (including those not covered by a general requirement of a governing professional body) working for faith groups from having to register under this Act, or indeed the faith group as an organisation in itself being granted a blanket exemption from compliance.

Such an exemption is, we believe, unjust as it grants the privilege of not having to comply with the requirements of the Bill to a group based not on whether all parties should be treated equally or even that the NPOs may pose a limited risk of money laundering or financing terrorism (a claim we dispute), but rather special pleading that compliance will lead some within the NPO sector to feel ‘a potential pressure’. We note from the response to the first draft “A common theme among the feedback was concern regarding the potential pressures resulting from the AML/CFT oversight to NPOs”.<sup>2</sup>

The rationale that has been applied for exempting NPOs is that at some point in the future the Commission (or other such body) may have an outreach programme aimed at NPOs. We believe the Commission’s initial appraisal, namely to include NPOs within the designated businesses schedule was sound; “This was to allow the Commission to engage in outreach in relation to AML/CFT with this sector rather than to oversee NPOs in respect of AML/CFT at this time” [ibid.]

Acknowledging that NPOs are not covered by ‘the Code’ (Appendix 1) then using that observation as a reason for not being able to supervise them, is perhaps, circular reasoning. The Commission has the authority to include all NPOs within the scope of this proposed Bill, as demonstrated by the Commission in the first draft.

Professionals covered by this Bill are already required to comply with AML and CFT regulations under ‘the Code’. If it is just to burden these

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<sup>2</sup><http://www.fsc.gov.im/lib/docs/fsc/consultations/summaryofconsultationdesignatedbusi.pdf> accessed 19/3/14

professionals with yet more compliance costs then surely requiring those persons who currently have no AML or CFT compliance burden, by virtue of their engagement with NPOs, to bear some of the load is a more equitable way to reduce the overall risk to the public?

Therefore, we believe, the Commission should revert to its original position by including NPOs in the list of possible designated businesses.

## 2. Excluding all NPOs leaves a 'back door open' for criminal activity:

Having a route to circumvent the purpose of this Bill demonstrates the inherent weakness of not requiring all NPOs to submit to the Commission's authority, even if this act of submission is simply to register a request to be exempted on certain (published) criteria. After all, we require these same organisations to apply for the privilege of not paying taxes (whilst they still enjoy the benefits those taxes afford), so why not apply a similar test when it comes to compliance under this Bill?

We appreciate that accountants, lawyers and other professionals, who would come under the requirement to register, may be engaged by faith groups, however this may not always be the case, and should a faith group wish to circumvent this law, in order to minimise this 'potential' administrative 'pressure' perhaps, it would be a simple act to dismiss those professionals and replace them with persons who may not be as qualified to determine when a breach of law occurs. Further, if a professional claims they are engaged by an organisation which is specifically exempted from this legislation, then this may mean the professional is not even required to comply with their own professional codes of practice as the exempt status of their client grants them exemption as well.

We also note that leaders of religious organisations; Bishops, Popes, Swamis, Rabbis or Imams for instance, fulfil a role equivalent to CEO's or Directors within their organisations. It may be claimed that they should come under 'director'; "any person occupying the position of director by whatever name called"<sup>3</sup>, however others may claim that they are acting under the direction of some necessary existent being, whose existence is disputed.

Without a clear description of the roles and responsibilities of those at the head of their faith groups it leaves open the possibility of yet more pleading for special treatment or some metaphysical argument deferring responsibility to some necessary existent being (again, whose existence we dispute).

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<sup>3</sup><http://www.fsc.gov.im/lib/docs/fsc/consultations/designatedbusinessesregistrationand.pdf> accessed 19/3/14

The end result being an abrogation of responsibility for the actions of persons within that faith group. It is not as if a god, or gods, can be held responsible under this law after all!

Hence, for the sake of clarity, perhaps a specific definition of such a role; Bishops, Popes, Swamis, Rabbis or Imams, should be included in Part 1 Section 3.1

### 3. Excluding all NPOs is an inconsistent approach to risk:

The Commission acknowledges the NPOs may pose a risk when the case for an outreach programme is stated, a point raised in 1, above. However the stated reasoning behind not including NPOs in the second draft seems to rest on a concern around “potential pressures”; “A common theme among the feedback was concern regarding the potential pressures resulting from the AML/CFT oversight to NPOs” [Ibid]. Given that the financial pressures can be mitigated by varying the fees charged by the Commission to NPOs (or set at zero) this only leaves the administration burden of compliance. If there is a significant risk posed by NPOs then this should be addressed now by including them in the list of possible designated businesses, subject to some test criteria for their continued inclusion.

