

Appendix H



PROCEEDS OF CRIME ACT (BUSINESS IN THE REGULATED SECTOR) ORDER 2019

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Statutory Document No. ~~20XX/XXXX~~2019/0204



Proceeds of Crime Act 2008

PROCEEDS OF CRIME ACT (BUSINESS IN THE REGULATED SECTOR) ORDER 2019

Approved by Tynwald:

Coming into Operation:

1 June 2019

The Department of Home Affairs makes the following Order under paragraph 3 of Schedule 4 to the Proceeds of Crime Act 2008.

1 Title

This Order is the Proceeds of Crime Act (Business in the Regulated Sector) Order 2019.

2 Commencement

If approved by Tynwald, this Order comes into operation on ~~1 June 2019~~ 1 June 2019.¹

3 Substitution of Schedule 4 to the Proceeds of Crime Act 2008

For Schedule 4 to the Proceeds of Crime Act 2008 (regulated sector and supervisory authorities), substitute the text set out in the Schedule to this Order.

~~4~~ **Revocation**

~~The Proceeds of Crime (Amendment to Schedule 4) Order 2018² is revoked.~~

¹ Section 223(3) of the Proceeds of Crime Act 2008 specified that an order made under paragraph 3 of Schedule 4 to the Act must be approved by Tynwald.

² ~~SD-2018/0113~~

MADE 24 APRIL 2019

NAME

W M MALARKEY
Minister for Home Affairs

SCHEDULE

[Article 3]

SUBSTITUTION OF SCHEDULE 4 TO THE PROCEEDS OF CRIME ACT 2008

REGULATED SECTOR AND SUPERVISORY AUTHORITIES

Sections 142(17), 143(11), 149(1)

Interpretation

1 Interpretation

In this Schedule –

the “**AML/CFT 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;

“**convertible virtual currency activity**” 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)~~(a) 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

³ SD 2019/~~XX~~0202

- (iii) that person's duties relate solely to the provision of accountancy services to his or her employer;

the "Gambling Code" means the Gambling (Anti-Money Laundering and Countering the Financing of Terrorism (Gambling) Code) 2019⁴, as it has effect from time to time and any instrument or enactment from time to time amending or replacing that Code;

~~"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)(a)~~ an advocate within the meaning of the *Advocates Act 1976*;

~~(ii)(b)~~ a registered legal practitioner within the meaning of the *Legal Practitioners Registration Act 1986*;

~~(iii)(c)~~ a notary public within the meaning of the *Advocates Act 1995* and the *Notaries Regulations 2000⁵*, as those Regulations have effect from time to time and any instrument or enactment from time to time amending or replacing those Regulations; or

~~(iv)(d)~~ 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~~

~~(b) — provides services to a third party including —~~

~~(i) — managing any assets belonging to a client;~~

~~(ii)(i) 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)(A) — managing bank, savings or security accounts;~~

⁴ SD 2019/~~XX~~0219

⁵ SD 671/00 as amended by SD 0850/02

~~(C)(A) organising contributions for the promotion, formation, operation or management of bodies corporate;~~

~~(D)(A) 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)(a) 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 given 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 –

- (a) which has an annual or anticipated annual income of £5,000 or more;

- (b) 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
- (c) where the decision as to where to remit the funds is made in the Island;

and for the purpose of this definition “higher risk jurisdiction” means a jurisdiction which the specified non-profit organisation, having considered any relevant guidance, determines presents a higher risk of money laundering, the financing of terrorism or of proliferation;

the “**Specified Non-Profit Organisations Code**” means the Anti-Money Laundering and Countering the Financing of Terrorism (Specified Non-Profit Organisations) Code 2019⁶, as it has effect from time to time and any instrument or enactment from time to time amending or replacing that Code; and

“**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 –~~

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

Regulated Sectors

2 Business in the regulated sector

- (1) A business is in the regulated sector to the extent it –

⁶ SD 2019/~~XX~~0200

- (a) is a business or carries on an activity to which sub-paragraph (6) applies, which is conducted –
 - (i) by way of business; and
 - (ii) in or from the Island;
 - (b) is a business or carries on an activity to which sub-paragraph (~~711~~) applies, which is conducted by way of business; or
 - (c) ~~carries on~~undertakes an activity to which sub-paragraph (~~812~~) applies, which is carried on in or from the Island, within the meaning of the *Designated Businesses (Registration and Oversight) Act 2015*.
- (2) For the purpose of sub-paragraph (1)(a)(ii) “in or from the Island” means –
- (a) in the case of an activity or business to which any legislation referred to in sub-paragraph (6) applies and which includes a ~~definition~~meaning of “in or from the Island”, that meaning; or
 - (b) in the case of an activity or business specified in Schedule 1 to the *Designated ~~Business~~Businesses (Registration and Oversight) Act 2015*, the meaning within that Act.

