



**Isle of Man
Government**

Reilrys Ellan Vannin



Anti-money laundering and other financial crime (Miscellaneous Amendment) Bill 2017

Consultation

**Cabinet Office
December 2017**

CONTENT

	Page No.
Glossary of terms	2
Consultation overview	3
Part 1 Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Bill 2017	5
Part 2 Codes relating to money laundering and the financing of proliferation and terrorism	5
Part 3 Foreign Trustee Duties	6
Part 4 Criminal jurisdiction in relation to certain offences	7
Part 5 Penalties for failure to comply with certain requirements	7
Part 6 Additional gambling decisions subject to appeal	8
Part 7 Additional record keeping requirements in respect of foundations	8
Part 8 Power to make enquiries in relation to information submitted for registration	9
Next steps	9
Bodies to be consulted	10
Consultation criteria	10
 Annex I Draft Anti Money Laundering and Other Financial Crime (Miscellaneous Amendment) Bill 2017	
 Annex II Example of an Anti-Money Laundering and Countering the Financing of Terrorism (Unregulated Trustees) Code 2017	
 Annex III Impact Assessment	

Glossary of Terms

AML/CFT	Anti-money laundering and countering the financing of terrorism
DHA	Department of Home Affairs
DNFBPs	Designated non-financial businesses and professions
FATF	Financial Action Task Force
FIs	Financial Institutions
IOMFSA	Isle of Man Financial Services Authority
MER	Mutual Evaluation Report
MONEYVAL	European Council Committee of Experts on the Evaluation of Anti-Money Laundering Measures
Proliferation	Proliferation of weapons of mass destruction
Recommendations	FATF Forty Recommendations on anti-money laundering and combating the financing of terrorism and proliferation

Consultation Overview

Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Bill 2017

The MONEYVAL Mutual Evaluation Report (MER)¹ on the Isle of Man (IoM) was published in January 2017. MONEYVAL is a permanent monitoring committee of the Council of Europe and part of its role is to undertake evaluations of the measures that its forty seven member countries have in place to combat money laundering and the financing of terrorism. MONEYVAL undertakes these evaluations on behalf of the Financial Action Task Force (FATF) which is the body responsible for setting the international standards in this area. These standards are known as the FATF Forty Recommendations ("Recommendations").

The IoM is a member of MONEYVAL along with the other Crown Dependencies and was evaluated by a multi-national team of assessors in 2016. The assessment identified a number of improvements that were required to better enhance the IoM's anti-money laundering and countering the finance of terrorism ("AML/CFT") regime, in order to better meet the international standards. The changes would also further improve the effectiveness with which the authorities carried out their roles and responsibilities.

The Cabinet Office has the role of coordinating the actions by the relevant authorities which are required to deal with the issues identified in the MER and any related matters. Part of that work has been to consider how recommendations in the assessment report which require the amendment of primary legislation might best be dealt with. In particular amendments relating to matters that are identified as a priority, or where the Island has been rated as only 'partially compliant' when measured against the required Recommendations.

The relevant authorities, notably the DHA who are introducing this Bill, are working in accordance with the Programme for Government which states that we will; "*Maintain our robust, zero tolerance stance in relation to money laundering and the financing of terrorism.*" The Council of Ministers has further committed to the following action "*Consider and respond to issues identified in the international MONEYVAL report on the Isle of Man, prioritising and taking action as required.*"

In summary, the Anti-Money Laundering and Other Financial Crimes (Miscellaneous Amendments) Bill 2017 ("the Bill") addresses the following areas;

- Creates a requirement that trustees of unregulated trusts in the IoM and trustees of arrangements made under IOM legislation who are not actually resident in the IoM, obtain and hold certain information. This information includes details of the settlor, protectors, beneficiaries etc. Such trustees should also disclose their status to financial institutions and other relevant businesses when conducting a business relationship. Some of the details are to be set out in a specific Code, an example of

¹ Anti-money laundering and counter-terrorist financing measures Isle of Man; Fifth Round Mutual Evaluation Report. 2016

which is also being published with this Bill. This Bill amends primary legislation so that such a Code may be enabled.

- The removal of any uncertainty regarding the ability for a court in the Isle of Man to prosecute complex crimes of dishonesty unless the last act of the underlying crime occurred in England or Wales.
- Providing that a failure to produce information when required to by law enforcement authorities should carry the same level of penalty as a failure to produce information when required to by a regulator, which for the latter is a term of two years imprisonment and/or an unlimited fine. The current law enforcement penalties are for a two year sentence and/or only a £5,000 fine.
- Some minor changes that are needed to the Gambling (Amendment) Act 2006. These changes are in order to clarify that decisions made under the Gambling (Anti-Money Laundering and Combatting the Financing of Terrorism) Bill 2017, when it comes into effect, are appealable to the Tribunal and that public statements are also subject to the section 9 provisions regarding stays pending appeal.
- Some additional record keeping requirements in respect of foundations, including a requirement that the foundation rules are filed with the Central Registry. Details identifying the settlor, trustees, beneficiaries within the foundation rules etc. are to be redacted.
- Categorically gives the Registrar of the Companies Registry the power to examine and investigate certain relevant documents filed with the Registry.

In order to provide an opportunity for the financial services industry, relevant non-financial services and members of the public to submit their views, the Council of Ministers has requested that a public consultation take place.

When responding to the consultation questions within each table, please state the Part of the Bill and the specific section/s to which your response relates.

Any comments or questions should be submitted in writing to:

Sinead King
AML/CFT Policy Office
3rd Floor
Government Office
Bucks Road
Douglas
IM1 3PN

Or by email to: amlcft@gov.im

The closing date for the receipt of comments is **02 February 2017**

Part 1 Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Bill 2017

Part 1 of the Bill contains standard clauses dealing with its title, commencement and expiry after it has made the amendments to other, existing, legislation.

Part 2 contains amendments to the Proceeds of Crime Act 2008 (POCA) and the Terrorism and Other Crime (Financial Restrictions) Act 2014 (TOCFRA).

Part 3 contains amendments to the Trustee Act 2001 (TA).

Part 4 contains amendments to the Criminal Justice Act 1991 (CJA)

Part 5 contains amendments to the Anti-Terrorism and Crime Act 2003 (ATCA), the Financial Intelligence Unit Act 2016 (FIUA) and the POCA.

Part 6 contains an amendment to the Gambling (Amendment) Act 2006

Part 7 contains amendments to the Foundations Act 2011

Part 8 contains amendments to the Companies Act 1931, the Companies Act 2006, the Foundations Act 2011, the Limited Liability Companies Act 1996 and the Partnership Act 1909.

Part 2 Codes relating to money laundering and the financing of proliferation and terrorism

The MER for the IoM includes the following recommended action, that:

"Authorities should require trustees of express trusts governed under IoM legislation to obtain and hold information in line with c.25.1 and disclose their status to FIs and DNFBPs."
[MER p.94]

In the MER the IoM was also rated as only Partially Complaint against the international FATF² Recommendation which deals with transparency and beneficial ownership of legal arrangements (R25). The deficiencies identified by MONEYVAL are as follows;

- a) No explicit requirement placed on the trustee of an express trust that is governed by Manx law where the trustee is resident outside the IoM, or resident in the IoM but non-professional to obtain and hold information in line with c25.1.
- b) No explicit requirement placed on TCSPs subject to the AML/CFT Code to obtain information on classes of beneficiaries.
- c) No explicit requirement in the Trustee Act requiring trustees to hold basic information on regulated agents of, and service providers to, a trust.