If there is no significant risk posed by NPOs then why have an outreach programme to bring to their attention AML or CFT issues?

We claim that some NPOs do pose a significant risk of money laundering or financing terrorism.

This view is supported by the UN Security Council:

“The non-profit sector is vulnerable to abuse in a number of ways. NPOs can be used to raise, transfer and divert funds for terrorist purposes, to provide direct logistical support to terrorists, or serve as a cover for their operations.

Thankfully, these examples are not the norm. Most NPOs operate responsibly and provide valuable services to the community, especially to those in need. However, it is important that States provide the necessary protection, including through a frank assessment of risks and vulnerabilities in the highly diverse charitable sector, in order to ensure that they do not suffer the reputational risk that could deter donors from funding.”<sup>4</sup>

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<sup>4</sup> <http://www.un.org/en/sc/ctc/news/2011-01-26nonprofit.html> accessed 19/3/14

Religious organisations are amongst some of the largest repositories of money and other assets on the Island and distribute some of their funds globally (often to countries with known links to terrorism or money laundering). They may receive cash donations, (or a series of linked transactions), which collectively exceed 15,000 Euros.

For the purposes of this Bill, surely being a repository for cash donations and a distributor of money, both locally and globally, is enough to qualify some religious organisations, who carry out their businesses on, or from, the Island, for inclusion within this Bill?

As we are sure the Commission is aware, some faith groups have been involved in money laundering, supporting terrorism and other criminal activities in the past; from Northern Ireland to New York and beyond. Likewise, we acknowledge there are good reasons to reach out to NPOs, however it should be noted that certain religious organisations have an abysmal record when it comes to cooperating or complying with state agencies. It would, we believe, be naive in the extreme to expect that to change before further crimes would be committed.

Specifically, the term Non-Profit Organisation is a catch all term which includes everything from small charities to international religious organisations with billions (if not trillions) of pounds worth of assets. There is a distinction, and this distinction should be applied by way of a test for all possible entrants to the 'Designated Businesses List' to comply with. The criteria and a list of exemptions should be published in Schedule 1.

The question of whether a religious organisation is a 'business' is an interesting one. When an organisation has, say; over five billion pounds of assets under management, business committees, policy review boards, pension funds for employees, political lobbying divisions, whilst at the same time enjoying tax free status, then we believe it is not unreasonable that they should be treated as a business when it comes to supervising their financial transactions.

Respectfully,

Andrew Dixon  
Chair Isle of Man Freethinkers.

## APPENDIX 1

### Correspondence

**From:** Andrew Dixon [<mailto:andrew@dixon.im>]  
**Sent:** 05 March 2014 08:24  
**To:** Corlett, Shirley  
**Subject:** designated businesses Bill question

Dear Mrs Corlett,

I write as chair of the Isle of Man Freethinkers. Prior to submitting our comments I would ask for your reasoning for not including non-profit organisations in the list of designated businesses. I noted your comment on the 20th February:

"Note: the designated businesses in italics are new to Schedule 1 and non-profit organisations, which were included in the original consultation, have been removed from the Schedule"

Some non-profits accept cash donations in excess of the threshold (either in one transaction or a series of linked transactions) and would therefore come under the requirements to comply with this proposed Act, however I am concerned that the reasoning you applied to exempt non-profits from being listed would be used by these same non-profit organisations to avoid having to comply immediately the Act comes into force.

Also, the Bill allows for a list of exemptions to be made and included in Schedule 1. If non-profits are to be exempt would you not agree that explicitly stating this in Schedule 1 would be more transparent?

Andrew Dixon

REPLY:

On 11 Mar 2014, at 11:53, "Whyte, Ashley" <[Ashley.Whyte@fsc.gov.im](mailto:Ashley.Whyte@fsc.gov.im)> wrote:  
Dear Mr Dixon

Many thanks for your email addressed to my colleague Shirley Corlett. Apologies for the delay in responding.