Codes

- (3) The AML/CFT Code applies to a business ~~which carries on~~or an activity to which sub-paragraph (6) applies.
- (4) The Gambling Code applies to a business ~~which carries on~~or an activity to which sub-paragraph (~~711~~) applies.
- (5) The Specified Non-Profit Organisations Code applies to an organisation ~~undertaking any activity~~to which sub-paragraph (~~812~~) applies.

~~Regulated sectors~~Sectors to which the AML/CFT Code applies

- (6) This sub-paragraph applies to –
 - (a) subject to sub-paragraph (~~913~~), engaging in any regulated activity within the meaning of the *Financial Services Act 2008*, whether or not an exemption specified in the Financial Services (Exemptions) Regulations 2011⁷, as those Regulations have effect from time to time and any instrument or enactment from time to time amending or replacing those Regulations, applies to that activity;
 - (b) a collective investment scheme within the meaning of section 1 of the *Collective Investment Schemes Act 2008*;
 - (c) insurance business within the meaning of the *Insurance Act 2008*;

⁷ SD 0885/11 as amended by SD 0374/13, SD 2016/0100, SD 2016/0186, SD 2017/0262 and SD 2017/0345

- (d) acting as an insurance manager for, or in relation to, an insurer within the meaning of the *Insurance Act 2008*;
- (e) acting as an insurance intermediary within the meaning of the *Insurance Act 2008*;
- (f) acting as an administrator of a retirement benefits scheme within the meaning of the *Retirement Benefits Schemes Act 2000*;
- (g) acting as the trustee of a retirement benefits scheme within the meaning of the *Retirement Benefits Schemes Act 2000*;
- ~~(h) a society registered as a credit union within the meaning of the Credit Unions Act 1993;~~
- (h) subject to sub-paragraph (10),14), any of the following activity when undertaken by a legal professional –
 - (i) managing any assets belonging to a client;
 - (ii) the provision of 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;
- ~~(i) an external accountant;~~
- ~~(j) a tax adviser;~~
- ~~(l) a payroll agent;~~
- (k) subject to sub-paragraph (11), a payroll agent as defined in sub-paragraphs (7), (8) and (9);
- ~~(m) subject to sub-paragraph (15), lending in respect of products other than consumer products for and on behalf of customers;~~

- ~~(m)~~ subject to sub-paragraph (~~11~~5), providing financial leasing arrangements in respect of products other than consumer products for and on behalf of customers;
 - ~~(n)~~ subject to sub-paragraph (~~11~~5), providing financial guarantees and commitments in respect of products other than consumer products for and on behalf of customers;
 - ~~(o)~~ subject to sub-paragraph (~~12~~18), an estate agent;
 - ~~(p)~~ 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;
 - ~~(q)~~ subject to sub-paragraph (~~13~~19), providing safe custody facilities for cash or liquid securities, deposit boxes or other secure storage facilities suitable for high value physical items or assets, jewellery, precious metals, stones, bullion or documents of title;
 - ~~(r)~~ ~~the activity of~~ convertible virtual currency activity;
 - ~~(s)~~ administering or managing money on behalf of another person, including the provision of escrow services; and
 - ~~(u)~~ ~~a building society within the meaning of section 7 of the Industrial and Building Societies Act 1892; and~~
 - ~~(v)~~ ~~(t)~~ the Post Office in respect of any activity undertaken on behalf of the National Savings Bank.
- ~~(7)~~ ~~Regulated sectors~~ For the purpose of (6)(k) “payroll agent” means a person who is involved with the payment of earnings to, or for the benefit of, any individual.
- ~~(8)~~ Sub-paragraph (7) applies where the payroll agent is not the individual’s employer.
- ~~(9)~~ Sub-paragraph (7) also applies where –
- ~~(a)~~ the payroll agent is the individual’s employer but the place of work of the individual 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.
- ~~(10)~~ Sub-paragraph (7) does not apply to 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.

For the purpose of this sub-paragraph “technical service provider” means a person who supports the provision of payroll 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 payroll services.

Sectors to which the Gambling Code applies

~~(7)~~(11) This sub-paragraph applies to –

- (a) any business permitted to be carried on by a licence holder under a casino licence granted under the *Casino Act 1986* or on premises in respect of which a temporary premises certificate is in issue under Part IIA of that Act;
- (b) any of the following activities, within the meaning of the *Gaming, Betting and Lotteries Act 1988* –
 - (i) acting as or carrying on business of a bookmaker;
 - (ii) setting up, keeping or operating a totalisator;
 - (iii) providing betting facilities on a racecourse;
- (c) subject to sub-paragraph ~~(1420)~~, conducting online gambling within the meaning of section 1 of the *Online Gambling Regulation Act 2001*.

Regulated sectors to which the Specified Non-Profit Organisations Code applies

~~(8)~~(12) This sub-paragraph applies to any activity of a specified non-profit organisation.

