



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

Lught-Reill Shirveishyn Argidoil Ellan Vannin

CONSULTATION RESPONSE

CR19-02/T19

**ANTI-MONEY LAUNDERING
AND COUNTERING THE
FINANCING OF TERRORISM
(SPECIFIED NON-PROFIT
ORGANISATIONS) CODE**

Issue Date: 15 May 2019

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GLOSSARY

Term	Meaning in this document
AML	Anti-Money Laundering
Authority	Isle of Man Financial Services Authority
CFT	Countering the Financing of Terrorism
FATF	The Financial Action Taskforce
POCA	The Proceeds of Crime Act 2008
Relevant person	Means a person carrying on business in the regulated sector, which is included in paragraphs 2(6)(a) – (t) of Schedule 4 to the Proceeds of Crime Act 2008.
SNPO	Specified Non-Profit Organisation

The 2015 Code	The Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 (as amended 2018)
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The 2019 Code	The Anti-Money Laundering and Countering the Financing of Terrorism Code 2019
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The SNPO Code	The Anti-Money Laundering and Countering the Financing of Terrorism (Specified Non-Profit Organisations) Code 2019
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1 BACKGROUND TO CONSULTATION

This Consultation Response is issued by the Isle of Man Financial Services Authority ('the Authority') following Consultation Paper CP19-02/T19¹. The Consultation was issued by the Authority in conjunction with the Department of Home Affairs. The Authority is the oversight body for Designated Non-Financial Businesses and Professions, including SNPOs, in relation to compliance with AML and CFT obligations.

The purpose of the consultation was to obtain views in relation the proposed introduction of a dedicated anti-money laundering and countering the financing of terrorism code for SNPOs (currently SNPOs must comply with the 2015 Code, which is applicable to a wide range of sectors).

The consultation was relevant to:

- SNPOs registered under the Designated Businesses (Registration and Oversight) Act 2015. It was also relevant to advisers to SNPOs, and potential SNPOs.

At the same time as this consultation took place the Authority, in conjunction with the Department of Home Affairs and the Isle of Man Treasury conducted a consultation into changes to the wider AML/CFT framework², which included an update to the 2015 Code.

2 BACKGROUND TO PROJECT

The Authority has been undertaking a comprehensive project to update the Island's current AML/CFT framework. This update encompassed 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.

As part of the update of the AML/CFT framework, it is proposed that the areas of the 2015 Code which deal with the SNPO sector are removed from the 2019 Code and a separate SNPO Code is developed. It is proposed that the SNPO Code will mirror the 2019 Code where deemed appropriate.

¹ https://consult.gov.im/financial-services-authority/anti-money-laundering-and-countering-the-financing/consult_view/

² CR19-01/T19 https://consult.gov.im/financial-services-authority/aml-cft-framework/consult_view/

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.

3 INDUSTRY ENGAGEMENT

During the consultation period the Authority offered a number of meeting slots to SNPOs who wished to discuss particular areas of the SNPO Code. There was a favourable up take to this and some constructive discussions were held.

4 SUMMARY OF RESPONSES

Responses were received from 2 parties. The responses received were broadly supportive of the update to the framework and respondents understood the rationale behind the update.

Some issues raised which will be summarised under specific headings below. Also, there were a number of questions asked in the consultation, a summary of responses is included below.

Question 1	
Do you have any comments regarding the layout and order of the provisions of the SNPO Code?	
Responses received (in summary)	Authority's response
There were some responses regarding the technical language used in the SNPO Code.	Whilst every effort has been made to ensure that the SNPO Code has been written in plain language there are some technical terms which cannot be avoided. Guidance will be provided regarding technical terms. The SNPO Code is in a different order to the 2015 Code. Also, it should be noted there have been some further paragraph number amendments due to additional changes made since the consultation closed.
Question 2	
Do you have any comments in relation to the SNPO Code?	
Responses received (in summary)	Authority's response

<p>There were some comments regarding the due diligence requirements and whether these were risk based.</p>	<p>The SNPO Code does not impose any new customer due diligence requirements, but clarifies the requirements of the 2015 Code and makes them more appropriate for SNPOs.</p> <p>The sector specific guidance for SNPOs provides guidance on how the identity of beneficiaries can be verified. This sector specific guidance will be updated in due course.</p>
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Question 3

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

Responses received (in summary)

A suggestion was received that it would be beneficial for there to be guidance on how SNPOs can identify the beneficial owner of different types of structure.

