

Statutory Document No. 20XX/XXXX



Designated Businesses (Registration and Oversight) Act 2015

DESIGNATED BUSINESSES (AMENDMENT) ORDER 2019

Laid before Tynwald:

Approved by Tynwald:

Coming into Operation: in accordance with article 2

The Isle of Man Financial Services Authority makes the following Order under section 4 of the Designated Businesses (Registration and Oversight) Act 2015, having consulted in accordance with section 35 of that Act¹.

1 Title

This Order is the Designated Businesses (Amendment) Order 2019.

2 Commencement

This Order comes into operation on the day after it is approved by Tynwald².

3 Substitution of Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015

For Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015, substitute the text set out in the Schedule to this Order.

¹ Section 35(3) of the Designated Businesses (Registration and Oversight) Act 2015 requires the Authority to consult the Treasury, the Department of Home Affairs and any other body or person that it considers appropriate, before making an order under that section.

² Section 35(3) of the Designated Businesses (Registration and Oversight) Act 2015 specifies that an Order made under section 4 of the Act must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the orders are laid or at the next following sitting fails to approve them, they cease to have effect.

MADE

NAME

Chief Executive of the Isle of Man Financial Services Authority

NAME

Member of the Isle of Man Financial Services Authority

SCHEDULE

[Article 4]

**SUBSTITUTION OF SCHEDULE 1 TO THE DESIGNATED BUSINESSES
(REGISTRATION AND OVERSIGHT) ACT 2015****SCHEDULE 1**

[Section 4]

DESIGNATED BUSINESSES AND EXEMPTIONS**PART 1 – DESIGNATED BUSINESSES**

- 1 The following are designated businesses for the purposes of this Act, where it is conducted by way of business –
 - (a) a legal professional, subject to paragraph 3;
 - (b) an external accountant;
 - (c) a tax adviser;
 - (d) a payroll agent;
 - (e) lending in respect of products other than consumer products for and on behalf of customers, subject to paragraph 4;
 - (f) providing financial leasing arrangements in respect of products other than consumer products and on behalf of customers, subject to paragraph 4;
 - (g) providing financial guarantees and commitments in respect of products other than consumer products for and on behalf of customers, subject to paragraph 4;
 - (h) an estate agent, subject to paragraph 5;
 - (i) dealing in goods or services of any description (including dealing as an auctioneer) whenever a transaction or series of linked transactions involves accepting a total cash payment (in any currency) that is equivalent to at least €15,000;
 - (j) providing safe custody facilities for cash or liquid securities, deposit boxes or other secure storage facilities, subject to paragraph 6;
 - (k) the activity of convertible virtual currency; and
 - (l) the activity of a specified non-profit organisation.
- 2 In this Schedule –

“**convertible virtual currency**” means issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies, including crypto-currencies, virtual assets or similar concepts where the concept is accepted by persons as a means of payment of goods or services, a unit of account, a store of value or a commodity;

“**estate agent**” means a person who practices, or carries on business, as an estate agent, within the meaning of section 15 of the Estate Agents Act 1975;

“**external accountant**” means a person who provides accountancy services to a third party –

- (a) including –
 - (i) audit services in respect of a body corporate; and
 - (ii) insolvency services; but
- (b) excluding a person who provides those services if –
 - (i) that person is employed by a public authority;
 - (ii) that person is employed by an undertaking which does not provide accountancy services to a third party by way of business; or
 - (iii) that person’s duties relate solely to the provision of accountancy services to his or her employer;

“**higher risk jurisdiction**” means a jurisdiction which the business in the regulated sector, having considered any relevant guidance, determines presents a higher risk of money laundering, the financing of terrorism or of proliferation;

“**land**” has the meaning given in the Schedule to the Interpretation Act 2015;

“**legal professional**” means a person who –

- (a) is –
 - (i) an advocate within the meaning of the Advocates Act 1976;
 - (ii) a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986;
 - (iii) a notary public within the meaning of the Advocates Act 1995 and the Notaries Regulations 2000³; or
 - (iv) any other person who provides legal services to third parties, except for any such person who is employed by a public authority or an undertaking which does not provide legal services to a third party, by way of business; and

³ SD 671/00 as amended by SD 0850/02

- (b) provides services to a third party including –
 - (i) managing any assets belonging to a client;
 - (ii) legal services which involve the participation in a financial or real property transaction (whether by assisting in the planning or execution of any such transaction or otherwise) by acting for, or on behalf of, a client in respect of –
 - (A) the sale or purchase of land;
 - (B) managing bank, savings or security accounts;
 - (C) organising contributions for the promotion, formation, operation or management of bodies corporate;
 - (D) the sale or purchase of a business; or
 - (E) the creation, operation or management of a legal person or legal arrangement;

“lending” includes –

- (a) consumer credit;
- (b) mortgage credit;
- (c) factoring; and
- (d) the finance of commercial transactions;

“payroll agent” means a person who is involved with the payment of earnings to, or for the benefit of, any individual –

- (a) including where the payroll agent –
 - (i) is not the individual’s employer; or
 - (ii) is the individual’s employer; but
 - (A) the place of work of the individual being paid is outside the Island;
 - (B) the work being carried out by the individual is not being carried on directly for the payroll agent or any company within a group to which the payroll agent belongs; and
 - (C) the work being carried out by the individual is not the principal trade or business of the payroll agent; but
- (b) excluding a technical service provider who only provides services which support the provision of payroll services and at no time takes possession of the funds being transferred;

