

Appendix F



ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (CIVIL PENALTIES) REGULATIONS 2019

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Statutory Document No. 2019/0201



Proceeds of Crime Act 2008,
Terrorism and Other Crime (Financial Restrictions) Act 2014

ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (CIVIL PENALTIES) REGULATIONS 2019

Approved by Tynwald:

Coming into Operation: ~~1 July 2019~~ in accordance with regulation 2

The Isle of Man Financial Services Authority makes the following Regulations under section 157 of the Proceeds of Crime Act 2008 and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014, after carrying out the consultations required by those sections¹.

1 Title

These Regulations are the Anti-Money Laundering and Countering the Financing of Terrorism (Civil Penalties) Regulations 2019.

2 Commencement

If approved by Tynwald, these Regulations come into operation on ~~1 June 2019~~ the day after approval is given².

3 Interpretation

In these Regulations –

“**accounting year**” means the relevant person’s accounting year;

“**AML/CFT**” means anti-money laundering and countering the financing of terrorism;

¹ Section 157(4) of the Proceeds of Crime Act 2008 and section 68(4) of the Terrorism and Other Crime (Financial Restrictions) Act 2014 require the Isle of Man Financial Services Authority to consult any person or body that appears to it to be appropriate before making regulations under those sections.

² Section 223(3) of the Proceeds of Crime Act 2008 and section 68(2ZA) of the Terrorism and Other Crime (Financial Restrictions) Act 2014 state that Regulations must be approved by Tynwald.

“**Authority**” means the Isle of Man Financial Services Authority;

“**business day**” means any day other than –

–

- (a) a Saturday;
- (b) a Sunday;
- (c) a bank holiday under the Bank Holidays Act 1989;
- (d) a day declared to be a non-business day under a Treasury order under section 1 of the Banking and Financial Dealings (Isle of Man) Act 1973;

“**the Code**” means the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019³, as it has effect from time to time and any instrument or enactment from time to time amending or replacing that Code;

“**competent authority**” means all Isle of Man administrative and law enforcement authorities concerned with AML/CFT, including the Authority, the Isle of Man Gambling Supervision Commission, the Department of Home Affairs, the Isle of Man Constabulary, the Financial Intelligence Unit, the Attorney General and the Customs and Excise and Income Tax Divisions of the Treasury;

“**contravention**” means a contravention of any provision of the Code;

“**income**” means all income derived from the relevant person’s business in the regulated sector during the accounting year in which the contravention was notified to the Authority occurred;

“**relevant person**” means any person listed in paragraph 2(6)(a) to (sr) of Schedule 4 to the Proceeds of Crime Act 2008; and

“**senior management**” means the directors or persons who are nominated to ensure that the relevant person is effectively controlled on a day-to-day basis and who have responsibility for overseeing the relevant person’s proper conduct.

4 Application

These Regulations apply to a person who is a relevant person at the time of a contravention.

5 Civil Penalties

- (1) The Authority may require a relevant person to pay a penalty in respect of ~~each~~ contravention in accordance with this regulation, ~~including and~~ the Table in the Schedule (“the Table”).

³ SD [2019/XX]0202

- (2) In determining whether to impose a penalty under paragraph (1) the Authority ~~will~~shall have regard to factors such as –
- (a) whether ~~or not the relevant person reported~~ the contravention ~~to the Authority~~is systemic;
 - (b) whether or not the relevant person brought the contravention to the Authority's attention;
 - ~~(b)~~(c) whether the relevant person was aware, or should have been aware, of the contravention;
 - ~~(c)~~(d) whether or not the contravention was committed deliberately or recklessly;
 - ~~(d)~~(e) whether or not there were aggravating or mitigating factors in relation to the contravention;
 - ~~(e)~~(f) whether or not appropriate steps were taken to remedy the contravention to the Authority's satisfaction;
 - ~~(f)~~(g) whether or not the contravention created a significant risk that financial crime may have occurred;
 - ~~(g)~~(h) the relevant person's record of compliance with the Code or any legislation revoked by the Code; ("the previous Code") or any legislation revoked by the previous Code;
 - ~~(h)~~(i) penalties imposed by the Authority in other cases;
 - ~~(i)~~(j) compliance with any relevant supervisory or regulatory guidance provided by a competent authority that applies to the relevant person; and
 - ~~(j)~~(k) the potential financial consequences of imposing a penalty on the relevant person and on any third parties including customers and creditors of the relevant person.
- ~~(3) — Level 1 of the Table applies to a contravention to which Level 2 of the Table does not apply and to avoid doubt, a Level 1 penalty is payable in respect of each contravention.~~
- ~~(4) — The aggregate amount of Level 1 penalties specified in a notice issued under paragraph (8) must not exceed the maximum amount that can be applied for a contravention to which Level 2 of the Table applies.~~
- ~~(5)~~(3) Level 2 of the Table applies if the Authority is satisfied that one or more of the following factors ~~are~~is present –
- (a) the relevant person failed to bring the contravention to the Authority's attention;
 - (b) the relevant person, or any of the relevant person's senior management, have attempted to conceal the contravention from the Authority;

