



ISLE OF MAN
FINANCIAL SERVICES AUTHORITY

Lught-Reill Shirveishyn Argidoil Ellan Vannin

CONSULTATION PAPER

CP19-02/T19

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

Issue Date: 13th February 2019

Closing Date: 27th March 2019

CONSULTATION PAPER – CP19-02/T19

This Consultation Paper is issued by the Isle of Man Financial Services Authority in conjunction with the Department of Home Affairs. The Isle of Man Financial Services 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 is to obtain views in relation to 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). The consultation is relevant to:

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

A consultation on other changes to the Isle of Man's AML/CFT framework are contained in a separate consultation. This includes a change to the definition of SNPO contained in schedule 4 to the Proceeds of Crime Act 2008 which will be of interest to SNPOs, their advisors and potential applicants.

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 confidentiality is necessary. Your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding. The Authority is registered with the Information Commissioner as a data controller under Isle of Man data protection legislation. It collects and processes personal data to carry out its functions under relevant legislation and may share personal data with other parties where there is a legal basis for doing so. Further information on how the Authority collects and processes personal data can be found in the Privacy Policy on the Authority's website: <https://www.iomfsa.im/terms-conditions/privacy-policy/>.

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 or by telephone on +44 (0) 1624 689353.

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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
ML	Money Laundering
Relevant person	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.
SNPO	Specified Non-Profit Organisation (as defined in paragraph (6) of Schedule 4 to the Proceeds of Crime Act 2008)
SNPO Code	The Anti-Money Laundering and Countering the Financing of Terrorism (Specified Non-Profit Organisations) Code 2019
TF	Terrorist Financing
The 2015 Code	The Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 (as amended 2018)

The 2019 Code	The Anti-Money Laundering and Countering the Financing of Terrorism Code 2019
TOCFR	Terrorism and Other Financial Crime (Financial Restrictions) Act 2014

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. The main changes to the framework are discussed in the consultation 'AML/CFT Framework'.

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.

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 SNPO Code belongs to the Isle of Man Department of Home Affairs; however, work regarding this legislation has been delegated to the Authority.

1.2 What is the purpose of this Consultation Paper?

The purpose of this consultation paper is to obtain feedback on the proposed Anti-Money Laundering and Countering the Financing of Terrorism (Specified Non-Profit Organisations) Code 2019.

1.3 Who may be affected by this Consultation Paper?

The consultation is relevant to:

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

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 —

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- (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.

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 Hub¹. A list of specific representative groups to which this Consultation Paper has been sent is shown in Appendix A.

3 PROPOSALS

3.1 The Anti-Money Laundering and Countering the Financing of Terrorism (Specified Non-Profit Organisations) Code 2019 (DHA legislation)

It is proposed that the areas of the 2015 Code which deal with the SNPO sector are removed from the 2019 Code and that a separate SNPO Code is developed. It is proposed that the

¹ <https://consult.gov.im/>

Specified Non-Profit Organisation Code will mirror the 2019 Code where deemed appropriate.

The 2015 Code and the proposed 2019 Code require customer risk assessments to be undertaken. The proposed SNPO Code will split this requirement into requirements to conduct risk assessments on donors and beneficiaries in order to better address the specific risks of these groups. The requirements to conduct customer due diligence has also been split in this way. Definitions of donor and beneficiary will be added to the SNPO Code.

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, these will be replicated in the SNPO Code where appropriate.

Some of the key changes proposed within the 2019 Code which will be replicated in the SNPO Code are detailed below (listed in the order they appear in the 2015 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.
- 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.

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- Acceptable applicants – this section will be amended to make it clearer that it only applies where a customer is acting on their own behalf.
 - 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.
 - List C – this list will be updated in due course.

In due course the AML/CFT Handbook will be updated to give guidance on the requirements of the 2019 Code and SNPO sector specific guidance will be updated and drafted.

4 IMPACT ASSESSMENT

The proposed SNPO Code is applicable to all SNPOs, regardless of size. However, it should be noted that the requirements of the SNPO Code are proportionate to the nature and scale of a SNPO's activities.

5 QUESTIONS

Question 1

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

Question 2

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

Question 3

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

Question 4

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

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 Hub².

² <https://consult.gov.im/>

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

- One World Centre Isle of Man

APPENDIX B – DRAFT ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (SPECIFIED NON-PROFIT ORGANISATIONS) CODE 2019

A draft Anti-Money Laundering and Countering the Financing of Terrorism (Specified Non-Profit Organisations) Code 2019 has been prepared.