² FATF is the Financial Action Task Force, the international body responsible for setting AML/CFT standards.

- d) Record-keeping requirements do not apply to professional trustees that are resident outside the IoM.
- e) Not all trustees are required to disclose their status when entering into a business relationship or carrying out a one-off transaction.
- f) The common law duty of confidentiality may prevent a trustee providing information to a financial institution or designated non-financial institution.

Whilst trustees who manage trusts professionally are regulated for AML/CFT purposes (under the existing AML/CFT Code 2015), there is no legal requirement for non-professional trustees to keep records. This includes professional persons who may act as trustees, not by way of their main business, but in a personal capacity. A trustee acting in a personal capacity may manage up to ten trusts without being required to register with the IOMFSA.

Neither is there any requirements placed upon any foreign trustees who use IoM trust legislation but are not resident in the IoM to keep records. This is dealt with under Part 3.

The recommendation is also that all trustees should disclose their trustee status to financial institutions and other relevant businesses (designated non-financial businesses and professions) when engaged in a business relationship on behalf of a trust.

The draft legislation seeks to address the gaps identified in IO5 and R25 by way of amendments to the POCA and the Terrorism and Other Crime (Financial Restrictions) Act 2014 and the issuing of a specific Code under these Acts to deal with this class of trusts. Although it would be secondary legislation, nevertheless a worked example of such a Code has been included with this consultation and any comments would be welcome.

Question: Do you have any comments or suggestions regarding Part 2 of the draft Bill, Codes relating to money laundering and countering the financing of proliferation and terrorism?

Part 3 Foreign Trustee Duties

The requirement for foreign trustees who are not resident in the IoM but involved with trusts set up using IoM law but which have no connection to the IoM, to obtain and maintain records is proposed to be dealt with by amending the Trustee Act 2001. The requirements for foreign trustees mirror those for unregulated IoM trustees but without any offence provisions, as they would not be enforceable on foreign trustees outside of the jurisdiction.

Question: Do you have any comments or suggestions concerning Part 3 of the draft Bill, foreign trustee duties?

Part 4 Criminal jurisdiction in relation to certain offences

This part of the Bill addresses a matter that was not identified by MONEYVAL but was highlighted when the Fraud Act 2017 was being brought in. It makes explicit the power to prosecute predicate cases domestically where parts of the offence/s were committed abroad. Introducing these changes by way of this Bill would ensure that in cases of for example theft, forgery or counterfeiting, it would not matter if the offender is operating from abroad, as they would be caught by the legislation.

The present common law rules applicable in the IoM concerning jurisdiction in offences of dishonesty have become increasingly difficult to apply, partly because they have not adapted adequately to fraud itself becoming increasingly complicated. The old common law rules were concluded to be a barrier to the proper control of fraud in England and Wales and consequently were addressed in Part 1 of Parliament's Criminal Justice Act 1993. It is recommended that for the IoM modern rules governing jurisdiction over dishonesty offences with a foreign element should be framed so as to take into account the high incidence of large-scale fraud committed across national boundaries and involving modern electronic and other means of transferring money.

Question: Do you have any comments or suggestions concerning Part 4 of the draft Bill, criminal jurisdiction in relation to certain offences?

Part 5 Penalties for failure to comply with certain requirements

The MER highlighted under Recommendation 24 (transparency and beneficial ownership of legal persons) and Recommendation 25 (transparency and beneficial ownership of legal arrangements) that the range of sanctions that can be applied by the FIU and law enforcement for failing to grant competent authorities timely access to information is not proportionate³.

The reference to 'proportionate' is made because, whilst a failure to produce information required by a regulator carries an unlimited fine amongst other penalties, for law enforcement the same offence, that is a failure to produce information required by law enforcement, is limited to a £5,000 fine. This is not considered to be either proportionate or dissuasive, in particular in the case of large corporate bodies and especially given that the purpose for which law enforcement may be seeking information, could well be more serious than a regulatory matter.

The Bill therefore seeks to amend paragraph 1(6) of Schedule 6 of the ATCA, section 20(5) of the FIUA and section 163A of POCA such that the sanctions available to law enforcement for failing to grant timely access to information are the same as those available for regulatory matters.

Question: Do you have any comments or suggestions concerning Part 5 of the

³ See paragraph 300 at page 152 and paragraph 325 at page 156 of the MER

draft Bill, penalties for failure to comply with certain requirements?

Part 6 Additional gambling decisions subject to appeal

This part of the Bill concerns a minor amendment arising out of the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Bill 2017 which has now completed its parliamentary passage.

A consequence of the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Bill is that the Gambling (Amendment) Act 2006, which gives rights of appeal against decisions of the regulator, which is the Gambling Supervision Commission, will need to be amended in its Schedule 4 so that it includes as a right of appeal any decisions made under the new Bill when it comes into force. Section 8(1) will need to be amended as well so that procedures applying a stay whilst an appeal is pending also apply to the new bill when it is enacted.

Question: Do you have any comments or suggestions concerning Part 6 of the draft Bill, additional gambling decisions subject to appeal?

Part 7 Additional record keeping requirements in respect of foundations

Under Recommendation 24 the MER identified that certain record keeping requirements are not placed upon 2006 companies, foundations and partnerships. In respect of foundations in particular, they recommended that a requirement should be imposed that a copy of the foundation rules should be filed with the Companies Registry and made available to the public. They noted that it was already a legal requirement that the foundation's instruments are so filed publically. This is set out at section 4(4) of the Foundations Act 2011 for the foundation to file its rules and at section 48(2) for the Register to be made public. The assessors believed the foundation rules should also be made public as these describe the foundation's basic regulating powers. Paragraph 264 at page 147 of the MER refers.

As the foundation's rules may identify individuals such as the settlor and beneficiaries the requirement in the Bill has been specifically drafted to allow a redacted version of such rules to be filed with Companies Registry since requiring foundations to publically identify such persons goes beyond the requirements in this area and beyond international standards.

The assessors also noted that IoM legislation proscribed certain documents to be held at the foundation's business address, but did not include proof of registration, information on founders and known beneficiaries. Paragraph 269 at page 147 of the MER refers. Part 7 of the Bill attempts to rectify these points.

Question: Do you have any comments or suggestions concerning Part 7 of the draft Bill, additional record keeping requirements in respect of foundations?

Part 8 Power to make enquiries in relation to information submitted for registration

Under Recommendation 24 the MER identified that the Companies Registry does not check the accuracy of basic information filed with it. This contributed to Recommendation 24 being rated as only 'Partially Complaint'. Although the Registrar currently has the power to refuse to accept documents which on their face value clearly contains false information on it (for example a fictitious name) it is not explicit that the Registrar may make further enquiries to ascertain if documents presented for registration are truthful.

It is therefore proposed that the power of the Registrar to investigate the most significant documents filed with the Registry be made explicit. It is not intended that this power will in any way increase the liability of the Companies Registry therefore the amendments also make clear that the Registry is not liable for the accuracy of the documents so filed with it.

