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MINUTES OF THE MEETING OF THE AML/CFT ADVISORY GROUP HELD AT 2.00PM, TUESDAY 15 MAY 2018 IN THE KING ORRY ROOM, CABINET OFFICE, ISLE OF MAN GOVERNMENT

Present: Karen Ramsay, Head of AML/CFT Policy Office, Cabinet Office (Chair)
Paul Heckles, AML/CFT Advisor, Cabinet Office
Joanne Hetherington, AML/CFT Policy Manager, Cabinet Office (Minutes)
Lucie Kennedy, Legal & Policy Team Leader, Customs & Excise Division
Helen Ault, Deputy Director AML/CFT, GSC
Julian Lalor-Smith, Deputy Chief Executive, Department of Home Affairs
Lindsey Bermingham, Director, FIU
Francesca Signorio-Hooper, Head of Business Change, IoMFSA
Ashley Whyte, AML Unit Manager, IoMFSA
Mark England, Risk & Compliance Manager, IoM Post Office
Sandra Skuszka, Chair, ACCA
Mark Denton, Chair, ACSP
Graeme Snape, Chair, AICP
Nathan Holden, Committee Member, CISI
Oksana Lytvyn, Representative, Gambling MLRO Forum
Phil O'Shea, Chair of Risk & Compliance Committee, IoMBA & Institute of Directors
Sinead O'Connor, Representative, IoMCA
Bill Mummery, IoM CoC ICT Committee Director
Charles Garside, Chair, IoM Estate Agents
Juan Moore, CEO IoM Law Society
Jon Whiting, Representative, IoMSCA
Claire Cope, Deputy Chair, Compliance Sub-Committee, MIA
Kurt Roosen, CEO, MICTA
Jon Barwood, Committee Member, FPIBA

Apologies: Stuart Quayle, Director of Policy & Legislation, Treasury
Iain MacMillan, Operations Manager, FIU
Simon Pickering, Head of Insurance and Pensions, Department for Enterprise
Elisabeth Rattigan, Legal Officer, International Co-operation, ICART, AGC
Dougie Elliot, Chair, APSP
Paul Clague, Member, IoM Wealth & Funds Association

010/18 MINUTES OF AML/CFT ADVISORY GROUP MEETING HELD ON 13 FEBRUARY 2018

Having been previously circulated, the minutes of the AML/CFT Advisory Group ("the Group") meeting held on 13 February 2018 were agreed and signed by the Chair.

011/18 MATTERS ARISING FROM THE MINUTES

There were no matters arising from the minutes.

012/18 AML/CFT CODE UPDATE

a) IoMFSA

The AML Unit Manager, IoMFSA, advised the Group that the AML/CFT Code (Code) was under review and would be updated following comprehensive engagement and consultation with industry. The Group was given a summary of the proposals, which included the following:

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MONEYVAL Actions / Code Log

Those areas identified by the MONEYVAL assessors and also the IoMFSAs AML Unit which need addressing are:

- *Risk based concessions*
The IoMFSAs must be able to demonstrate that all concessions in the Code have been properly risk assessed and clearly demonstrate the basis for such concessions. The key area of concern by MONEYVAL was Acting On Behalf Of and the IoMFSAs has engaged an independent technical expert to assist with this, and they are due to report back to the IoMFSAs by the end of May 2018. Any concessions within the Code must not be used where there is unusual or suspicious activity as full Customer Due Diligence (potentially enhanced due diligence) should be in place in these circumstances.
- *Source of Funds / Source of Wealth (SOF/SOW)*
The IoMFSAs wishes to provide additional clarity in the Code, and is considering the inclusion of SOW/SOF definitions based on international standards to assist in differentiating between the terms.
- *Beneficial Ownership*
Proposals to amend paragraph 13 of the Code, to make it clear what is required when a customer is a natural person and when they are a legal person. No plans to change the requirements, but looking to define some of the terminology used (e.g. 13 (5) where payments to beneficiaries are covered). Also considering the introduction of concepts of known beneficiaries and classes of beneficiaries into the Code.
- *Insurance Sector*
Proposals to amend paragraph 13 of the Code concerning the insurance sector. Concerned with ensuring that financial institutions can obtain sufficient information to satisfy that it will be able to establish the identity of the beneficiary of a life assurance policy that is not specifically named but instead designated by characteristics, class or other means at the time of pay-out.
- *PEPs*
No major amendments planned will review in light of a further FATF paper that has been published in relation to PEPs. Also, re: insurance there is currently no requirement to determine whether the beneficial owner of a beneficiary of a life policy that is not an individual is a PEP.
- *Eligible introducer*
Paragraph 23 of the Code could be made clearer in relation to the differences between an eligible and non-eligible introduced relationships.
- *Internal Disclosures*
Proposal to clarify that it is not only in the course of a business relationship that suspicious activity could be identified but also at the establishment of the business relationship. Re-emphasise that CDD is still required to be conducted where there is a suspicion.
- *Registers of internal / external disclosures and enquiries*
Proposal to update in light of introduction of Themis to ensure fields of the register remain relevant and up to date.