Authority's response

The sector specific guidance for SNPOs will be revised in due course and this suggestion will be considered.

Question 4

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

Responses received (in summary)

No comments were received.

Authority's response

As no comments were received regarding this question in the SNPO consultation and no strong views were expressed in the AML/CFT Framework consultation it has been decided that the SNPO Code and the 2019 Code will continue to refer to Euros in order to remain consistent with the FATF Recommendations irrespective of currency exchange fluctuations.

5 CHANGES TO THE PROPOSALS

A tracked changes copy of the comparison between the consultation version and the final of SNPO Code and the final SNPO Code are included in the Appendices to this document.

A number of changes to the 2019 Code took place following the AML/CFT framework consultation, where appropriate these changes were mirrored in the SNPO Code.

SNPO Code - changes

A main summary of the changes since the consultation closed is as follows:

- General and definitions

Throughout the document wording in relation to undertaking verification of identity has been amended to ensure it is in-line with FATF wording and is consistent in the document.

AML/CFT legislation definition – now includes reference to financial sanctions which have effect on the Island.

PEP definition – removal of close associate. This will however be included as a suggestion in the Guidance. It should be noted, for completeness, we have however added a sibling-in-law into the definition of a PEP.

Director and Officer definitions – the wording has been revised to bring the definition up to date and in-line with other Manx legislation.

Convertible virtual currency – definition added which cross references to the definition included in Schedule 4 to POCA.

Customer due diligence and enhanced due diligence definitions – the definitions have been made consistent and have been updated to ensure they refer to the correct paragraph numbers.

Eligible introducer definition – amendments made to match the changes to the definition in the AML/CFT Code.

Trusted person definition – amended to reflect changes made to definition of external regulated business and to ensure consistency throughout the SNPO Code.

- Paragraph 4 (Procedures and controls) - whole paragraph tidied up to make clearer and reduce repetition. Also, removal of reference to registering on the designated reporting platform provided by the Financial Intelligence Unit.
- Paragraph 5 (Business risk assessment) – removal of reference to the national risk assessments of other jurisdictions with which the relevant person has significant connections. This however maybe referred to in the Guidance.

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- Paragraph 12 (Beneficial ownership and control) – now cross refers to part 3 (risk based approach) as well as parts 4 (customer due diligence and ongoing monitoring), 5 (enhanced measures) and 6 (exemptions and simplified measures) in the opening sub-paragraph.
 - Paragraph 16 (Acceptable applicants) – the whole of paragraph 12(2)(a) is disapplied if the conditions are met rather than just disapplying verification requirements (paragraph 12(2)(a)(ii)). This was a typographical error in the consultation version of the 2019 Code.
 - Paragraph 18 (Money laundering reporting officer) – a new requirement has been inserted to require the money laundering reporting officer to retain responsibility for all external disclosures (including those from branches and subsidiaries).
 - Paragraph 19 (Reporting procedures) – a new requirement has been inserted to ensure any registers required by the SNPO Code are populated.
 - Paragraph 21 (External disclosures) – the cross reference to section 24 of Financial Intelligence Unit Act has now been removed.
 - Paragraphs 27 and 28 (Record keeping and Record retention) - for clarification the wording has been amended to ensure the requirements in these paragraphs apply to former SNPOs.
 - Paragraph 30 (Branches and subsidiaries) - clarification has been inserted in this paragraph to clarify that the requirements only apply where the branch, subsidiary or agent is undertaking activities equivalent to those included in Schedule 4 POCA.

6 NEXT STEPS

The SNPO Code is due to come into operation on 1 June 2019. The Authority would like to thank those who responded to the consultation, and those who have attended meetings held during the course of the project.

In case of any query, please contact the undersigned —

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APPENDIX A – LIST OF REPRESENTATIVE GROUPS WHO HAVE BEEN SENT THIS CONSULTATION RESPONSE

- One World Centre Isle of Man