It is important to note that these proposed amendments seek only to clarify the Registrar's powers in this area and do not instigate any obligation to start a policy or process of actual investigation/verification.

Question: Do you have any comments or suggestions concerning Part 8 of the draft Bill, power to make enquiries in relation to information submitted for registration?

Next Steps

After publishing this consultation paper a summary of matters raised in the consultation, with responses where appropriate, will be published and work will take place with those affected in order to further inform the draft legislation.

If you have any views or observations or there is some point of clarification you would like to receive, you are invited to respond by writing to –

Sinead King
AML/CFT Policy Office
3rd Floor
Government Office
Bucks Road
Douglas
IM1 3PN

Or by email to: amlcft@gov.im

The closing date for the receipt of comments is **02 February 2017**

Bodies to be consulted

- Tynwald members
- Bodies representing financial services and designated non-financial businesses
- Unions
- Chamber of Commerce
- Law Society
- Attorney General's Chambers
- Voluntary organisations / charities
- Information Commissioner
- IOM Financial Services Authority
- Gambling Supervision Commission
- Local Authorities
- Government departments

Consultation Criteria

The Council of Ministers '[Public engagement and consultation principles](#)' were laid before the November 2017 sitting of Tynwald. In summary, the consultation principles are as follows:

1. Consultations have a purpose and offer genuine opportunities to make a difference
2. Consultations follow a clear and open process
3. Consultations are well planned and delivered in a reasonable timescale
4. We encourage and enable everyone affected to get involved, if they wish to
5. We provide jargon free and understandable information
6. Use suitable methods to deliver the consultation
7. We learn and share lessons to improve future consultations
8. We tell people the impact of their contribution



ANTI-MONEY LAUNDERING AND OTHER FINANCIAL CRIME (MISCELLANEOUS AMENDMENTS) BILL 2017

Index

Section	Page
PART 1 – INTRODUCTORY	3
1 Short title.....	3
2 Commencement.....	3
PART 2 – CODES RELATING TO MONEY LAUNDERING AND THE FINANCING OF PROLIFERATION AND TERRORISM	4
3 Proceeds of Crime Act 2008 amended	4
4 Terrorism and Other Crime (Financial Restrictions) Act 2014 amended	4
PART 3 – FOREIGN TRUSTEE DUTIES	5
5 Trustee Act 2001 amended	5
PART 4 – CRIMINAL JURISDICTION IN RELATION TO CERTAIN OFFENCES	10
6 Criminal Justice Act 1991 amended	10
PART 5 – PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN REQUIREMENTS	15
7 Anti-Terrorism and Crime Act 2003 amended	15
8 Financial Intelligence Unit Act 2016 amended	15
9 Proceeds of Crime Act 2008 amended	16
PART 6 – ADDITIONAL GAMBLING DECISIONS SUBJECT TO APPEAL	16
10 Gambling (Amendment) Act 2006 amended	16
PART 7 – ADDITIONAL RECORD KEEPING REQUIREMENTS IN RESPECT OF FOUNDATIONS	17
11 Foundations Act 2011 amended	17

PART 8 – POWER TO MAKE ENQUIRIES IN RELATION TO INFORMATION SUBMITTED FOR REGISTRATION	18
12 Companies Act 1931 amended	18
13 Companies Act 2006 amended	18
14 Foundations Act 2011 amended	19
15 Limited Liability Companies Act 1996 amended	18
16 Partnership Act 1909 amended	18



ANTI-MONEY LAUNDERING AND OTHER FINANCIAL CRIME (MISCELLANEOUS AMENDMENTS) BILL 2017

A BILL to amend the Trustee Act 2001, the Anti-Terrorism and Crime Act 2003, the Proceeds of Crime Act 2008, the Financial and Other Crime (Financial Restrictions) Act 2014 and the Financial Intelligence Unit Act 2016, to amend certain record-keeping provisions of the Foundations Act 2011, to amend the Companies Act 1931, the Companies Act 2006, the Foundations Act 2011, the Limited Liability Companies Act 1996 and the Partnership Act 1909 in order to provide powers to make enquiries in respect of information to be registered, in accordance with recommendations specified in the Fifth Round Mutual Evaluation Report of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism; to amend the Criminal Justice Act 1991 to make provision for the jurisdiction of courts in the Island in relation to certain criminal offences; to amend the Gambling (Amendment) Act 2006 to add to the decisions that may be appealed under Schedule 4 to that Act and to amend the matters in respect of which there may be a stay pending an appeal; and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

PART 1 – INTRODUCTORY

1 Short title

The short title of this Act is the Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Act 2017.

2 Commencement

- (1) This Act (other than section 1 and this section) comes into operation on such day or days as the Department of Home Affairs may by order appoint.

- (2) An order under subsection (1) may include such consequential, incidental, supplementary, transitional and transitory provision as the Department of Home Affairs considers necessary or expedient.

PART 2 – CODES RELATING TO MONEY LAUNDERING AND THE FINANCING OF PROLIFERATION AND TERRORISM

3 Proceeds of Crime Act 2008 amended

After section 157(2) (money laundering codes), insert —

- 66(2A) Additionally and without limiting subsection (2), a code may —
- (a) impose any of the requirements specified in subsection (2)(b) or (c) on any person resident in the Island who is a trustee of a trust; and
 - (b) provide that a reference in it to an enactment or to a public document made under an enactment is to be construed as a reference to the enactment or the public document as amended from time to time.
- (2B) Subsection (2A) applies where the person on whom the requirements are imposed is not carrying on business in the regulated sector or employed in or otherwise concerned in such a business. 67.

4 Terrorism and Other Crime (Financial Restrictions) Act 2014 amended

After section 68(2) (codes relating to the financing of proliferation and terrorism), insert —

- 68(2A) Additionally and without limiting subsection (2), a code may —
- (a) impose any of the requirements specified in subsection (2)(b) or (c) on any person resident in the Island who is a trustee of a trust; and
 - (b) provide that a reference in it to an enactment or to a public document made under an enactment is to be construed as a reference to the enactment or the public document as amended from time to time.
- (2B) Subsection (2A) applies where the person on whom the requirements are imposed is not carrying on business in the regulated sector or employed in or otherwise concerned in such a business. 69.

PART 3 — FOREIGN TRUSTEE DUTIES

5 Trustee Act 2001 amended

- (1) The *Trustee Act 2001* is amended in accordance with subsection (2).
- (2) After Part 5 (remuneration), insert —

PART 5A — FOREIGN TRUSTEE DUTIES

33A Application

This Part applies to a foreign trustee of a Manx trust.

33B Duty to obtain information

- (1) A foreign trustee of a Manx trust must obtain and hold adequate, accurate, and current information on the identity of —
 - (a) the settlor;
 - (b) any co-trustee;
 - (c) the protector (if any);
 - (d) the beneficiaries; and
 - (e) any other natural person exercising ultimate effective control over the trust.
- (2) In respect of a class of beneficiaries where it is not reasonably practicable to identify each beneficial owner, details sufficient to identify and describe the class of persons who are beneficiaries.
- (3) A foreign trustee of a Manx trust must hold information prescribed by regulations under subsection (6) on other regulated agents of, and service providers in relation to, the trust.
- (4) Information held pursuant to this section must be —
 - (a) updated on a timely basis; and
 - (b) accurate.
- (5) Where the foreign trustee of a Manx trust is a corporate trustee or is acting in a professional capacity, the information specified in subsections (1) and (2) must be maintained in accordance with sections 33C and 33D.
- (6) The Department of Home Affairs may by regulations make further provision about —
 - (a) the information to be held in accordance with subsection (3); and

- (b) the maintenance of information for the purposes of subsection (5), including the form of and location at which the information must be maintained.