“public authority” has the meaning in section 6 of the Human Rights Act 2001;

“**specified non-profit organisation**” means a body corporate or other legal person, the trustees of a trust, a partnership, other unincorporated association or organisation or any equivalent or similar structure or arrangement, established solely or primarily to raise or distribute funds for charitable, religious, cultural, educational, political, social, fraternal or philanthropic purposes with the intention of benefiting the public or a section of the public –

- (c) which has an annual or anticipated annual income of £5,000 or more;
- (d) which has remitted, or is anticipated to remit, at least £2,000 in any one financial year to one or more ultimate recipients in or from one or more higher risk jurisdictions; and
- (e) where the decision as to where to remit the funds is made within the Island;

“**tax adviser**” means a person who –

- (a) in the ordinary course of the person’s business gives advice to a third party about the third party’s tax affairs; and
- (b) has been appointed to give such advice either by the third party in relation to whose tax affairs the person advises or by another tax adviser to the third party;

“**technical service provider**” means a person who supports the provision of payment services by providing services including –

- (a) the processing and storage of data;
- (b) trust and privacy protection services;
- (c) data and entity authentication;
- (d) information technology and communication network provision; and
- (e) the provision and maintenance of terminals and devices used for payment services.

3 Paragraph 1(a) does not apply to a legal professional where the assets belonging to a client being managed represent advance payment of fees.

4 Paragraph 1(e), (f) or (g) does not apply where the lending, leasing or provision of guarantees or commitments (as the case may be) is made by –

- (a) a parent undertaking to a subsidiary of that parent undertaking;
- (b) a subsidiary of a parent undertaking to the parent undertaking; or
- (c) a subsidiary of a parent undertaking to another subsidiary of that parent undertaking.

- 5 Paragraph 1(h) does not apply where there is a grant of tenancy agreement and the estate agent does not take possession of funds from a tenant.
- 6 Paragraph 1(j) does not apply where the facilities provided are –
- (a) the storage of goods such as luggage, household items or motor vehicles;
 - (b) the storage of non-physical property such as computer data;
 - (c) the secure transportation of high value items;
 - (d) the offering of safe custody on an occasional or very limited basis, such as hotels providing a safe for use by guests; or
 - (e) legal professionals storing legal documents other than documents of title.
- 7 For the purposes of paragraph 4 –
- “parent undertaking”** means an undertaking which, in relation to another undertaking (a “subsidiary” (“S”)) –
- (a) owns or controls, whether directly or indirectly, shares or other interests in S together aggregating in excess of 50% of the votes exercisable at general or other meetings of S on any or all matters;
 - (b) has a right to appoint or remove a majority of S’s board of directors, or other governing body;
 - (c) has the right to exercise a dominant influence over S –
 - (i) by virtue of the provisions contained in S’s constitutional documents, or
 - (ii) by virtual of a control contract; or
 - (d) controls, alone or pursuant to an agreement with other persons, a majority of the voting rights in S; and
- “undertaking”** means a natural person, body corporate, trustees of a trust, partnership, foundation or unincorporated association.
- 8 For the purpose of paragraph 7 –
- (a) a parent undertaking (“X”) is taken to have the right to exercise a dominant influence over a subsidiary undertaking (“Y”) only if X has a right to give directions with respect to the operating and financial policies of Y with which Y’s directors are, or governing body is, obliged to comply whether or not they are for the benefit of Y;
 - (b) a “control contract” means a contract in writing conferring a dominant influence right which –

- (i) is of a kind authorised by the constitutional documents of the undertaking in relation to which the right is exercisable; and
 - (ii) is permitted by the law under which that undertaking is established; and
- (c) any undertaking which is a subsidiary of another undertaking (“A”) is also a subsidiary of any further undertaking of which A is a subsidiary.

PART 2 – PERSONS EXEMPT FROM THIS ACT

- 9 This Act does not apply to a person whilst acting in his or her capacity as any of the following –
- (a) a person listed under the Financial Services Act 2008;
 - (b) a collective investment scheme established under, and conducted in compliance with, the Collective Investment Schemes Act 2008;
 - (c) an authorised insurer within the meaning of the Insurance Act 2008;
 - (d) a foreign insurer to whom the Authority has issued a permit under section 22 of the Insurance Act 2008;
 - (e) a registered insurance manager or registered insurance intermediary under Part VI of the Insurance Act 2008;
 - (f) a person registered as an authorised or recognised scheme under the Retirement Benefits Schemes Act 2000;
 - (g) a trustee or administrator of a retirement benefits scheme registered under the Retirement Benefits Schemes Act 2000;
 - (h) the holder of a certificate granted in respect of specific premises under the Gaming (Amendment) Act 1984;
 - (i) the holder of a licence granted under the Gaming (Amendment) Act 1984;
 - (j) the holder of any of the following –
 - (i) a bookmaker’s permit granted under section 14 of the Gaming, Betting and Lotteries Act 1988;
 - (ii) a betting office licence granted under section 15 of the Gaming, Betting and Lotteries Act 1988;
 - (iii) a racecourse licence granted under section 22 of the Gaming, Betting and Lotteries Act 1988;
 - (iv) a licence to operate a totalisator on an approved racecourse granted under section 24 of the Gaming, Betting and Lotteries Act 1988;
 - (k) the holder of a casino licence granted under the Casino Act 1986.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order replaces Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015. The Schedule has been expanded to include the detail of the definitions of designated businesses. A number of definitions have been amended to take into account identified scope gaps, in particular the definition of payroll agent has been expanded.