

## MINUTES

### **SIGNED MINUTES OF THE MEETING OF THE AML/CFT ADVISORY GROUP HELD AT 10.00AM, WEDNESDAY 27<sup>TH</sup> FEBRUARY 2019 IN THE KING ORRY ROOM, CABINET OFFICE, ISLE OF MAN GOVERNMENT**

**Present:** Karen Ramsay, Head of AML/CFT Policy, Cabinet Office (Chair)  
Paul Heckles, AML/CFT Advisor, Cabinet Office  
Sean Gavin, AML/CFT Policy Manager, Cabinet Office (Minutes)  
Lindsey Bermingham, Director, FIU  
Mark Denton, Chair, ACSP  
Graeme Snape, Chair, AICP  
Jon Barwood, Committee Member, FPIBA  
Sinead O'Connor, Representative, IoMCA  
Chris Wilson, IoM Crypto Currency  
Michael Crowe, CEO, Finance Isle of Man  
Helen Ault, Director, Licensing & Compliance GSC  
Dani Kelly, Head of Financial Crime Barclays  
Bill Mummery, Chamber Director, Celton Manx IOM  
Cathy Dawson, MIA Representative  
Jon Whiting, IOMSCA Representative  
Lucie Kennedy, Senior Officer, Customs & Excise  
Bryan Griffith, Manager IoMFSA  
Caitlin Shimmin, Assistant Manager IoMFSA

**Apologies:** Dave Dobbie, IoM Constabulary  
Julian Lalor-Smith, Deputy Chief Executive, DHA  
Kurt Roosen, CEO, Manx ICT Association  
Simon Pickering, Head of Financial Services, Dept. of Economic Development  
Elisabeth Rattigan, Advocate, HM Attorney General's Chambers  
Tom Bateman, Legislation & Policy Manager, DHA  
Mark England, Risk Manager, IoM Post  
Charles Garside, RICS, IOM Estate Agents Association

#### **01/19 MINUTES OF AML/CFT ADVISORY GROUP MEETING HELD ON 13<sup>TH</sup> NOVEMBER 2018**

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

#### **02/19 MATTERS ARISING FROM THE MINUTES**

##### ***45/18 (a) Customs and Excise – Aircraft VAT***

Ms Kennedy advised no additional information had been received from HM Treasury in the UK, in reference to infringement procedures raised by the EU against the UK regarding the application of VAT to aircraft. In respect of the review of the Isle of Man register, this is being led by the UK. We are still awaiting a response.

##### ***45/18 (b) TAX3 Committee***

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Mrs Ramsay advised the TAX3 Committee report has been finalised and will be published within the next two weeks. Mrs Ramsay noted that the report had been amended to include reference to the rise of the e-gaming sector in some jurisdictions "including certain UK Crown Dependencies such as the Isle of Man, where e-gaming already accounts for 18 percent of national income". The report calls for an 'urgent assessment' of the implications for money laundering and tax crimes.

KR/SG

**ACTION: Mrs Ramsay advised that the AML/CFT Policy Office will circulate the final report.**

### 03/19 ACTIONS LOG 2018

Mr Gavin advised there were several ongoing Actions on the Actions Log which he discussed with the Group.

**a) AOBO Working Group** - Mr Griffith advised that no immediate meetings were scheduled for this group; the IOMFSA was considering the related FATF paper finalised in October 2018 and will re-convene the working group in due course.

**b) Gambling (AML/CFT) Data** – Ms Ault advised that the initiating of AML/CFT Quarterly returns being provided to the GSC by industry had proven to be a valuable exercise. Submission of this data is now a legal requirement; the submission of the quarterly returns will therefore be ongoing and so this action could be closed off.

**c) AML/CFT Code Update** – Mr Gavin advised this would be covered later as part of the agenda.

**d) National Risk Assessment review** – Mrs Ramsay updated the Advisory Group on the progress made by the AML/CFT Policy Office in relation to the National Risk Assessment. She advised progress has been relatively slow as a substantial amount of time and resource had been used to deal with more urgent matters. In recent months however, the NRA had been progressing. As much of the information remains the same or similar to that in the NRA published in 2015, this has been built upon and Mrs Ramsay is coordinating with the relevant authorities in respect to the text. The aim is to have the assessment finished in summer 2019.

**e) Digital ID Working Group** – It was reported that Mrs Whyte, IoMFSAs, had advised that the IoMFSAs and DFE had met to discuss this matter further and an internal meeting on the Digital ID Working Group was scheduled. Once the FSA and DFE starts working on the updates to the AML/CFT Handbook, they will be in contact with industry to arrange a meeting with volunteers whom have shown interest in joining the Working Group. Mr Griffith added that Digital Identity is relevant to the IOM AML/CFT Handbook and not the AML/CFT Code.