Tynwald procedure — negative.

- (7) For the purposes of subsection (1) the Authority may issue guidance about the meaning of “control”.

Tynwald procedure — laying only.

- (8) Regard must be had to guidance issued under subsection (7) in interpreting references in this Part to that expression.

- (9) The Authority may revise guidance issued under subsection (7) and a reference to guidance includes a reference to revised guidance.

Tynwald procedure — laying only.

- (10) Guidance issued under subsection (7) and revised guidance issued under subsection (9) must be published by the Authority on its website or in a manner the Authority considers will bring it to the attention of those likely to be affected by it.

33C Record retention

- (1) A foreign trustee of a Manx trust must keep the records required by section 33B for at least 5 years —

- (a) in the case of records relating to a transaction, from the date —

- (i) of the completion of the transaction; or
- (ii) when all activities relating to an occasional transaction or a series of linked transactions were completed; or

- (b) in respect of all other records, from —

- (i) the date when the business relationship was formally ended; or
- (ii) if the business relationship was not formally ended, when all activities relating to the transaction were completed.

- (2) Without limiting sub-section (1), if a foreign trustee of a Manx trust knows or believes that a matter is under investigation by a competent authority or becomes aware that a request for information or an enquiry is underway by a competent authority, the foreign trustee must retain all relevant records for as long as required by the competent authority.

33D Record format and retrieval

- (1) In the case of any records required to be obtained, held and maintained under section 33B —
 - (a) if the records are in the form of hard copies kept in the Island, a foreign trustee of a Manx trust must ensure that they are capable of retrieval without undue delay;
 - (b) if the records are in the form of hard copies kept outside the Island, a foreign trustee must ensure that the copies can be sent to the Island and made available within 7 working days; and
 - (c) if the records are not in the form of hard copies (such as records kept on a computer system), a foreign trustee of a Manx trust must ensure that they are readily accessible in or from the Island and that they are capable of retrieval without undue delay.
- (2) A foreign trustee of a Manx trust may rely on the records of a third party in respect of the details of payments and transactions by customers if it is satisfied that the third party will —
 - (a) produce copies of the records on request; and
 - (b) notify the foreign trustee if the third party is no longer able to produce copies of the records on request.

33E Duty to disclose status

- (1) A foreign trustee of a Manx trust must disclose the fact that he or she acts as a trustee to a financial institution or a designated non-financial business or profession in the circumstances specified in subsection (2).
- (2) The circumstances referred to in subsection (1) are when —
 - (a) a business relationship is formed; and
 - (b) an occasional transaction above the threshold specified in paragraph (d) of the definition of “exempted occasional transaction” in paragraph 3(1) of the Code is carried out.

33F Power to disclose information

- (1) Upon request from a person to which subsection (2) applies a foreign trustee of a Manx trust may disclose any information the foreign trustee holds relating to —
 - (a) the trust;
 - (b) the beneficiaries of the trust; and
 - (c) the assets of the trust.

- (2) This subsection applies to —
- (a) a competent authority;
 - (b) a designated non-financial business or profession; and
 - (c) a financial institution,
- (in the case of paragraphs (b) and (c), with which the foreign trustee has a business relationship in relation to the trust).
- (3) The power to disclose information under subsection (1) has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, common law, contract or otherwise.
- (4) Nothing in this section authorises a disclosure, in contravention of any provision of the *Data Protection Act 2002* or equivalent legislation to which the foreign trustee is subject, of personal data which is not exempt from those provisions.

33G Other trustees' duties to obtain and disclose information not affected

The operation of a power or duty in this Act to obtain or disclose information does not affect the operation of any other power or duty to obtain or disclose information which exists in this Act or any other enactment or any restriction on such disclosure.

33H Common law not affected

Save as expressly affected by sections 33A to 33G, other common law duties, obligations or requirements imposed on a trustee are not affected.

33I Interpretation of Part 5A

- (1) In this Part —
- “Authority” means the Isle of Man Financial Services Authority;
- “business relationship” has the meaning given by paragraph 3(1) of the Code;
- “Code” means the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 as it has effect from time to time and any instrument or enactment from time to time amending or replacing that Code;
- “competent authority” has the meaning given in paragraph 3(1) of the Code;
- “corporate trustee” means a trustee which is a body corporate, firm or other body that is a legal person under the law by which it is governed;

“designated non-financial business or profession” means a business within the meaning of Part 1 of Schedule 1 to the *Designated Businesses (Registration and Oversight) Act 2015*;

“express trust” means a trust other than a trust which arises by construction on implication of law;

“financial institution” includes a financial institution within the meaning given in paragraph 1 of Schedule 4 to the *Anti-Terrorism and Crime Act 2003* and a holder of a licence issued under section 7 of the *Financial Services Act 2008* which permits the holder to carry on the regulated activity (within the meaning of section 3(1) of that Act) of providing corporate services or trust services;

“foreign trustee” means a person who —

- (a) acts as the trustee of a Manx trust; and
- (b) is not resident in the Island.

“Manx trust” means an express trust that is governed by or otherwise subject to the law of the Island;

“occasional transaction” has the meaning given by paragraph 3(1) of the Code;


“regulated agent” means a regulated person acting in relation to the trust on behalf of —

- (a) the settlor;
- (b) the trustee;
- (c) the protector (if any);
- (d) the beneficiaries; or
- (e) any other natural person exercising ultimate effective control over the trust;

“regulated person” has the meaning given in paragraph 3(1) of the Code; and

“service provider” means a person who provides services to the foreign trustee in relation to the trust and includes a provider of investment advice or managerial, accountancy, tax advisory, legal or trust and company services.

(2) The Department of Home Affairs may by order amend any definition in subsection (1).

Tynwald procedure – approval required. .

PART 4 — CRIMINAL JURISDICTION IN RELATION TO CERTAIN OFFENCES

6 Criminal Justice Act 1991 amended

- (1) The *Criminal Justice Act 1991* is amended in accordance with subsections (2) to (4).
- (2) Immediately before Part 3 (miscellaneous and supplemental), insert —

PART 2A — JURISDICTION IN RELATION TO CERTAIN OFFENCES

26ZA Offences to which this Part applies

P1993/36/1 and drafting

- (1) This Part applies to 2 groups of offences —
 - (a) any offence mentioned in subsection (2) (a "Group A offence"); and
 - (b) any offence mentioned in subsection (3) (a "Group B offence").
- (2) The Group A offences are —
 - (a) an offence under any of the following provisions of the *Theft Act 1981* —
 - (i) section 7 (theft);
 - (ii) section 19 (false accounting);
 - (iii) section 21 (false statements by company directors, etc);
 - (iv) section 23 (blackmail);
 - (v) section 24 (handling stolen goods);
 - (vi) section 24A (dishonestly retaining a wrongful credit);
 - (b) an offence under any of the following provisions of the *Fraud Act 2017* —
 - (i) section 3 (fraud);
 - (ii) section 8 (possession etc. of articles for use in frauds);
 - (iii) section 9 (making or supplying articles for use in frauds);
 - (iv) section 11 (participating in fraudulent business);
 - (v) section 12 (obtaining services dishonestly);