As you have pointed out, non-profit organisations have been removed from the list of designated businesses which are stated at Schedule 1 to the Designated Businesses (Registration and Oversight) Bill 2014. The reason for this is that these organisations are not currently covered by the provisions of the Anti-Money Laundering and Terrorist Financing Code 2013 ("the Code"), therefore we are unable to oversee these organisations for compliance with AML/CFT until the relevant AML/CFT Code provisions are applicable to these organisations.

You refer in your email to cash donations exceeding the threshold stated in the Code, however, this threshold amount is only applicable to those businesses covered by the Code which are listed in Schedule 4 to the Proceeds of Crime Act. As mentioned above non-profit organisations are not included in this list at this time.

It is anticipated certain provisions of the AML/CFT legislation on the Island will be extended in due course to cover charities and non-profit organisations. At the appropriate time the Designated Businesses (Registration and Oversight) Bill 2014 will be extended to include these organisations.

I hope this helps.

Kind regards

Ashley

**Ashley Whyte A.C.I.S BA (Hons)** † Manager - Anti-Money Laundering † Enforcement Division † [ashley.whyte@fsc.gov.im](mailto:ashley.whyte@fsc.gov.im)  
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**From:** Andrew Dixon [<mailto:andrew@dixon.im>]  
**Sent:** 14 March 2014 08:59  
**To:** Whyte, Ashley  
**Subject:** Re: designated businesses Bill question

Many thanks Ashley.

Before I open this topic up for wider discussion, could you please confirm which body on the Island does supervise the financial affairs of charities and non profits with regards to AML and/ or CFT?

Isle of Man Freethinkers comments on Designated Businesses (Registration and Oversight) Bill 2014

Given your office originally included non profits in the designated businesses list, and were at that time presumably aware that these organisations are not currently covered by the provisions of the anti money laundering and terrorist funding code, may I please ask again for your reasoning in granting them exemption in the second draft?

Has anyone in your department been approached by a representative of a non profit organisation seeking the privilege of being exempt from the requirements of being listed? Do you consider that non profits present a negligible risk with regards to your remit to protect citizens from the harm caused by money laundering or the financing of terrorism?

I look forward to hearing from you soon as we would very much like to submit our thoughts before the April 2nd deadline.

Andrew Dixon

REPLY:

On 14 Mar 2014, at 15:24, "Whyte, Ashley" <[Ashley.Whyte@fsc.gov.im](mailto:Ashley.Whyte@fsc.gov.im)> wrote:

Dear Mr Dixon

Thank you for your email.

As I have advised in my previous email non-profit organisations ("NPOs") are not currently covered by the provisions of the Anti-Money Laundering and Terrorist Financing Code 2013 ("the Code"), therefore we are unable to oversee these organisations for compliance with AML/CFT until the relevant AML/CFT Code provisions are applicable to these organisations. As NPOs are not covered by the Code there is nobody overseeing these organisations for AML/CFT purposes at present.

When the Bill was initially out for the first consultation period the Commission proposed to include NPOs within the scope of the Bill. This was to allow the Commission to engage in outreach / education in relation to AML/CFT with this sector rather than to oversee NPOs in respect of AML/CFT at this time. A common theme among the feedback was concern regarding the potential pressures resulting from the AML/CFT oversight to NPOs. As a result of these concerns, and the fact that NPOs do not need to be included in Schedule 1 to the Bill for the Commission to undertake an outreach program, NPOs have been removed at this time. It is envisaged that an outreach program in relation to AML/CFT will commence in due course. Following the outreach program it is anticipated AML/CFT requirements will be extended to NPOs and oversight of compliance with these requirements will commence.

The Commission, in conjunction with other Government Departments, is currently working on an Island-wide National Risk Assessment in respect of AML/CFT. This will look at the potential AML/CFT risks of all industries on the Island (including NPOs) and how the identified risks can be mitigated.

I hope this answers your questions.

Ashley

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**From:** Andrew Dixon [<mailto:andrew@dixon.im>]  
**Sent:** 14 March 2014 14:44  
**To:** Whyte, Ashley  
**Subject:** Re: designated businesses Bill question

Thanks Ashley. Just one last quick question ... May I review the feedback to the first consultation you referred to? Is this information available to the public, and if so may I make an appointment to view same please?

Have a great weekend

Andrew Dixon

REPLY:

Dear Andrew

A summary of the first consultation is available in this document at Appendix A:

<http://www.fsc.gov.im/lib/docs/fsc/consultations/dnfbpbillconsultationdocfeb2014awf.pdf>

Many thanks

Ashley

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