



**ISLE OF MAN
FINANCIAL SERVICES AUTHORITY**

Lught-Reill Shirveishyn Argidoil Ellan Vannin

Feedback Statement

AML/CFT Framework legislation updates

FS24-01

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Contents

Glossary.....	2
1. Background	3
2. Summary of Responses.....	3
3. Changes to the Proposals	4
4. Further Call for Views - Lenders.....	4
5. Next Steps	6
Appendix A – List of Groups to which this Feedback Statement has been sent	8
Appendix B - Designated Businesses (Amendment) Order 2024 – showing tracked changes post Consultation	9
Appendix C - Proceeds of Crime (Business in the Regulated Sector)(Amendment) Order 2024 – showing tracked changes post Consultation	9
Appendix D - Call for Views - Lenders (Letter).....	9

Glossary

AML/CFT	Anti-Money Laundering and Countering the Financing of Terrorism
Authority	Isle of Man Financial Services Authority
DBROA15	Designated Businesses (Registration and Oversight) Act 2015
DHA	Department of Home Affairs
POCA08	Proceeds of Crime Act 2008
Treasury	Isle of Man Treasury

1. Background

This Feedback Statement is issued by the Isle of Man Financial Services Authority ('the Authority') following the closure of Consultation Paper '**CP24-01**' in respect of the AML/CFT Framework legislation updates.

The Authority, in conjunction with the Department of Home Affairs ('DHA') and the Isle of Man Treasury ('the Treasury'), published this Consultation to obtain views regarding the proposed amendments to Schedule 1¹ ('Schedule 1') to the Designated Businesses (Registration and Oversight) Act 2015 ('DBROA15') and to Schedule 4² ('Schedule 4') to the Proceeds of Crime Act 2008 ('POCA08').

The primary objective of this project is to update the Isle of Man's AML/CFT framework. The proposed updates seek to harmonise, where possible, the provisions of Schedule 1 to the DBROA15 with the provisions of Schedule 4 to the POCA08 and to ensure both schedules are consistent with one another, and align with international standards.

The Consultation ran for a 6-week period, closing on the 15 April 2024.

2. Summary of Responses

The Consultation received eight responses in total. Seven of these responses were via the Isle of Man Government Engagement Hub and one was received by email. All responses were broadly supportive of the proposed amendments, however some common themes were identified from the feedback submitted:

- In regard to the addition of the new activity 'Administering or managing money on behalf of another person' into the DBROA15, a number of responders expressed hesitancy as to what may be captured by this activity, and how wide its scope may reach. A specific concern raised was whether this activity captured a 'Power of Attorney' acting on behalf of a family member. The Act states that the activity must be undertaken 'by way of business', therefore it is not caught by the DBROA15 or the AML/CFT Code 2019 if the activity (such as power of attorney) is not being undertaken 'by way of business'. Additional guidance will be published to support the inclusion of this new activity into the DBROA15, and this will address the circumstances in which one may be subject to registration under this activity.
- The explicit inclusion of 'bookkeeping services' was broadly supported by the responders to the Consultation. It is prudent to highlight here again that for one to be 'caught' the activity must be being undertaken 'by way of business'. It is further worth nothing that 'bookkeeping services' already constitute designated business activity (when done 'by way of business') as they form part of the activity of an 'external accountant'. The rationale for drawing out 'bookkeeping services' and to make it explicit is to provide clarity and help ensure persons don't inadvertently fall foul of the registration and oversight requirements under the DBROA15.

¹ Appendix B – Designated Businesses (Amendment) Order 2024

² Appendix C – Proceeds of Crime (Business in the Regulated Sector)(Amendment) Order 2024

- In regard to the definition of ‘Lending’, the feedback received from one respondent highlighted that there remains a lack of clarity around certain types of lending and what constitutes registerable and non-registerable forms of lending³.
- The proposals to update some of the sector terminology for the purpose of aligning the island’s legislative framework with international standards was broadly supported by all responders.
- It should be noted that refreshed guidance will be issued in support of all the changes being made to both Schedule 1 DBROA15 and Schedule 4 POCA08, and this includes new guidance for the Virtual Assets Service Provider sector and detailed guidance on the Travel Rule (Transfer of Virtual Assets) Code 2024 that will come into effect in October 2024.

3. Changes to the Proposals

Following analysis and consideration of the responses provided to the Consultation it is not envisaged that there will be any significantly material changes to the content or structure of either Schedule 1 of the DBROA15 or Schedule 4 of the POCA08. The feedback received from the Consultation will aid the Authority in producing refreshed guidance which will support the changes being proposed and provide industry with additional clarification where necessary.

As highlighted in the Consultation documents, it is not anticipated that the proposed changes to Schedule 1 of the DBROA15 and Schedule 4 of the POCA08 will have any negative impact on existing or new designated businesses. Most of the amendments are not scope changes but are updates to align the two Schedules and bring the terminology in line with international standards.

The one scope change that forms part of the Consultation proposal is the inclusion of the new activity ‘Administering or managing money on behalf of another person’. The Authority has undertaken research in relation to its proposal to bring this new activity into the DBROA15 and has concluded that it is unlikely to result in many, if any, new designated business registrations. If you believe your business will be affected by this proposed change, please contact the Authority at your earliest convenience to discuss this further.