- (c) the contravention was incurred deliberately by the relevant person, or any of the relevant person's senior management, in order to obtain a benefit or mitigate a loss; or
- (d) the contravention is attributable to material deficiencies in –
 - (i) the relevant person's procedures, systems and controls as required by the Code; or
 - (ii) the conduct of the relevant person, or any of the relevant person's senior management.

~~(6)~~(4) The Authority may reduce a penalty ~~for a contravention that Level 2 of the Table applies~~ by up to 30% of the calculated amount, but only if the relevant person has –

- (a) co-operated with the Authority in respect of any proceedings or investigation into the contravention; and
- (b) taken appropriate steps to remedy the contravention to the Authority's satisfaction.

~~(7)~~(5) Any penalty calculated under this regulation must be rounded up to the nearest pound sterling.

~~(8)~~(6) The Authority must give written notice to the relevant person concerned of any decision to require a penalty to be paid under this regulation together with a statement of the reasons for the decision.

~~(9)~~(7) The Authority may publish, or arrange for the publication of, information in such form and manner as it considers appropriate with respect of the imposition of a civil penalty.

~~(10)~~(8) Unless ~~specified otherwise by~~ the Authority specifies in writing, ~~that~~ a penalty must be paid ~~on or before by a date later than the date~~ specified in sub-paragraph (a) or (b) (~~"the due date"~~), a penalty must be paid on or before the due date and -

- (a) if the relevant person duly appeals the decision to require a penalty to be paid, the due date is the last day of the period of 90 business days immediately following –
 - (i) if the appeal is abandoned, the date the appeal is abandoned;
 - ~~(ii) —if the tribunal confirms the decision, the date the tribunal does so;~~
 - ~~(iii)~~(ii) if the tribunal varies the decision, the date the tribunal does so;
- (b) if the relevant person does not duly appeal, the due date is the last day of the period of 90 business days immediately following the prescribed period for doing so; date specified in the written notice referred to in sub-paragraph(6);

~~(c) — a penalty may be paid by a date later than the due date under sub-paragraph (a) or (b), as specified by the Authority in writing.~~

~~(11)(9)~~ For the purpose of paragraph (8), “**appeal**” means an appeal under section 157(2ZD) of the Proceeds of Crime Act 2008 or section 68(2ZD) of the Terrorism and Other Crime (Financial Restrictions) Act ~~2015, against the decision to impose a penalty~~2014.

MADE

NAME

Chief Executive of the Isle of Man Financial Services Authority

NAME

Member of the Isle of Man Financial Services Authority

SCHEDULE
CIVIL PENALTIES

Regulation 5

Table

| CIVIL PENALTY | Amount of penalty |
|--|--|
| <p>Level 1</p> <p>Subject to regulation 5(3) and (4), a penalty may be imposed at this level if there has been a contravention<u>the Authority is satisfied that none of the factors specified in regulation 5(3) is present.</u></p> | <p>£50 PER CONTRAVENTION Up to 5% of the relevant person's income</p> |
| <p>Level 2</p> <p>A penalty may be imposed at this level if the Authority is satisfied that any of the factors listed in regulation 5(5)<u>are</u>3) is present.</p> | <p>Up to 8% of the relevant person's income</p> |

*EXPLANATORY NOTE**(This note is not part of the Regulations)*

These Regulations specify the circumstances in which the Isle of Man Financial Services Authority may impose a civil penalty on a relevant person for a contravention of the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019. ~~The Regulations also specify the amount of the penalty that may be imposed.~~

The Regulations also specify the amount of the penalty that may be imposed and by when it must be paid, that the Authority must give notice of a decision to impose a penalty and the reasons for it in writing and that the Authority may publish information in respect of the imposition of a civil penalty.