- (c) an offence under any of the following provisions of the *Forgery Act 1952* —
 - (i) section 2 (forgery of certain documents with intent to defraud);
 - (ii) section 3 (forgery of certain documents with intent to defraud or deceive);
 - (iii) section 4 (forgery of other documents with intent to defraud or to deceive a misdemeanour);
 - (iv) section 5 (forgery of seals and dies);
 - (v) section 6 (uttering);
 - (vi) section 7 (demanding property on forged documents, etc);
 - (vii) section 8 (possession of forged documents, seals, and dies);
 - (viii) section 9 (making or having in possession paper or implements for forgery);
 - (ix) section 10 (purchasing or having in possession certain paper before it has been duly stamped and issued);
 - (x) section 11 (forgery of a passport);
- (d) an offence under any of the following provisions of the *Coinage Offences Act 1980* —
 - (i) section 1 (counterfeiting);
 - (ii) section 2 (gilding, silvering, filing and altering);
 - (iii) section 3 (impairing platinum, gold, silver, cupro-nickel or bronze coin and unlawful possession of filings);
 - (iv) section 4 (defacing and uttering defaced coins);
 - (v) section 5 (uttering and possession with intent to utter);
 - (vi) section 6 (buying or selling, etc counterfeit coin for lower value than its denomination);
 - (vii) section 7 (importing and exporting, etc counterfeit coin);
 - (viii) section 8 (making, possessing and selling medals resembling platinum, gold, silver or cupro-nickel coin);
 - (ix) section 9 (making, mending and having possession of coining implements); and
- (e) an offence under any of the following provisions of the *Customs and Excise Management Act 1986* —

- (i) section 176 (counterfeiting documents, etc);
 - (ii) section 176A (prohibition on importation and exportation of false identity documents, etc).
 - (3) The Group B offences are —
 - (a) conspiracy to commit a Group A offence;
 - (b) conspiracy to defraud;
 - (c) attempting to commit a Group A offence;
 - (d) incitement to commit a Group A offence.
 - (4) The Department of Home Affairs may by order amend subsection (2) or (3) by adding or removing any offence.
- Tynwald procedure – approval required.

26ZB Jurisdiction in respect of Group A offences

P1993/36/2 and drafting

- (1) Subject to subsection (2), for the purposes of this Part "relevant event", in relation to any Group A offence, means any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.
- (2) In relation to an offence under section 3 of the *Fraud Act 2017* (fraud), "relevant event" includes —
 - (a) if the fraud involved an intention to make a gain and the gain occurred, that occurrence;
 - (b) if the fraud involved an intention to cause a loss or to expose another to a risk of loss and the loss occurred, that occurrence.
- (3) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.
- (4) A person may be guilty of a Group A offence if any of the events which are relevant events in relation to the offence occurred in the Island.

26ZC Questions immaterial to jurisdiction in the case of certain offences

P1993/36/3 and drafting

- (1) A person may be guilty of a Group A or Group B offence whether or not that person was —
 - (a) a British citizen at any material time;
 - (b) in the Island at any such time.

- (2) On a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in the Island, the defendant may be guilty of the offence whether or not —
 - (a) the defendant became a party to the conspiracy in the Island;
 - (b) any act or omission or other event in relation to the conspiracy occurred in the Island.
- (3) On a charge of attempting to commit a Group A offence, the defendant may be guilty of the offence whether or not —
 - (a) the attempt was made in the Island;
 - (b) it had an effect in the Island.
- (4) Subsection (1)(a) does not apply where jurisdiction is given to try the offence in question by an enactment which makes provision by reference to the nationality of the person charged.
- (5) Subsection (2) does not apply in relation to any charge of conspiracy brought by virtue of paragraphs 1 and 3 of Schedule 4 to the *Criminal Justice Act 2001*.

26ZD Rules for determining certain jurisdictional questions relating to location of events

P1993/36/4 and drafting

- In relation to a Group A or Group B offence —
 - (a) there is an obtaining of property in the Island if the property is either despatched from or received at a place in the Island; and
 - (b) there is a communication in the Island of any information, instruction, request, demand or other matter if it is sent by any means —
 - (i) from a place in the Island to a place elsewhere; or
 - (ii) from a place elsewhere to a place in the Island.

26ZE Attempt

P1993/36/5(2) and drafting

- (1) If this section applies to an act, what the person doing the act had in view shall be treated as an offence to which section 9 of the *Criminal Law Act 1981* applies.
- (2) This section applies to an act if —
 - (a) it is done in the Island; and
 - (b) it would fall within section 9 of the *Criminal Law Act 1981* as more than merely preparatory to the commission of a

Group A offence but for the fact that that offence, if completed, would not be an offence triable in the Island.

- (3) Subsection (1) above is subject to section 26ZG (relevance of external law).
- (4) Where a person does any act to which this section applies, the offence which he or she commits shall for all purposes be treated as the offence of attempting to commit the relevant Group A offence.

26ZF Incitement

P1993/36/5(4)&(5) and drafting

- (1) A person may be guilty of incitement to commit a Group A offence if the incitement —
 - (a) takes place in the Island; and
 - (b) would be triable in the Island but for what the person charged had in view not being an offence triable in the Island.
- (2) Subsection (1) is subject to section 26ZG.

26ZG Relevance of external law

P1993/36/6 and drafting

- (1) A person is guilty of conspiracy to defraud only if the pursuit of the agreed course of conduct would at some stage involve —
 - (a) an act or omission by one or more of the parties; or
 - (b) the happening of some other event,
 constituting an offence under the law in force where the act, omission or other event was intended to take place.
- (2) A person is guilty of an offence triable by virtue of section 26ZF only if what that person had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.
- (3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.
- (4) Subject to subsection (6), a condition specified in subsection (1) or (2) shall be taken to be satisfied unless, not later than specified by the court, the defence serve on the prosecution a notice —
 - (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;
 - (b) showing their grounds for that opinion; and

- (c) requiring the prosecution to show that it is satisfied.
- (5) In subsection (4) "the relevant conduct" means —
 - (a) where the condition in subsection (1) is in question, the agreed course of conduct; and
 - (b) where the condition in subsection (2) is in question, what the defendant had in view.
- (6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).
- (7) In the Court of General Gaol Delivery the question whether the condition is satisfied shall be decided by the Deemster alone.

26ZH Application of Part 2A

Nothing in any provision of this Part applies to any act, omission or other event occurring before the commencement of that provision. **22**.

- (3) In section 21 (evidence or information for use outside the Island), subsection (7) is omitted.
- (4) In section 21(9), paragraph (c) is omitted.

PART 5 – PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN REQUIREMENTS

7 Anti-Terrorism and Crime Act 2003 amended

- (1) The *Anti-Terrorism and Crime Act 2003* is amended in accordance with subsection (2).
- (2) In paragraph 1(6) of Schedule 6 (financial information), for “on summary conviction to a fine not exceeding £5,000”, substitute —
 - 66** —
 - (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
 - (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both. **22**.