4. Further Call for Views - Lenders

Following the closure of the Consultation, and through further engagement with industry as a direct response to this process, it was again highlighted to the Authority that a section of existing wording found in the activity of “Lending” is potentially erroneous and is creating both ambiguity and a lack of clarity around the intended scope of the activity.

This led the Authority to issue a ‘Call for Views’⁴ to the 39 registered Moneylenders operating on or from the Island. This sought views and input regarding the Authority’s proposal to revise

³ Additional information can be found in section 4 – Further Call for Views - Lenders

⁴ Appendix D – Call for Views – Lenders (mail merge letter)

the wording for the activity of Lending. The Call for Views was open for a period of 10 days from Wednesday 10th July 2024, closing on Friday 19th July 2024.

The primary issue is that a section (highlighted in red text in the wording extract below) of the current wording found respectively at paragraph 2(6)(l) of Schedule 4 to POCA and Part 1 Item 5 of Schedule 1 to the DBROA15, within the activity of “Lending” is believed to have been historically transposed (in error) from a footnote in the glossary of the FATF Methodology. On review, the current wording appears to relate to the activities of Financial Leasing, as it is specifically worded with an emphasis on ‘*products*’. This error has resulted in the activity of Lending being unclear in terms of scope and application.

Current wording in paragraph 2(6)(l) of Schedule 4 to the POCA:

- ‘subject to sub-paragraph (15), lending *in respect of products other than consumer products* for and on behalf of customers’
-

Current wording in Part 1 (5) of Schedule 1 to the DBROA:

- A business which provides lending *in respect of products other than consumer products* for and on behalf of customers, subject to paragraph 5.

The removal of the highlighted wording is being proposed to better align the island’s terminology with the FATF international standards, to provide greater clarity and to reduce ambiguity within the legislation. Further details will also be provided in the AML/CFT Handbook, and supporting sector guidance.

Proposed amended wording in paragraph 2(6)(l) of Schedule 4 to the POCA:

- ‘subject to sub-paragraph (15), lending for and on behalf of customers’
-

Proposed amended wording in Part 1 (5) of Schedule 1 to the DBROA:

- A business which provides lending for and on behalf of customers, subject to paragraph 4(2).

In total the Authority received two formal responses to the 'Call for Views – Lenders':

1. A law firm operating on the Island:

They were supportive of the proposal to amend the wording, citing that this would provide additional clarity around the scope of Lending for industry and would aid them in being able to offer clearer advice to their clients.

2. A local registered Moneylender operating on the Island:

They were supportive of the proposal to amend the wording, citing this would provide additional clarity and have no material impact on their offering.

The response numbers were limited (nil responses were not required), however of those received they were positive in favour of an amendment being made to the Lending activity wording found in paragraph 2(6)(l) of Schedule 4 to the POCA08 and Part 1 (5) of Schedule 1 to the DBROA15. The Authority has received no indication from any relevant persons that the proposed amendments would cause problems or would have any material impact on their business, or the services they offer.

Continued engagement with industry has helped to shape the legislation with the intention of developing and improving the framework for the benefit of both the regulator and industry, therefore it is viewed as practical that this wording is addressed now, whilst an opportunity to do so is available.

A tracked change version of both Schedule 1 DBROA15 and Schedule 4 POCA08 highlighting any amendments that have been made post Consultation can be found in Appendices B and C.

5. Next Steps

Following closure of the Consultation and the issuance of this Feedback Statement, the AML/CFT framework legislation updates to Schedule 1 of the DBROA15 and Schedule 4 of the POCA08 will progress to Tynwald for formal consideration and approval.

Subject to Tynwald approval the Designated Businesses (Amendment) Order 2024 and the Proceeds of Crime (Business in the Regulated Sector) (Amendment) Order 2024 will come into effect in October 2024.

In case of any query, please contact —

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Appendix A – List of Groups to which this Feedback Statement has been sent -

- Alliance of Isle of Man Compliance Professionals
- Association of Chartered Certificated Accountants (as oversight body)
- Association of Chartered Certified Accountants (Isle of Man branch)
- Association of Corporate Service Providers
- Chartered Institute for Securities and Investment (Isle of Man branch)
- Digital Isle of Man
- Finance Isle of Man
- Financial Intelligence Unit
- Financial Planners & Insurance Brokers Association
- Gambling Supervision Commission
- Institute of Certified Bookkeepers (as oversight body)
- Institute of Chartered Accountants In England and Wales (as oversight body)
- Institute of Directors (Isle of Man branch)
- Institute of Financial Accountants (as oversight body)
- Insurance Institute of the Isle of Man
- International Association of Bookkeepers (as oversight body)
- Isle of Man Association of Pension Scheme Providers
- Isle of Man Bankers Association
- Isle of Man Captive Association
- Isle of Man Chamber of Commerce
- Isle of Man Insurance Association
- Isle of Man Law Society (as oversight body)
- Isle of Man Post Office
- Isle of Man Society of Chartered Accountants
- Isle of Man Wealth & Fund Services Association
- Society of Trust and Estate Practitioners (Isle of Man branch)
- The Department for Enterprise

Appendix B - Designated Businesses (Amendment) Order 2024 – showing tracked changes post Consultation -

This copy of the Order highlights any changes that have been made following the closure of the Consultation.

Appendix C - Proceeds of Crime (Business in the Regulated Sector)(Amendment) Order 2024 – showing tracked changes post Consultation -

This copy of the Order highlights any changes that have been made following the closure of the Consultation.

Appendix D – Call for Views – Lenders (Letter)