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- *Foreign Branches and Subsidiaries*
Currently no specific requirement for financial groups to have group-wide programmes against ML/TF and no requirement to apply additional measures to mitigate ML/TF risks where a branch/subsidiary is prevented by law from applying necessary CDD measures.

Insurance Revisions (to be discussed separately with sector)

- Insurance Sector Guidance for the life sector was published in 2008 and is out of date. Proposal to update and simplify the current AML/CFT framework that is in place. Currently the insurance sector has to comply with both the Code and the AML Regulations which were written 10 years ago. Proposal that where something remains in the Regulations but is not in the Code and it needs to be mandatory, proposal to bring it into the Code therefore eliminating the Regulations.
- Proposal to introduce a requirement for entities to have sanction checking policies and procedures (to apply to all entities, not just insurers).
- Review SOF/SOW requirements in the Insurance Regulations in conjunction with the planned review for these areas in the Code.
- Good opportunity to streamline the guidance (e.g. one Handbook for all licenceholders with sector guidance for insurance and pensions' licenceholders). IoM FSA internal discussions remain ongoing in this area.

Introduction of Civil Penalties

- Proposal to introduce civil penalties into the Code. Would allow IoMFSA to deal with breaches of this legislation directly in a manner proportionate to the nature / materiality of the offence (the Authority could still escalate the matter to be prosecuted with criminal provisions if necessary). The IoMFSA will be researching the UK position.

Separate Codes

- Proposal that the specified non-profit organisation sector and the gambling sector have their own Codes due to the differing natures of the sectors.

Schedule 4 to POCA

- Proposal to tidy up language and order of Schedule 4. May also make amendments re: certain Designated Non-Financial Businesses and Professions definitions if the scope needs varying.

b) GSC

The Deputy Director AML/CFT, GSC advised the Group of the following:

- The GSC plans to seek the necessary approvals to remove the casino and bookmakers from the 2015 AML/CFT Code and into a new gambling Code
- The GSC will work with the IoMFSA for consistency across the two Codes in respect of layout, style, common definitions, etc.
- There is more work to do on the Online Gambling Code than the 2015 Code, as it has not been updated since 2013.
- Some changes will impact on day to day business so the GSC plans to carry out informal pre-consultations
- For the casino and bookmakers, work needs to be done to ensure that the requirements can be achieved in practice (i.e. in the 2015 Code they

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are only exempted from verifying the customer's identity under the qualifying payment threshold. They are still required to identify, risk assess, PEP check all customer which is not practical for businesses that have walk-in customers with quick, high volume, low value transactions).

013/18 AML/CFT HANDBOOK FEEDBACK

The AML Unit Manager, IoMFSAs, referred to an email circulated by the Cabinet Office on 11 May 2018, in which the Group was invited to provide feedback on proposed text for inclusion in the AML/CFT Handbook when it is updated.

The Group noted that the proposed amendment has arisen from the following Recommended Action (under Immediate Outcome 4 – Preventive measures) in the IoM's MONEYVAL Report:

- Authorities should require FIs to assess whether to: (i) have sight of documents, such as letters of wishes, to determine who the ultimate beneficial owner is of a trust; or (ii) collect appropriate assurances from TCSPs (and keep evidence) that information in relevant documents (such as the letter of wishes) is consistent with information provided on beneficial ownership.

The proposed additional text would appear in s.4.9 of the AML/CFT Handbook – 'Methods to Verify: Legal Arrangements' as follows:

"Consider obtaining sight of the letter of wishes, or other relevant documents of the trust, to confirm the beneficiaries / potential beneficiaries to the trust".

During discussion, the Group noted that the Authorities were keen to progress with the proposed amendment, unless there were significant issues raised by industry. It was noted that the deadline for written comments is 18 May 2018.