### 04/19 EU LIST OF HIGH RISK JURISDICTIONS

Mrs Ramsay updated the meeting in relation to the European Commission's list of jurisdictions they believe to represent a Higher Risk to the EU in respect of money laundering and terrorist financing. Mrs Ramsay explained that the Policy Office

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had actively sought contact with the EU Commission to understand their issues in order to address any concerns they may have had. Furthermore, a report had been compiled and provided to the Commission which provided details of the size of the IoM financial services (in particular banking) sectors, exposure to the EU and measures that had been taken to address deficiencies identified by MONEYVAL.

A meeting had taken place in Brussels in mid-February with the Commission and a small delegation from the Isle of Man, which included representatives from the IoMFSA, Cabinet Office, FIU and the Head of IoM Brussels Office. This meeting had been very positive; the Commission representatives praised the IoM on the speed with which changes had been made to legislation in August/September 2018. That being said, the Commission had identified two areas where they considered that there was still work to be done. This was in relation to intermediaries and also the application of dissuasive sanctions by the regulator. Mrs Ramsay added that the draft list of countries that the Commission considered had AML/CFT deficiencies was published the day after the meeting. The Isle of Man had not been included on that list. The draft list would be submitted to the European Council members and to the European Parliament. Both must approve it for it to pass. However several EU member states had expressed their discontent in respect of some of the countries on the list and also the lack of transparency regarding how the list had been compiled. Mr Denton advised that the US Treasury has told their banks to ignore the list.

### **05/19 EU SUBSTANCE – ITD UPDATE**

Ms Skillicorn explained that, as a result of the substance requirements being introduced in respect of the EU tax grey and black lists, ITD would need to collect information on beneficial owners (over 25%). The Assessor of Income Tax was designated as a competent authority under the Beneficial Ownership Act 2017 and therefore would be able to obtain this information directly from the Beneficial Ownership Database. However, ITD wanted to obtain the views of the meeting as to this course of action. If it was not acceptable or raised concerns, then the information would have to be secured via a change to business tax reporting. However, this would duplicate the information which already had to be provided for the database. The meeting agreed that securing this information from the Beneficial Ownership database was the logical way to address this and was acceptable to the meeting.

Ms Skillicorn also explained, in terms of foreign companies, any non-IOM incorporated company that is tax resident, regardless of whether it is on the f-register or not, the Assessor will have to collect the UBO information from the company as there is no requirement for this information to be held by Companies Registry, under the BO Act. Therefore it is most likely that the company tax return will collect this information instead, but only from the foreign incorporated companies. It was agreed that this point would be taken away by ITD to discuss further with industry.

### **06/19 UPDATE ON FINANCIAL SANCTIONS POST BREXIT (CED)**

Ms Kennedy provided an update on the impact a 'No Deal' Brexit would have on the Isle of Man in respect of Financial Sanctions. In the event that the UK should leave the EU without a deal in place, the Isle of Man would initially continue to follow EU Sanctions Law without any noticeable change.

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Ms Kennedy added Customs and Excise are currently reviewing the UK's Financial Sanctions Act, in order to closer align the Isle of Man with the UK. The UK Act will however continue to follow the penalties set out in EU Financial Sanctions.

### 07/19 DRAFT ORDERS TO BE MADE UNDER POCA AND ATCA

Mrs Ramsay advised that draft copies of two Orders have been sent to Members of the Advisory Group by Mr Gavin this week for consideration.

Mrs Ramsay explained the first Order, which includes changes to the Proceeds of Crime Act in respect of the level of proof for restraints and powers for financial investigators, was required as these issues were adversely affecting progress in respect to meeting the recommendations of MONEYVAL regarding confiscation.

The ECU staffing includes around 50% non-police officers (financial investigators) but the activities which they can undertake are limited as they are not designated as 'approved officers' in POCA. Amending the legislation would provide them with the authority to search, seize and detain cash in the same way as police and customs officers. The Order also proposes a change to the level of proof required for exercising powers in relation to restraint orders, by substituting '*is reasonable cause to believe*' for '*are reasonable grounds to suspect*', in POCA.

Ms Bermingham discussed the second Order, which proposes changes to POCA and ATCA in relation to 'tipping-off'. Ms Bermingham explained that the Isle of Man is not currently compliant with FATF Recommendation 21 on 'tipping-off'. Introductory provisions have been drafted to allow financial institutions to discuss their suspicions with other regulated bodies to create in effect a 'Super SAR'. However Ms Bermingham emphasised that it was not the intention of the Order to discourage reporting especially as the quality had improved significantly and therefore feedback on the proposals would be very welcome.

Ms O'Connor highlighted two issues with the 'tipping-off' proposals. The first of which concerned the reference to 'forbid' within the Act. The language previously used the phrase 'consent' or 'do not consent'. Ms O'Connor also highlighted an issue in relation to making joint reports on Themis. Mr Denton agreed that there was some confusion in respect of how a joint report could be made.

Mr Wilson asked whether a designated entity could speak to a regulated entity, which Ms Bermingham advised they could.