8 Financial Intelligence Unit Act 2016 amended

- (1) The *Financial Intelligence Unit Act 2016* is amended in accordance with subsection (2).
- (2) For section 20(5) (offence for failing to comply with request), substitute —

66 (5) A person guilty of an offence under subsection (1), (3) or (4) is liable —

- (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
- (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both. **62**.

9 Proceeds of Crime Act 2008 amended

(1) The *Proceeds of Crime Act 2008* is amended in accordance with subsections (2) and (3).

(2) In section 163A (production orders: offences) —

- (a) omit subsection (2); and
- (b) for subsection (4), substitute —

66 (4) A person guilty of an offence under subsection (1) or (3) is liable —

- (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
- (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both. **62**.

(3) In section 176(2) (disclosure orders: offences) —

- (a) omit subsection (2); and
- (b) for subsection (4), substitute —

66 (4) A person guilty of an offence under subsection (1) or (3) is liable —

- (a) on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both;
- (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both. **62**.

PART 6 — ADDITIONAL GAMBLING DECISIONS SUBJECT TO APPEAL

10 Gambling (Amendment) Act 2006 amended

(1) The *Gambling (Amendment) Act 2006* is amended in accordance with subsections (2) and (3).

(2) In section 8(1) (stay pending appeal) for “section 7(1)(c) to (e)”, substitute **66** section 19 of the *Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2017* (public statements) **62**.

- (3) In Schedule 4 (decisions subject to appeal), immediately after paragraph 28, insert —

66 *Gambling generally*

29. Any decision made or action taken by the Commissioners under any of the sections listed in section 34(2) of *the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2017*. **67**.

PART 7 — ADDITIONAL RECORD KEEPING REQUIREMENTS IN RESPECT OF FOUNDATIONS

11 Foundations Act 2011 amended

- (1) The *Foundations Act 2011* is amended in accordance with subsections (2) to (5).
- (2) In section 4 (application for the establishment of a foundation) —
- (a) after subsection (4)(a), insert —
- 68** (aa) a copy of the foundation rules within which any information from which a person can or may be identified has been redacted; and **69**; and
- (b) after subsection (4), insert —
- 69** (4A) Where the foundation rules are not in English, the foundation must provide a copy of an accurate English translation of the rules to the Registrar. **70**
- (3) In section 41 (documents to be kept at business address of foundation) —
- (a) in subsection (1), omit “or outside”; and
- (b) after subsection (2)(f) insert —
- 71** (g) a register of the names and addresses of all founders of the foundation;
- (h) a register of the names and addresses of all known beneficiaries under the foundation; and
- (i) proof of registration of the foundation. **72**.
- (4) In section 45 (amendment of the foundation instrument) —
- (a) after “foundation instrument”, insert **73** or foundation rules **74** in —
- (i) subsection (1);
- (ii) subsection (3)(a); and
- (iii) subsection (4) in both places;

- (b) in subsection (5), after “to amend the foundation instrument”, insert **43** or foundation rules **22**; and
 - (c) in the section heading after “foundation instrument”, insert **43** or foundation rules **22**.
- (5) In section 48 (register to be kept and made available for public inspection) after subsection (2) insert —
- 43**(2A) The Registrar must include in the register the foundation rules of each foundation in the form provided for by section 4(4)(aa). **22**.

PART 8 — POWER TO MAKE ENQUIRIES IN RELATION TO INFORMATION SUBMITTED FOR REGISTRATION

12 Partnership Act 1909 amended

In the *Partnership Act 1909*, after section 56, insert —

4356A Department not liable for accuracy of information submitted

- (1) To avoid doubt, the Department is not liable for the accuracy of any document submitted for inclusion on any register or index it maintains under this Act.
- (2) Despite subsection (1), the Department may make such enquiries as it considers appropriate in the circumstances to establish the accuracy of any such information. **22**.

13 Companies Act 1931 amended

In the *Companies Act 1931*, after section 285A, insert —

43285B Department not liable for accuracy of information submitted

- (1) To avoid doubt, the Department is not liable for the accuracy of any document submitted for inclusion on any register it maintains under this Act.
- (2) Despite subsection (1), the Department may make such enquiries as it considers appropriate in the circumstances to establish the accuracy of any such information. **22**.

14 Limited Liability Companies Act 1996 amended

In the *Limited Liability Companies Act 1996*, after section 11D, insert —

11E Department not liable for accuracy of information submitted

- (1) To avoid doubt, the Department is not liable for the accuracy of any document submitted for registration under this Act.
- (2) Despite subsection (1), the Department may make such enquiries as it considers appropriate in the circumstances to establish the accuracy of any such information. **22**.

15 Companies Act 2006 amended

In the *Companies Act 2006*, after section 206, insert —

206A Registrar not liable for accuracy of information submitted

- (1) To avoid doubt, the Registrar is not liable for the accuracy of any document submitted for inclusion on any register it maintains under this Act.
- (2) Despite subsection (1), the Registrar may make such enquiries as he or she considers appropriate in the circumstances to establish the accuracy of any such information. **22**.

16 Foundations Act 2011 amended

In the *Foundations Act 2011*, after section 50, insert —

50A Registrar not liable for accuracy of information submitted

- (1) To avoid doubt, the Registrar is not liable for the accuracy of any information submitted to him or her for inclusion on the register.
- (2) Despite subsection (1), the Registrar may make such enquiries as he or she considers appropriate in the circumstances to establish the accuracy of any such information. **22**.

ANNEX II

Draft Anti-Money Laundering and Countering the Financing of Terrorism (Unregulated Trustees) Code 2017.

The Department of Home Affairs makes the following Code under section [157 of the Proceeds of Crime Act 2008] AND [68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014] after consulting such persons and bodies that appeared to it to be appropriate.

1 Title

This Code is the Anti-Money Laundering and Countering the Financing of Terrorism (Unregulated Trustees) Code 2017.

2 Commencement

This Code comes into operation on [].

3 Interpretation

(1) In this Code —

“business relationship” has the meaning given by paragraph 3(1) of the 2015 Code;

“2015 Code” means the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 as it has effect from time to time and any instrument or enactment from time to time amending or replacing that Code;

“competent authority” has the meaning given in paragraph 3(1) of the 2015 Code;

“designated non-financial business or profession” means a business within the meaning of Part 1 of Schedule 1 to the *Designated Businesses (Registration and Oversight) Act 2015*;

“express trust” means a trust other than a trust which arises by construction on implication of law;

“financial institution” includes a financial institution within the meaning given in paragraph 1 of Schedule 4 to the *Anti-Terrorism and Crime Act 2003* and a holder of a licence issued under section 7 of the *Financial Services Act 2008* which permits the holder to carry on the regulated activity (within the meaning of section 3(1) of that Act) of providing corporate services or trust services;

“occasional transaction” has the meaning given by paragraph 3(1) of the 2015 Code;

“regulated agent” means a regulated person acting in relation to the trust on behalf of —

- (a) the settlor;
- (b) the trustee;
- (c) the protector (if any);

- (d) the beneficiaries; or
- (e) any other natural person exercising ultimate effective control over the trust;

“regulated person” has the meaning given in paragraph 3(1) of the 2015 Code;

“service provider” means a person who provides services to the trustee in relation to the trust and includes a provider of investment advice or managerial, accountancy, tax advisory, legal or trust and company services; and

“unregulated trustee” means a trustee of an express trust that is governed by or otherwise subject to the law of the Island, who —

- (a) is resident in the Island; and
- (b) who is not required to comply with the Code.

