



ISLE OF MAN  
FINANCIAL SERVICES AUTHORITY

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*Lught-Reill Shirveishyn Argidoil Ellan Vannin*

CONSULTATION PAPER

CP19-01/T19

# **AML/CFT FRAMEWORK**

Issue Date: 13<sup>th</sup> February 2019

Closing Date: 27th March 2019

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## CONSULTATION PAPER – CP19-01/T19

This Consultation Paper is issued by the Isle of Man Financial Services Authority in conjunction with the Department of Home Affairs and the Isle of Man Treasury. The Isle of Man Financial Services Authority is the regulatory body for financial services in the Isle of Man, and the oversight body for Designated Non-Financial Businesses and Professions in relation to compliance with AML and CFT obligations.

The purpose of the consultation is to obtain views in relation to proposed changes to the Island's AML/CFT framework. The consultation is relevant to:

- All persons that are licensed, authorised or registered under the Financial Services Act 2008, Insurance Act 2008, Retirement Benefits Schemes Act 2000, Designated Businesses (Registration and Oversight) Act 2015 or that have responsibility for collective investment schemes under the Collective Investment Schemes Act 2008. It is also relevant to advisers to those persons, or potential applicants for permissions under these Acts or their advisers.
- The consultation is also relevant to a society registered as a credit union within the meaning of the Credit Unions Act 1993, a building society within the meaning of section 7 of the Industrial and Building Societies Act 1892, and, the Post Office in respect of certain activities.
- Schedule 4 to POCA includes a proposed new definition of “payroll agent” which may bring new businesses into the regulated sector. If you believe your business will be affected by this proposed change please contact the Authority.
- Additionally, the sections of the consultation regarding Schedule 4 to POCA are also relevant to all persons supervised in relation to AML/CFT by the Isle of Man Gambling Supervision Commission.

The closing date for comments is **27 March 2019**.

Please send comments in writing and preferably by email to:

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### ***Confidentiality and Data Protection***

*The information you send may be published in full or in a summary of responses. All information in responses, including personal data, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2015 and the Data Protection Act 2018). If you want your response to remain confidential, you should explain why*

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If you have a query in relation to how this consultation has been carried out, please contact the Authority's AML Team by email at [aml@iomfsa.im](mailto:aml@iomfsa.im) or by telephone on +44 (0) 1624 689377.

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## GLOSSARY

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<b>Term</b>	<b>Meaning in this document</b>
<b>AML</b>	Anti-Money Laundering
<b>Authority</b>	Isle of Man Financial Services Authority
<b>CFT</b>	Countering the Financing of Terrorism
<b>FATF</b>	The Financial Action Taskforce
<b>Guidance Notes</b>	The Guidance Notes on Anti-Money Laundering and Preventing the Financing of Terrorism – for Insurers (Long Term Business)
<b>ML</b>	Money Laundering
<b>POCA</b>	The Proceeds of Crime Act 2008

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<b>Relevant person</b>	Means a person carrying on business in the regulated sector, which is included in paragraphs 2(5)(a) – (v) of Schedule 4 to the Proceeds of Crime Act 2008.
<b>TF</b>	Terrorist Financing
<b>The 2015 Code</b>	The Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 (as amended 2018)
<b>The 2019 Code</b>	The Anti-Money Laundering and Countering the Financing of Terrorism Code 2019
<b>TOCFR</b>	Terrorism and Other Financial Crime (Financial Restrictions) Act 2014

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## **1 EXECUTIVE SUMMARY**

### **1.1 Overview**

The Authority has been undertaking a comprehensive project to update the Isle of Man's current AML/CFT framework. This proposed update encompasses remediation action identified by MONEYVAL in their evaluation of the island, and also amendments identified by the Authority's officers over time through supervisory activities and discussions with relevant persons. This update will also include the AML/CFT framework currently applicable to insurers, which was last updated in 2008. This review presents the opportunity to harmonise where possible and update the framework for all sectors.

Additionally, it is proposed that the areas of the 2015 Code which deal with the Specified Non-Profit Organisation sector and the Gambling sector are removed from the 2019 Code. It is proposed that separate AML/CFT Codes are developed for these sectors. These proposed new Codes are considered in separate consultations. These separate Codes will mirror the 2019 Code where deemed appropriate.

Prior to this consultation being issued a number of meetings between the Authority and representatives from the affected sectors have taken place; general feedback has been provided to representatives following these meetings.

The updated framework needs to be in force by July 2019 in order to coincide with the Island's next follow up report to MONEYVAL and its consideration at their plenary scheduled for July 2019.