Mr Heckles advised the deficiencies in respect of FATF recommendation 21 have been identified on two occasions, first by the IMF and then by MONEYVAL. A commitment to address the deficiencies was required as Recommendation 21 had changed and therefore the IoM was required to report on it at the next MONEYVAL Plenary meeting in July.

### 08/19 REPORT ON MONEYVAL PLENARY DECEMBER 2018 AND COMPLIANCE ENHANCING PROCEDURES

Mr Heckles advised that due to financial problems the MONEYVAL Plenary is now only scheduled for twice a year as opposed to three times as it has been in the past.

Mr Heckles added that the 2<sup>nd</sup> Enhanced Follow-up Report from the IoM was due to be submitted to MONEYVAL for the end of February. The first part of the report covers the technical requirements; the full report, which will include progress on effectiveness, will be due for submission around the end of May or early June for consideration in July. The technical report aims to address Recommendations 23 & 25 specifically as these remain the IoM's only remaining Partially Compliant

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(deficient) ratings. Work is also being undertaken (via the Code changes) to improve several recommendations which will enable the IoM to seek to have them re-graded as well as several Recommendations that have been updated by FATF and on which we therefore have to report.

Mr Heckles reported that at the July MONEYVAL Plenary the Isle of Man would also have to make its first report under the Compliance Enhancing Procedures. He explained that we had to report on three issues involving IOs 3 and 4. Mr Heckles further reported that the Isle of Man was not anticipating any problems over this matter.

### **09/19 REPORT ON FATF PLENARY FEBRUARY 2019**

Mr Heckles updated the meeting on several topics discussed at the FATF Plenary which included Israel being accepted as a full member of the FATF and Saudi Arabia's request to join the FATF which is due for consideration at the June 2019 Plenary. Israel will also continue as a member of MONEYVAL. During the Plenary, Marshall Billingslea, the President of FATF, was complimentary of the Isle of Man stating that we had set a good example to other jurisdictions seeking to improve their AML/CFT regimes. Mr Billingslea will by rotation be leaving the position as President of FATF after the next FATF Plenary which will take place in Orlando, in June 2019. The Mutual Evaluation Reports for Finland and China were adopted and will be made public in April 2019. Mr Heckles detailed two public consultation exercises which FATF were currently conducting and undertook to circulate links to the consultations to those present. Note: This action was completed immediately after the meeting.

### **10/19 UPDATE ON THE AML/CFT CODE & HANDBOOK & AML/CFT (GAMBLING) CODE**

Mr Griffith advised that the consultation had been published; it is due to conclude on the 27<sup>th</sup> March 2019. The IoMFSA invited all interested parties to review the consultation documentation and send any responses they may have using the indicated contact methods. Mr Griffiths added that there were several slots available to visit the IoMFSA to discuss the changes to the AML/CFT Code in more detail on the 7<sup>th</sup> March 2019.

Mr Denton initiated a discussion in reference to the changes to the AML/CFT Gambling Code based on feedback received from industry when attending the ICE convention. Mr Denton was given the impression industry were receiving different messages in respect of the definitions of Source of Funds (SOF) and Source of Wealth (SOW). Ms Ault confirmed she has been speaking to industry regularly in relation to these changes. Due to the differences between the Financial Services and Gambling industries, the consensus was that it may not be relevant to treat financial institutions and the gambling sectors in the same way. It was highlighted that the changes could severely disrupt the Isle of Man's ability to attract new business. Discussions are ongoing and Ms Ault is also considering whether a paper is required for the consideration of the Financial Crime Strategic Board (FCSB) on this issue.

Mr Denton advised that he felt the guidance documentation that is provided to industry was too generic and more work should be undertaken to ensure the requirements are more specific and bespoke for each business sector. Mr Denton

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also highlighted that he felt that further consideration was required in respect of the scenarios regarding use of intermediaries, notably concerning the relationship between CSPs and banks. It was agreed that Mr Denton on behalf of the ACSP would meet with the IOM Bankers Association (IOMBA) and agree the scenarios they would like covered in the guidance.

Action MD

### Action – MD to set up meeting with Banking Industry

#### 11/19 ANY OTHER BUSINESS

Mr Snape requested clarification in respect of the final step in the process of re-writing the AML/CFT Code and whether the final agreement of content was the responsibility of the IoMFSA. Mrs Ramsay advised that the Department for Home Affairs (DHA) make the legislation after duly consulting and also taking advice from other parts of Government which would include the AML Technical Group and the Financial Crime Strategic Board. However, ultimately Tynwald Members were the last people who could alter the content of legislation.

Mr Denton noted that the Trustee section that had been included in the AML/CFT Code was not very clear. Mr Heckles advised that the changes in respect of trustees had been included to mirror those introduced for unregulated and foreign trustees last September, as required by MONEYVAL.

The meeting closed at 11.40pm



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Head of AML/CFT Policy Office, Cabinet Office



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Date