014/18 DIGITAL IDs

The CEO of MICTA raised a query in relation to digital IDs and asked if there was an IoM Government policy in relation to acceptable forms and issuers. He advised that the UK has defined a number of external providers. The Group discussed the issue in some detail and the IoMFSAs's AML Unit Manager advised that this issue will be considered during the planned review of the AML/CFT Handbook, and confirmed that it is not an AML/CFT Code matter.

It was noted that the FATF's Policy Development Group has recently issued a working document on 'Digital Identity and the FATF Recommendations' which aims to start identifying the potential needs for change or clarification that should be brought to the FATF Recommendations to support digital IDs. This document will form part of the IoMFSAs's considerations.

The CEO of MICTA advised that the Digital ID and Authentication Council of Canada (www.diacc.ca) is very progressive. Following discussion, the Head of AML/CFT Policy advised that she would welcome further discussion on this matter and it was **agreed** that a working group be established comprising of interested parties.

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015/18 IOMFSA AML/CFT STATISTICAL RETURNS

The Head of Business Change, IoMFSA, advised that a number of presentations on the AML/CFT Statistical Returns project had been made to industry during late April / early May 2018 with >350 attendees. Members of the Group were thanked for their participation in the project and for attending the presentations.

The Group noted that the IoMFSA is in the process of finalising the 2018 AML/CFT Statistical Returns form which will be issued in June, with a deadline of 30 November 2018 for submission.

Mrs Linda Watts, Senior Legal Officer, Asset Recovery & Prosecutions, Attorney General's Chambers was in attendance for the following agenda item

016/18 ASSET RECOVERY PRESENTATION

Mrs Linda Watts, Senior Legal Officer, Asset Recovery & Prosecutions, Attorney General's Chambers gave a presentation on the work of the International Co-operation and Asset Recovery Team ('ICART')

It was noted that in the MONEYVAL Mutual Evaluation Report of the Isle of Man the effectiveness rating for international co-operation was 'Substantial' and the effectiveness rating for money laundering prosecutions and confiscation was 'Low'. In December 2016, HM Attorney General created ICART as a new unit, bringing together two key components; international co-operation which was already a well-established operation of the AGC and a new lawyer-led Asset Recovery Unit with dedicated financial investigators and administrative support.

The objectives of ICART include ensuring the provision of timely and effective international co-operation, promoting measures to increase asset forfeiture and recovery (incl. civil recovery); taking the benefit out of crime and adopting a zero tolerance approach to money laundering. ICART also contributes to wider strategic objectives which include ensuring that the IoM is a hostile jurisdiction for ML/TF, and proactively identifying and pursuing offenders.

The Group noted that the Proceeds of Crime Act 2008 provides a strong legislative framework for asset recovery, including non-conviction based confiscation. Secondary legislation extends restraint, confiscation and investigative measures to matters of international co-operation.

ICART works in partnership with other stakeholders, including the financial services industry; Financial Intelligence Unit, IoM Law Enforcement Authorities (Economic Crime Unit, Customs and Excise; Income Tax Division) and the Prosecutions Division of the Attorney General's Chambers.

ICART's ultimate goal is the confiscation of assets (i.e. taking the benefit out of crime) but it can also restrain criminal assets and assist with financial aspects of investigations (e.g. production orders; customer information orders; account monitoring orders). ICART can also gather information and evidence from other jurisdictions via requests for international co-operation.

The Group noted that the disruption of crime is also a key aspect of ICART's work. Cash seizures (under POCA 2008) may be carried out by a police or customs officers, and within 48 hours ICART may apply to court for further

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detention or forfeiture. This approach causes immediate disruption and swiftly takes the benefit out of crime.

Examples of ICART's successes since January 2017 included the following:

- Restrained >£166.5 million in domestic criminal investigations including the IoM's first Property Freezing Orders
- Condemnation under the Customs & Excise Management Act 1986
- Assisted in international cases with criminal restraints and civil freezing, including high profile cases and those involving repatriation of funds to enable compensation of victims

During the closing statements, the Group noted that the work of ICART will sometimes have implications for industry. Mrs Watts advised that industry provides key intelligence, and thanked the Group for their ongoing co-operation. The benefits of good working relationships were acknowledged and the Group noted that although ICART will not provide legal advice, its staff can give practical guidance to industry.

017/18 ADEQUATE CONSIDERATION

The IOMCA Representative raised the issue of adequate consideration, and expressed concern that it was becoming an issue (e.g. on the ability to act on restraint orders).