The legislative ownership of the documents being consulted on belongs to either the Isle of Man Department of Home Affairs or Isle of Man Treasury; however, work regarding updates to this legislation has been delegated to the Authority. The different legislative ownership of documents will be noted throughout this paper.

### **1.2 What is the purpose of this Consultation Paper?**

The purpose of this consultation paper is to obtain feedback on the proposed update to the Island's AML/CFT framework. The documents included in this consultation are:

- the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019 (Department of Home Affairs legislation);
- section 157 of the Proceeds of Crime Act 2008 and section 68 of Terrorism and Other Crime (Financial Restrictions) Act 2014 (Department of Home Affairs legislation);
- the Anti-Money Laundering and Countering the Financing of Terrorism (Civil Penalties) Regulations 2019 (Isle of Man Treasury legislation);

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- Schedule 4 to the Proceeds of Crime Act 2008 (Department of Home Affairs legislation); and
  - Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015 (Isle of Man Treasury legislation).

### **1.3 Who may be affected by this Consultation Paper?**

The consultation is relevant to:

- All persons that are licensed, authorised or registered under the Financial Services Act 2008, Insurance Act 2008, Retirement Benefits Schemes Act 2000, Designated Businesses (Registration and Oversight) Act 2015 or that have responsibility for collective investment schemes under the CIS08. It is also relevant to advisers to those persons, or potential applicants for those permissions or their advisers.
- The consultation is also relevant to a society registered as a credit union within the meaning of the Credit Unions Act 1993, a building society within the meaning of section 7 of the Industrial and Building Societies Act 1892, and the Post Office in respect of certain activities.
- Schedule 4 to POCA includes a proposed new definition of “payroll agent” which may bring new businesses into the regulated sector. If you believe your business will be affected by this proposed change please contact the Authority.
- Additionally, the sections of the consultation regarding Schedule 4 to POCA is relevant to all persons supervised in relation to AML/CFT by the Isle of Man Gambling Supervision Commission

## **2 CONSULTATION PROCESS**

### **2.1 The Authority’s regulatory objectives**

The Authority’s regulatory objectives are set out in section 2(2) of the Financial Services Act 2008 as —

- (a) securing an appropriate degree of protection for policyholders, members of retirement benefits schemes and the customers of persons carrying on a regulated activity;
- (b) the reduction of financial crime; and
- (c) the maintenance of confidence in the Island’s financial services, insurance and pensions industries through effective regulation, thereby supporting the Island’s economy and its development as an international financial centre.

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## **2.2 Responding to the Consultation Paper**

Open dialogue with stakeholders is an essential element for successful development of the Authority's proposals and constructive feedback will help the Authority reach an informed decision on the content of the proposals and manner of implementation.

As responses to the consultation may be subject to publication or disclosure in accordance with access to information regimes, respondents should state if they wish their response to remain confidential and, if so, the reasons for this.

Submissions received by the closing date of the consultation will be considered but may not necessarily result in a change to the proposals following a review of all responses received.

Professional bodies, trade associations and other representative groups are asked to provide a summary of the people and organisations that they represent when responding to a consultation as well as the methodology used to gain members' input.

The Authority requests that submissions are not made anonymously as they will not be considered or included in the Consultation Response.

This Consultation Paper has been published on the Authority's website and the Isle of Man Government's Consultation Hub<sup>1</sup>. A list of specific representative groups to which this Consultation Paper has been sent is shown in Appendix A.

Prior to this consultation document being issued the Authority has undertaken pre-consultation engagement with representatives from affected sectors. This engagement primarily took the form of a number of meetings, beginning in July 2018.

## **3 PROPOSALS**

### **3.1 The Anti-Money Laundering and Countering the Financing of Terrorism Code 2019 (DHA legislation) (Appendix B)**

It is proposed that the 2015 Code is revoked and replaced with the 2019 Code in order to address remediation actions MONEYVAL in their evaluation of the island, and also to make amendments identified by the Authority's officers over time through supervisory experience and discussions with relevant persons. This includes bringing some provisions into the Code for the insurance sector which are currently contained in the Insurance (AML) Regulations into the Code. It is also proposed to extend the range of sanctions in relation non-

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<sup>1</sup> <https://consult.gov.im/>



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compliance with the Code by the introduction of civil penalties, currently the only option is for criminal sanctions.

There are a number of proposed changes to definitions and wording within the 2019 Code, in order to provide greater clarity and bring matters up to date. Matters relating to specified non-profit organisations and gambling activity will be removed into discrete AML/CFT Codes, which are being consulted on separately.