Exemptions

~~(9)~~(13) Sub-paragraph (6)(a) does not apply where the services provided relate only to the service of the conveyance of letters, documents or parcels or communication by post or any other means.

~~(10)~~(14) Sub-paragraph (6)(~~ih~~) does not apply to a legal professional where the assets belonging to a client being managed represent only advance payment of fees.

~~(11)~~(15) Sub-paragraph (6)(~~l~~, ~~m~~, ~~n~~) or (~~on~~) 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.

~~(12)~~ Sub-paragraph (6)(p) does not apply where there is a grant of tenancy agreement and the estate agent does not take possession of funds from a tenant.

~~(13)~~(1) Sub-paragraph (6)(r) does not apply where the facilities provided are –

- ~~(a) the storage of goods such as luggage, household items or motor vehicles;~~
- ~~(b)(a) the storage of non-physical property such as computer data;~~
- ~~(c)(a) the secure transportation of high value items;~~
- ~~(d)(a) the offering of safe custody on an occasional or very limited basis, such as hotels providing a safe for use by guests; or~~
- ~~(e)(a) legal professionals storing legal documents other than documents of title.~~

~~(14)~~ Sub-paragraph (7)(c) does not apply where the business is being carried out by means of a software supplier licence or a token based software supplier licence.

~~(15)~~ For the purposes of sub-paragraph (11) –

~~(16)~~ 15 “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~~virtue 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.

~~(16)~~(17) For the ~~purpose~~purposes of sub-paragraph ~~(15)~~(16) –

- (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.

~~(18) Sub-paragraph (6)(o) does not apply where there is a grant of tenancy agreement and the estate agent does not take possession of funds from a tenant.~~

~~(19) Sub-paragraph (6)(q) 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.~~

(20) Sub-paragraph (11)(c) does not apply where the business is being carried out by means of a software supplier licence or a token-based software supplier licence.

3 Supervisory authorities

- (1) The following bodies are supervisory authorities –
- (a) the Treasury;
 - (b) the Department of Home Affairs;
 - (c) the Isle of Man Financial Services Authority;
 - (d) the Isle of Man Gambling Supervision Commission; and
 - ~~(e) the Isle of Man Office of Fair Trading; and~~
 - ~~(f)~~(e) the professional bodies listed in sub-paragraph (2).
- (2) The professional bodies referred to in sub-paragraph (1)~~(f)~~ are –
- (a) the Association of Accounting Technicians;
 - (b) the Association of Chartered Certified Accountants;
 - (c) the Association of International Accountants;
 - (d) the Association of Taxation Technicians;
 - (e) the Chartered Institute of Management Accountants;
 - (f) the Chartered Institute of Public Finance and Accountancy;
 - (g) the Chartered Institute of Taxation;
 - (h) the Council for Licenced Conveyancers;
 - (i) the Faculty of Advocates;
 - (j) the Faculty Office of the Archbishop of Canterbury;
 - (k) the General Council of the Bar;
 - (l) the General Council of the Bar of Northern Ireland;
 - (m) the Insolvency Practitioners Association;
 - (n) the Institute of Certified Bookkeepers;
 - (o) the Institute of Chartered Accountants in England and ~~wales~~Wales;
 - (p) the Institute of Chartered Accountants in Ireland;
 - (q) the Institute of Chartered Accountants of Scotland;
 - (r) the Institute of Financial Accountants;
 - (s) the International Association of Bookkeepers;
 - (t) the Isle of Man Law Society;
 - (u) the Law Society of England and Wales;

- (v) the Law Society for Northern Ireland; and
- (w) the Law Society of Scotland.

Amendment

4 Power to amend

The Department of Home Affairs may by order amend this Schedule. **22**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order replaces Schedule 4 to the Proceeds of Crime Act 2008 (“the Schedule”). ~~The layout of the Schedule has been amended to provide clarity that the activity in the Schedule is subject to three separate Anti Money Laundering and Countering the Financing of Terrorism Codes. A number of definitions have also been amended to take into account identified scope gaps, in particular the definition of payroll agent has been expanded.~~The Schedule has effect for the purpose of determining business in the regulated sector and what is a supervisory authority for the purposes of that Act.

Section 157 of that Act and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014 require a person carrying on a business in the regulated sector to institute and operate systems, procedures, record-keeping, controls and training specified in a code made by the Department of Home Affairs for the purposes of preventing and detecting money laundering and the financing of proliferation and terrorism. They also require persons carrying on, employed in or otherwise concerned in a business in the regulated sector to comply with such systems, procedures, record-keeping, controls and training.

The new Schedule provides that one of three Anti-Money Laundering and Countering the Financing of Terrorism Codes applies to a business in the regulated sector, depending on its activities. A number of definitions have also been amended to address scope gaps that have been identified.