- (2) The Department of Home Affairs may by order amend any definition in subparagraph (1).

Tynwald procedure – approval required.

5 Application

This Code applies to an unregulated trustee.

6 Duty to obtain information

- (1) An unregulated trustee must obtain and hold adequate, accurate, and current information on the identity of —
- (a) the settlor;
 - (b) any co-trustee;
 - (c) the protector (if any);
 - (d) the beneficiaries; and
 - (e) any other natural person exercising ultimate effective control over the trust.
- (2) In respect of a class of beneficiaries where it is not reasonably practicable to identify each beneficiary, details sufficient to identify and describe the class of persons who are beneficiaries.
- (3) An unregulated trustee must hold information prescribed by regulations under subparagraph (6) on other regulated agents of, and service providers in relation to, a trust of which he or she is a trustee.
- (4) Information held pursuant to this paragraph must be —
- (a) updated on a timely basis; and
 - (b) accurate.

- (5) Where the unregulated trustee is acting in a professional capacity, the information specified in subparagraphs (1) and (2) must be maintained in accordance with paragraphs 2 and 3.
- (6) The Department of Home Affairs may by regulations make further provision about —
 - (a) the information to be held in accordance with subparagraph (3); and
 - (b) the maintenance of information for the purposes of subparagraphs (4) and (5), including the form of and location at which the information must be maintained.
- (7) Regulations under subparagraph (6) must be laid before Tynwald as soon as practicable after they are made and if Tynwald at the sitting at which they are laid or the next subsequent sitting resolves that the regulations are to be annulled they shall cease to have effect.
- (8) A person who fails to comply with this paragraph commits an offence.
- (9) A person guilty of an offence under subparagraph (8) is liable —
 - (a) on conviction on information, to custody not exceeding 2 years, to a fine or to both;
 - (b) on summary conviction, to custody not exceeding 12 months, to a fine not exceeding £5,000 or to both.
- (10) For the purposes of subparagraph (1) the Isle of Man Financial Services Authority (“the Authority”) may issue guidance about the meaning of “control”.

Tynwald procedure – laying only.
- (11) Regard must be had to guidance issued under paragraph (10) in interpreting references in this Code to that expression.
- (12) The Authority may revise guidance issued under paragraph (10) and a reference to guidance includes a reference to revised guidance.

Tynwald procedure – laying only.
- (13) Guidance issued under paragraph (10) and revised guidance issued under subparagraph (12) must be published by the Authority on its website or in a manner the Authority considers will bring it to the attention of those likely to be affected by it.

7 Record retention

- (1) An unregulated trustee must keep the records required by paragraph 6 for at least 5 years —
 - (a) in the case of records relating to a transaction, from the date —

- (i) of the completion of the transaction; or
 - (ii) when all activities relating to an occasional transaction or a series of linked transactions were completed; or
- (b) in respect of other activities, from —
 - (i) the date the business relationship was formally ended; or
 - (ii) if the business relationship was not formally ended, when all activities relating to the transaction were completed.
- (2) Without limiting sub-paragraph (1), if an unregulated trustee knows or believes that a matter is under investigation by a competent authority or becomes aware that a request for information or an enquiry is underway by a competent authority, the trustee must retain all relevant records for as long as required by the competent authority.

8 Record format and retrieval

- (1) In the case of any records required to be established and maintained under paragraph 6 —
 - (a) if the records are in the form of hard copies kept in the Island, an unregulated trustee must ensure that they are capable of retrieval without undue delay;
 - (b) if the records are in the form of hard copies kept outside the Island, an unregulated trustee must ensure that the copies can be sent to the Island and made available within 7 working days; and
 - (c) if the records are not in the form of hard copies (such as records kept on a computer system), an unregulated trustee must ensure that they are readily accessible in or from the Island and that they are capable of retrieval without undue delay.
- (2) An unregulated trustee may rely on the records of a third party in respect of the details of payments and transactions by customers if it is satisfied that the third party will —
 - (a) produce copies of the records on request; and
 - (b) notify the relevant person if the third party is no longer able to produce copies of the records on request.

9 Duty to disclose status

- (1) An unregulated trustee must disclose the fact that he or she acts as a trustee to a financial institution and a designated non-financial business or profession in the circumstances specified in subparagraph (2).
- (2) The circumstances referred to in subparagraph (1) are when —
 - (a) a business relationship is formed; and

- (b) an occasional transaction above the threshold specified in paragraph (d) of the definition of “exempted occasional transaction” in paragraph 3 of the Code is carried out.
- (3) An unregulated trustee of a trust which is established in the Island who fails to comply with this Code commits an offence.
- (4) A person guilty of an offence under subparagraph (3) is liable —
 - (a) on conviction on information, to custody not exceeding 2 years, to a fine or to both;
 - (b) on summary conviction, to custody not exceeding 12 months, to a fine not exceeding £5,000 or to both.

10 Power to disclose information

- (1) Upon request from a person to which subparagraph (2) applies, an unregulated trustee may disclose any information the trustee holds relating to —
 - (a) the trust;
 - (b) the beneficiaries of the trust; and
 - (c) the assets of the trust.
- (2) This subparagraph applies to —
 - (a) a competent authority;
 - (b) a designated non-financial business or profession; and
 - (c) a financial institution,

(in the case of sub-subparagraphs (b) and (c), with which the unregulated trustee has a business relationship in relation to the trust).
- (3) The power to disclose information under subparagraph (1) has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, common law, contract or otherwise.
- (4) Nothing in this paragraph authorises a disclosure, in contravention of any provisions of the *Data Protection Act 2002*, of personal data which is not exempt from those provisions.

11 Other trustees’ duties to obtain and disclose information not affected

The operation of a power or duty in this Code to obtain or disclose information does not affect the operation of any other power or duty to obtain or disclose information which exists in any other enactment or any restriction on such disclosure.

12 Common law not affected

Save as expressly affected by paragraphs 6 to 11, other common law duties, obligations or requirements imposed on an unregulated trustee are not affected.