The proposed changes throughout the 2019 Code will result in changes to paragraph numbers from the 2015 Code and some amendments to the order of provisions.

Some of the key changes proposed within the 2019 Code are detailed below (listed in the order they appear in the 2019 Code).

- Verification of customers - throughout the 2019 Code the requirement regarding verification of the customer will be widened from 'the verification of identity of the customer using reliable, independent source documents' to 'the verification of the identity of the customer using reliable, independent source documents, data or information'. This revised wording is in line with FATF standards (the FATF recommendations and methodology).
- Source of funds and source of wealth – definitions will be added to the 2019 Code clarifying these terms in line with international standards. In summary, source of funds means the origin of the particular funds or other assets involved in a business relationship or occasional transaction and source of wealth means the origin of a customer's entire body of wealth. Where source of funds and source of wealth are required the 2019 Code states that a relevant person must "take reasonable measures to establish" these. This allows for a risk based approach to be taken. Detailed guidance in this area will be provided in the AML/CFT Handbook.
- Registration on Themis – a requirement will be added for relevant persons to register on the designated reporting platform (which is currently Themis) in relation to external disclosures (this is already a requirement in the Financial Intelligence Unit Act 2016).
- Technology risk assessment – the 2015 Code includes the requirement to undertake a risk assessment of any technological developments, it is proposed that this requirement is widened to undertake and regularly review an assessment of any technology employed by a firm, including new or developing technologies.
- Introduced business – amendments are proposed in relation to adding requirements to ensure the customer is met by the relevant person or introducer (in certain cases) where two third parties have been involved in the introduction process and the third party who has met the customer is not a trusted person as defined by the 2019 Code.

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- Beneficial ownership and control – a number of amendments are proposed to requirements regarding the identification and verification of beneficial owners and controllers of customers, including the requirements in respect of natural and legal persons.
  - Acceptable applicants – this section will be amended to make it clearer that it only applies where a customer is acting on their own behalf.
  - Generic designated business – this section will be amended to clarify the circumstances in which this concession may be used.
  - Transfer of a block of business – the requirements regarding the transfer of a block of business will be moved into their own standalone paragraph to provide added clarity.
  - Section 24 of the Financial Intelligence Unit Act 2016 – a reference will be added in the 2019 Code to section 24 of the Financial Intelligence Unit Act 2016, and a requirement to keep a register of any disclosures under this section will also be added.
  - Compliance report to the board – a requirement for a report to the board of directors (if applicable) of a relevant person to be made at least annually regarding AML/CFT matters and testing of AML/CFT procedures within the relevant is proposed.
  - Monitoring and testing compliance – a requirement will be added for a relevant person to ensure that there is a suitable person at management level to exercise the functions regarding monitoring and testing compliance with the provisions of the 2019 Code.
  - Staff training – a requirement will be added for records of staff training to be maintained, and for training to be carried out to make staff aware of significant changes to AML/CFT legislation and internal AML/CFT policies and procedures.
  - Responding to customer due diligence requests – requirements will be added regarding disclosure of information by trustees upon request by a competent authority, a Designated Non-Financial Business or Profession or certain regulated persons as defined by the 2019 Code if certain conditions are met.
  - Acting on Behalf Of concession – following the changes introduced by the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Code 2018, and the accompanying changes to guidance in this area published in November 2018, there are no further changes proposed at this time. FATF have recently published Risk Based Approach Guidance for the Securities Sector (<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/rba-securities-sector.html>) which will be of interest to industry. The Authority continues to research the position and is monitoring discussions at FATF regarding subsequent changes to any of the FATF recommendations as a result of this paper. The Authority will continue keep in contact with industry regarding this matter.
  - List C – this list will be updated in due course.

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In due course the AML/CFT Handbook will be updated to give guidance on the requirements of the 2019 Code. Sector specific guidance will also be updated and, where required, drafted. The sector specific guidance which will be developed in conjunction with appropriate stakeholders.

### **3.1. 1. Insurance AML regulations and guidance**

The insurance AML regulations were written in 2008 and included additional requirements for insurers that were not present in the AML/CFT Code in place at that time. The insurance AML regulations have been compared against the 2015 Code in order to identify any differences. It is proposed that, where necessary, areas from the insurance AML regulations will be added to the 2019 Code, therefore eliminating the need for the insurance AML regulations. It is proposed that the insurance AML regulations are now repealed in order to streamline the framework.