During discussion the Group raised the point that in section 97 (4) of the Proceeds of Crime Act 2008 it is stated that:

But an exception to a restraint order must not make provision for any legal expenses which — (a) relate to an offence which falls within subsection (5); and (b) are incurred by the defendant or by a recipient of a tainted gift.

A number of members of the Group expressed concern that because of this provision within the legislation, a number of people are unable to access legal representation, and this may be a breach of their human rights. The IoM Law Society CEO advised that his organisation had previously sought a legal opinion on adequate consideration and had raised the matter with the Legal Aid Committee.

The FIU Director suggested that the legislation on Legal Aid should be changed, and the Head of AML/CFT Policy acknowledged that there were issues associated with access to justice.

018/18 PROCESS FOR SEIZURE OF FUNDS HELD BY A GAMBLING OPERATOR

The IoM Chamber of Commerce ICT Committee Director raised a question asking what the process is for the seizure of funds held by a gambling operator, where the funds are considered to be the proceeds of criminal activity. He expressed concern that a gambling operator could get 'caught' between the FIU and the Regulator on such matters and sought clarification on the mechanism in place.

The Senior Legal Officer, Asset Recovery and Prosecutions, Attorney General's

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Chambers confirmed that safeguards are in place via POCA 2008, and that it is a matter for the individual business to decide what is done with funds, following appropriate approval from the FIU.

Following discussion, it was **agreed** that the FIU Director and CoC ICT Committee Director would meet separately to consider the matter in more detail.

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FIU/CoC**

Mrs Linda Watts left the meeting.

019/18 INDUSTRY & AUTHORITY ROUNDTABLE

The ACSP Chair advised that businesses were investing significant amounts of time in attending meetings regarding EU substance / IFC Forum / Public Register of Beneficial Ownership. He advised that whilst industry views were being sought and provided (e.g. on the likely economic impact) he was concerned that the IoM Government's view was not clear, and that the IoM may lack the appetite to challenge such positions and proposals.

The Head of AML/CFT Policy advised that input from industry sectors was greatly valued, and that as high-level discussions remained ongoing in relation to such issues, she was not in a position to provide further information at this time.

020/18 MONEYVAL UPDATE

The Head of AML/CFT Policy advised that the Cabinet Office was working with all IoM Government stakeholder Authorities in responding to queries received from MONEYVAL following the submission of the IoM's First Enhanced Follow-Up Report (deadline 18 May 2018). It was also noted that preparations are underway for the MONEYVAL Plenary, which will be held in Strasbourg w/c 2 July 2018, at which the IoM's First Enhanced Follow-Up Report will be debated.

021/18 ANTI-MONEY LAUNDERING AND OTHER FINANCIAL CRIME (MISCELLANEOUS AMENDMENTS) BILL 2018

The Group noted that the Bill completed its passage through the Legislative Branches on 8 May 2018, and following the necessary sign-offs it was submitted to the Ministry of Justice by the Cabinet Office on 11 May 2018. It is hoped that Royal Assent will be announced at the July 2018 sitting of Tynwald.

022/18 CONSULTATION ON DRAFT ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (UNREGULATED DOMESTIC TRUSTEES) CODE 2018

The Head of AML/CFT Policy referred to an email circulated by the Cabinet Office on 24 April 2018 which invited the Group to review and comment upon the amended draft Anti-Money Laundering and Countering the Financing of Terrorism (Unregulated Domestic Trustees) Code 2018. The deadline for the submission of views was 8 May 2018 and no comments were received.

023/18 ANY OTHER BUSINESS

a) GSC

It was noted that Tynwald approval is being sought for the Gambling (Anti-

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Money Laundering and Countering the Financing of Terrorism) Civil Penalties Order 2018 at the May 2018 sitting (taking place on 15 May).

The GSC will be organising an Enhanced Due Diligence workshop for the sector in May 2018.

It was noted that the new Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018 gives new powers to the GSC and will allow for the expansion of information sharing with foreign counterparts.

Following recent typologies from the FIU re: gambling operators using multiple cards, the GSC is seeking feedback from the sector on what the regulator can provide to support businesses (e.g. more training / guidance / regulations).

b) Apologies for the next meeting

Apologies for the next meeting were received from the Deputy Chief Executive, Department of Home Affairs.

024/18 DATE OF NEXT MEETING

2.00pm Tuesday 14 August 2018.

[N.B. Due to the limited availability of attendees in August, the meeting was rescheduled to 2.00pm Tuesday 18 September 2018]

The meeting closed at 15:40


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Head of AML/CFT Policy Office, Cabinet Office

18 September 18
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Date