ANNEX III

DEPARTMENT: Home Affairs		
IMPACT ASSESSMENT OF: Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendment) Bill 2017		
Stage:	Version: 2.0	Date: 01 December 2017
Related Publications:		
<p>Responsible Officers: 1. Karen Ramsey, Head of AML/CFT Policy (Cabinet Office) 2. Tom Bateman, Legislation Manager (Home Affairs)</p> <p>Email Addresses: 1. Karen.ramsay@gov.im Telephone: 1. 685332 2. tom.bateman@gov.im 2. 694305</p>		
SUMMARY: INTERVENTION AND OPTIONS		
<p>Briefly summarise the proposal's purpose and the intended effects</p> <p>The Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendment) Bill 2017 aims to address a number of deficiencies in the IoM's anti-money laundering (AML) regime. These deficiencies were identified during the international assessment of the IoM undertaken by MONEYVAL on behalf of the Financial Action Task Force (FATF) in 2016. The measures in the Bill address gaps in respect of trustee duties (in particular trustees acting in a non-professional capacity and non-resident foreign trustees), record keeping for foundations, penalties for failure to produce information required by law enforcement, and the powers of the Companies' Registry to undertake enquiries concerning documents submitted to them. The Bill also makes some minor changes relating to rights of appeal proposed to the Gambling (Amendment) Act 2006 and extends the jurisdictional reach in a number of fraud type offences.</p> <p>There are existing AML/CFT requirements on professional trustees in the IoM; they are regulated and supervised by the IoM Financial Services Authority. However unregulated IoM based trustees, and trustees using IoM law but with no connection to the IoM, have no such requirements placed upon them. The MONEYVAL Report identified this as a gap which should be addressed, and rated the IoM accordingly. The measures which are planned will allow for a Code to be drafted so that certain standards are required to be met by all trustees resident in the IoM. Part 2 of the Bill makes provision for a Code to be made relating to unregulated Isle of Man based trustees. The issues identified can be found under IO5 and Recommendation 25 in the Mutual Evaluation Report. Part 3 of the Bill relates to foreign Trustees.</p> <p>Issues concerning jurisdictional matters were not identified by MONEYVAL, but were highlighted during the process of drafting the Fraud Bill, which has now been enacted. The present common law rules of jurisdiction are considered to be outdated. Planned amendments to the Criminal Justice Act 1991 would confer jurisdiction over certain specific crimes of dishonesty, which may form part of a money laundering case, if a 'relevant event' occurred in another jurisdiction. Part 4 of the Bill refers.</p> <p>The MONEYVAL Report highlighted that whilst a failure to produce information required by a regulator carries an unlimited fine, for law enforcement the same offence is limited to a £5,000 fine. This is not considered to be either proportionate or dissuasive in particular for a large corporate body. This matter is referred to under Recommendation 24 and Recommendation 25 in the Mutual Evaluation Report. Part 5 of the Bill removes the limit applied to the fining powers in the relevant law enforcement pieces of legislation.</p> <p>There are some minor changes relating to rights of appeal proposed to the Gambling (Amendment) Act 2006. These changes are in order to clarify that decisions made under the Gambling (Anti-Money Laundering and Combating the Financing of Terrorism) Bill 2017 are appealable to the Tribunal and that public statements are also subject to the section 9 provisions regarding stays pending appeal. These are detailed at Part 6 of the Bill.</p> <p>The Bill proposes strengthening the record keeping requirements around foundations, (which was</p>		

also recommended by MONEYVAL) in particular introducing a requirement that the foundation rules are filed with the Companies Registry and made available to the public (but with any settlor, beneficiary and other personal details redacted). Recommendation 24 and IO5 in the Mutual Evaluation Report refer. **Part 7** of the Bill addresses this requirement along with other measures regarding foundation documents.

Finally, MONEYVAL raised issues regarding Companies Registry not checking the accuracy of basic information on documents filed with it. Recommendation 24 in the Mutual Evaluation report refers. **Part 8** of the Bill has been drafted to clarify the powers of the Registrar in this respect.

What are the options that have been considered

Do nothing – the majority of the measures to be included in the Bill address recommendations made in the MONEYVAL report on the IoM. The other recommendations are directly relevant to the IoM's anti-money laundering regime. The IoM is currently in an 'enhanced follow-up' process with MONEYVAL and is to report back on progress being made against all the recommendations in their report. It would be inadvisable for the Island not to respond to key elements of the report, particularly as some matters are identified as only partially compliant. The Council of Ministers has clearly identified in the 'Programme for Government 2016-2021' that it is one of their priority actions to address recommendations in the MONEYVAL report.

Address some of the deficiencies identified – with the exception of the jurisdictional matters and the minor gambling amendments, the remainder of the Bill addresses matters identified by MONEYVAL which are relevant to FATF Recommendations dealing with transparency and beneficial ownership of legal persons and transparency and beneficial ownership of legal arrangements (Recommendations 24 and 25) and the effectiveness with which certain provisions are applied. Overall these areas were not assessed as satisfactory, and while for the most part they do not concern the largest part of the trust sector (which is fully regulated and the required provisions already apply to them) nevertheless it is an area where unquestionably there is a lack of legal requirements in respect of record keeping. Issues in respect of Recommendations 24 and 25 and their low assessment rating, at least as far as the MONEYVAL assessment is concerned, are a priority deficiency to correct.

Promote a Bill – this will ensure that the IoM can meet key MONEYVAL recommendations concerning foreign and domestic trusts and the majority of deficiencies identified under Recommendation 25. This was one of only 5 Recommendations which failed to reach a satisfactory grade and was instead rated as 'Partly Compliant'. The Bill also has the capacity to address some other key areas for the IoM and would provide additional evidence of progress to MONEYVAL, meeting actions identified in the 'Programme for Government 2016-2021'.

Link to Government Strategic Plan

Programme for Government 2016-2021

Policy statement

- Maintain our robust, zero tolerance stance in relation to money laundering and the financing of terrorism.

Actions by Outcome

- Consider and respond to issues identified in the international MONEYVAL report on the Isle of Man, prioritising and taking action as required.
- Implement any improvements identified by the MONEYVAL assessment'

Responsible Departmental Member: Clare Bettison, MHK

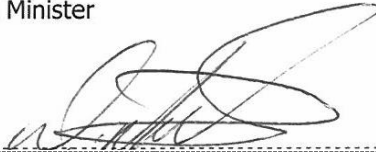
Ministerial sign off:

I have read the Impact Assessment and am satisfied that the balance between the benefit and any

costs is the right one in the circumstances.

Signed by the Responsible Minister

Hon. Bill Malarkey, MHK



Date:

16 Dec 2017

Minister for Home Affairs

SUMMARY: ANALYSIS AND EVIDENCE

IMPACT OF PROPOSAL

Resource Issues - Financial (including manpower)

None.

Statement

Likely Financial Costs

One Off: None.

Average Annual (excluding one off): None.

Likely Financial Benefits

One Off: None.

Average Annual (excluding one off): None.

If the proposal introduces provisions that will require another Department, Board, Office or Body to take on additional work or responsibility please ensure that they have been consulted with early on in your considerations. Please provide a brief statement as to who they are and the consultation that has taken place.

The Departments of Home Affairs, Enterprise, the Treasury, the Attorney General's Chambers, the Financial Services Authority and the Gambling Supervision Commission are involved and have been party to various groups charged with monitoring and addressing AML/CFT matters. All the bodies mentioned are aware of the importance of the proposals within this Bill for the Island's national interest and international reputation.

Are there any costs or benefits that are not financial i.e. social

The benefits of promoting the Bill are that it will help to address the MONEYVAL recommendations in respect of areas that were found to be only partially compliant with international standards. Progress on the Bill will help evidence the commitment of the IoM to addressing identified deficiencies ahead of the "enhanced follow-up report" the Island is required to provide to MONEYVAL in February 2018.

Which Business sectors/organisations will be impacted, if any, and has any direct consultation taken place?

This Bill will affect businesses in the gambling and financial sector. An early (or pre-) consultation process is currently taking place with the Society of Trust and Estate Practitioners and it is proposed to engage in a formal public consultation process before Christmas.

Does the proposal comply with privacy law? Please provide a brief statement as to any issue of privacy or security of personal information.



Cabinet Office
Government Office
Bucks Road
Douglas
IM1 3PN