Insurers must currently comply with the binding Guidance Notes on Anti-Money Laundering and Preventing the Financing of Terrorism, in conjunction with the aforementioned insurance AML regulations and the AML/CFT Code. The Guidance Notes have been reviewed against the 2015 Code and the AML/CFT Handbook in order to identify any differences. It is proposed that any requirements which need to remain mandatory will be included in the 2019 Code to ensure that appropriate sanctions can be applied where non-compliance is identified. The areas proposed to be added to the 2019 Code are:

- Specific requirements for Money Laundering Reporting Officers of insurers, registered insurance managers, and insurance intermediaries;
- A specific definition of customer in relation to insurers; and
- Specific requirements in relation to beneficial ownership and control in relation to a customer of a life assurance firm.

It is proposed the Guidance Notes will be repealed and the sector will begin to use the AML/CFT Handbook and sector specific guidance which will be developed for the sector in conjunction with appropriate stakeholders.

## **3.2 AML/CFT Civil Penalties**

### **3.2.1 Section 157 of POCA (Proceeds of Crime Act (Compliance with International Standards) Order 2019) and section 68 of TOCFR (Terrorism and Other Crime (Financial Restrictions Act (section 69A) Order 2019) (Department of Home Affairs legislation) (Appendices C and D)**

It is proposed that Section 157 of POCA and section 68 of TOCFR will be amended to allow for civil penalties regulations to be drafted, allowing civil penalties to be included as

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sanctions for non-compliance with the 2019 Code (the 2015 Code only contains criminal sanctions).

### **3.2.2 Anti-Money Laundering and Countering the Financing of Terrorism (Civil Penalties) Regulations 2019 (Treasury legislation) (Appendix E)**

It is proposed that regulations will be drafted under section 157 of POCA and section 68 of TOCFR. These Regulations have been drafted to mirror the Financial Services (Civil Penalties) Regulations 2015, where appropriate, and are in relation to imposing a civil penalty where there is a contravention of the 2019 Code.

The Regulations will introduce two levels of civil penalties. Level 1 penalties will be applied when there has been a contravention of the Code and there will be a set penalty of £50<sup>2</sup> per contravention. Level 2 penalties, which will be up to 8% of the relevant person's income, will be applied where there have been serious contraventions of the Code and certain factors are present, including; whether or not the contravention was brought to the Authority's attention, whether the contravention was incurred deliberately, or whether the contravention is attributable to serious deficiencies in the relevant person's systems and controls or senior management.

The proposed regulations set out the requirement for the Authority to provide written notice regarding any decision to issue a penalty, these notices may be published. The provision for appealing any decision to impose a civil penalty through the Financial Services Tribunal will be introduced into section 157 of POCA and section 68 of TOCFR, as well as the ability to publish information relating to the imposition of a civil penalty.

A guidance document, to provide clarity in relation to circumstances in which civil penalties may be issued, will be developed and published by the Authority in due course.

### **3.3 Schedule 4 to the Proceeds of Crime Act 2008 (Proceeds of Crime Act (Business in the Regulated Sector) Order 2019) (Department of Home Affairs legislation) (Appendix F)**

Schedule 4 of POCA sets out the businesses which are deemed to be business in the regulated sector and therefore are subject to AML/CFT requirements. It is proposed that schedule 4 to POCA will be amended in order to streamline it, increase usability, and, provide greater clarity regarding what businesses are deemed to be within the regulated sector. This includes removing any redundant entries and repetition, and ordering the definitions in a more user friendly way. As the changes to the AML/CFT framework

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<sup>2</sup> Level 1 penalties refer to any breach of the Code in relation to any clients. For example, if a relevant person had not conducted risk assessments for 100 clients, the penalty would be £50 x 100 (£5,000) as this would be 100 contraventions of the Code.

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proposed in this consultation will result in three separate Codes in relation to AML/CFT, Schedule 4 to POCA will also be amended to clarify which activities are subject to which Code.

There will be changes to terminology of a number of the definitions and some more substantial changes to address identified scope gaps; these definitions are:

- Estate agent –this definition will be amended to provide clarity that the arranging of sale and letting of land is caught;
- External Accountant – this will be amended to include the provision of insolvency services;
- Payroll Agent – this definition will be amended to include where a payroll agent is acting as an individual’s employer but the work is being carried out outside of the Island, the work being undertaken is not directly for the employer (payroll agent) and the work is not the principal trade of business of the employer (payroll agent). This could bring more payroll businesses into the regulated sector;
- Specified non-profit organisation – this definition will be amended so in order to be caught an organisation needs to remit at least £2,000 to a higher risk jurisdiction (previously 30% of income of over £5,000) and the decision of where to remit funds is made on the Island; and
- In relation to the business of providing online gambling within the meaning of section 1 of The Online Gambling Regulation Act 2001 an amendment will take place to exempt entities where the business is carried out by means of a software supplier licence or a token-based software supplier licence.

### **3.4 Schedule 1 to the Designated Businesses (Registration and Oversight Act) 2015 (Designated Businesses (Amendment) Order 2019)(Treasury legislation) (Appendix G)**

It is proposed that Schedule 1 to the DBROA will be updated to take into account the proposed changes to Schedule 4 to POCA; specifically the proposed changes to the definitions of Estate Agent, External Accountant, Payroll Agent and Specified Non- Profit Organisation.

There will be additional layout changes in order to provide greater clarity in determining what is caught by the DBROA. The Schedule will also no longer reference back to Schedule 4 to POCA and therefore definitions will now be included in their entirety in the body of Schedule 1.

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## 4 IMPACT ASSESSMENT

The proposed changes to the AML/CFT framework are applicable to all firms included in Schedule 4 to POCA, regardless of size. However, it should be noted that the requirements of the AML/CFT Code are proportionate to the nature and scale of a relevant person's activities.

The proposed changes to the definitions in Schedule 4 to POCA may bring some additional payroll firms into the regulated sector.

## 5 QUESTIONS

### Question 1

Do you have any comments regarding the layout and order of the provisions of the 2019 Code?

### Question 2

Do you have any comments regarding the extent to which you use the introducer provisions contained within the 2019 Code (in the Introduced Business paragraph) and will these changes affect business?

### Question 3

Do you have any comments in relation to the 2019 Code?

### Question 4

Are there any specific areas of the Code where you would benefit from the development of additional guidance?

### Question 5

Do you have any views regarding the currency which should be used within the Code (which is currently EUR)?

### Question 6

Do you have any comments regarding the repealing of the Insurance AML regulations and Guidance Notes?

### Question 7

Do you have any comments in relation to the AML/CFT Civil Penalties regulations?

### Question 8

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Do you have any comments in relation to Schedule 4 to POCA?

**Question 9**

Do you have any comments in relation to Schedule 1 to the DBROA?

**Question 10**

Do you have any comments in relation to section 157 of POCA and section 68 of TOCFR?

## **6 NEXT STEPS**

Following closure of the consultation period, the Authority will review the responses received and publish a Consultation Response document on the Authority's website and the Isle of Man Government's Consultation Hub<sup>3</sup>.

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<sup>3</sup> <https://consult.gov.im/>

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## **APPENDIX A – LIST OF REPRESENTATIVE GROUPS TO WHICH THIS CONSULTATION PAPER HAS BEEN SENT**

- Alliance of Isle of Man Compliance Professionals
- Association of Chartered Certificated Accountants (as oversight body)
- Association of Corporate Service Providers
- Chartered Institute for Securities and Investment
- Finance Isle of Man
- Financial Planners & Insurance Brokers Association
- Institute of Certified Bookkeepers (as oversight body)
- Institute of Chartered Accountants In England and Wales (as oversight body)
- Institute of Directors
- Institute of Financial Accountants (as oversight body)
- International Association of Bookkeepers (as oversight body)
- Isle of Man Wealth & Funds Association
- Isle of Man Association of Chartered Certified Accountants
- Isle of Man Association of Pension Scheme Providers
- Isle of Man Bankers Association
- Isle of Man Captives Association
- Isle of Man Chamber of Commerce
- Isle of Man Insurance Institute
- Isle of Man Law Society (as oversight body)
- Isle of Man Post Office
- Isle of Man Society of Chartered Accountants
- Isle of Man Wealth Management Forum
- London Institute of Banking and Finance
- Manx Insurance Association
- Society of Trust and Estate Practitioners



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## APPENDICES B - G – DRAFT PRIMARY AND SECONDARY LEGISLATION

Drafts of the following legislation have been prepared –

- **Appendix B** – Draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2019;
- **Appendix C** – Draft section 157 of the Proceeds of Crime Act 2008;
- **Appendix D** – Draft section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014;
- **Appendix E** – Draft Anti-Money Laundering and Countering the Financing of Terrorism (Civil Penalties) Regulations 2019;
- **Appendix F** – Draft schedule 4 to the Proceeds of Crime Act 2008; and
- **Appendix G** – Draft schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015