



Isle of Man
Government

Reiltys Ellan Vannin



Department of Home Affairs

Draft Proceeds of Crime (Business in the Regulated Sector) Order 2014

Draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2014

Simplified Due Diligence; Intermediary Pooled Accounts

SUMMARY OF RESPONSES TO THE CONSULTATION

1 The Consultation

1.1 The consultation document was presented in three sections:

- Draft Proceeds of Crime (Business in the Regulated Sector) Order 2014 ('the draft Order')
- Draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2014 ('the draft Code')
- Draft Simplified Due Diligence; Pooled Accounts ('the draft pooled accounts proposals')

1.2 The Department published the proposals for consultation on 15th August 2014 with consultation due to close on 10th October 2014. The Department discovered that certain businesses and professionals were unaware of the consultation until early October and so late submissions were accepted until the end of October.

1.3 The consultation document, in line with the Isle of Man Government's Code of Practice on Consultation, was sent directly to various persons or organisations, including the following –

- Association of Chartered Certified Accountants
- Association of Corporate Service Providers
- Association of Licenced Bankers
- Attorney Generals Chambers
- Cabinet Office
- Chartered Institute of Management Accountants
- Companies Registry
- Financial Crime Unit
- Financial Planners and Insurance Brokers Association
- Financial Supervision Commission
- Gambling Supervision Commission
- Income Tax Division
- Institute of Chartered Accountants of England and Wales
- Institute of Chartered Secretaries and Administrators
- Insurance and Pensions Authority
- Isle of Man Constabulary
- Isle of Man Customs and Excise
- Isle of Man Estate Agent Association
- Isle of Man Fund Management Association
- Isle of Man General Registry
- Isle of Man Law Society
- Isle of Man Post Office
- Isle of Man Society of Chartered Accountants
- Isle of Man Society of Chartered Certified Accountants
- Isle of Man Treasury
- Manx Digital Currency Association
- Manx e-Gaming Association
- Manx Insurance Association
- Office of Fair Trading
- Stockbrokers Forum
- The Chartered Institute of Taxation

1.4 This document was also published on the Isle of Man Government's consultation website and made the subject of a press release.

2.1 Draft Proceeds of Crime (Business in the Regulated Sector) Order 2014

2.1 The purpose of the draft Order is to update Schedule 4 to the Proceeds of Crime Act 2008. The update is required to apply the requirements of the Money Laundering and Terrorist Financing Code 2013 (or the Anti-Money Laundering and Counter the Financing of Terrorism

Code 2014 once commenced) to additional businesses either identified as posing a higher risk of money laundering and terrorist financing or in line with the Recommendations of the Financial Action Task Force (FATF).

2.2 Affected businesses and professions include, as defined in the Order:

- Specified non-profit organisations
- Tax advisors
- Payroll agents
- Controlled machines
- Convertible virtual currency businesses

2.3 Section 6 to this document provides a summary of the feedback received during the consultation in respect of the draft Order.

3 Anti-Money Laundering and Countering the Financing of Terrorism Code 2014

3.1 The purpose of this Code is to replace the Money Laundering and Terrorist Financing Code 2013.

3.2 The Code was drafted to fully take account of the revised FATF 40 Recommendations, to provide for the use of simplified due diligence measures and to make the legislation clearer and therefore more user friendly.

3.3 Section 7 to this document provides a summary of the feedback received during the consultation in respect of the draft Code.

4 Simplified Due Diligence; Intermediary Pooled Accounts

4.1 The proposals for simplified due diligence measures in relation to pooled accounts operated by intermediary businesses and professions were consulted upon separately to the draft 2014 Code as the Department wanted to draw particular attention to this matter.

4.2 The proposals were made to provide for simplified due diligence measures in respect of intermediary pooled client bank accounts. The proposals were drafted with particular reference to FATF Recommendations 10 (Customer due diligence) and 17 (Reliance on third parties).

4.3 The potential impact of the proposed measures were understood to be significant as they would impact a wide range of businesses sectors and relate to a sizeable portion of the activities carried out by them.

4.4 The proposed requirements, particularly the requirement for the relevant business to obtain identification information on the intermediary's customers, would require significant change from current industry practices and the non-legislative concession provided for in the Financial Supervision Commission (FSC)'s Anti-Money Laundering and Countering the Financing of Terrorism Handbook 2013.

4.5 The proposals broadened the scope of the simplified due diligence measures to include additional businesses sectors and, unlike the non-legislative Handbook concession allowed for a high risk customer pool provided that certain conditions were met.

4.6 Section 8 to this document provides a summary of the feedback received during the consultation in respect of the draft pooled accounts proposals.

5 Outline and Summary of Responses to the Consultation

5.1 The Department received thirty responses to the consultation, of which –

- twenty were from private companies or professionals;
- eight were from professional bodies; and
- two were from government departments.

In general, the majority of these responses were supportive of the legislative changes proposed by the Department in relation to the Proceeds of Crime (Business in the Regulated Sector) Order and to the Draft Anti-Money Laundering and Counter the Financing of Terrorism Code 2014, although a number of concerns were raised in relation to the proposed simplified due diligence measures for intermediary pooled accounts.

5.2 Some of the responses received on the Draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2014 were in respect of requirements that had not been amended from the Money Laundering and Terrorist Financing Code 2013 but was as a result of certain terminology being reworded for clarity and consistency. Some respondents believed that this revised wording amended the existing legislation when this was not, in fact, the case. In view of this, these comments have not been included in this summary of responses relating to the draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2014 but, where appropriate, additional clarification will be added to the guidance.

5.3 Comments in relation to minor drafting errors or suggestions have also not been included in this summary.

5.4 A frequently reoccurring theme was that respondents from various industry sectors highlighted a need for additional training and guidance in respect of anti-money laundering and counter the financing (AML/CFT) requirements, particularly for those businesses and professions that are proposed to be added to Schedule 4 to the Proceeds of Crime Act.

5.5 A small number of respondents commented that the consultation period was insufficient and that it was felt the changes were being “rushed though” with little input from the financial and designated non-finance business and profession (DNFBP) sectors.

Response: A number of meetings have been held between the FSC and various professional bodies and industry representatives to discuss their concerns over the consultation.

6 Responses Received in Relation to the Draft Proceeds of Crime (Business in the Regulated Sector) Order 2014

6.1 Several respondents raised concerns over how non profit organisations (NPOs) could reasonably determine whether 30% of their payments are made to high risk countries and some queried the rationale behind the £5,000 and 30% thresholds.

Response: The Department is well aware that the inclusion of NPOs required sensitive handling and a risk based approach in order to minimise any disruption to the good works carried out by the sector. The thresholds were formed following discussions between the FSC, the General Registry and various NPO sector representatives.

6.2 Several respondents raised concerns that the customer due diligence (CDD) requirements, if applied to tax advisors, would be overly burdensome and not representative of the risks faced in all instances of business undertaken. It was also suggested that such requirements go beyond the requirements in the UK and would put Island based tax advisors at a commercial disadvantage.

Response: The Department agrees that in some cases, such as where generic non-transaction related advice is given, the CDD requirements did not seem reasonable. The FSC has since worked with representatives from the sector to draft an appropriate concession for such activities.

- 6.2 Several respondents raised concerns that the wording of subparagraph 1(mm) may inadvertently capture businesses in the gaming sector, retailers using reward points systems or persons paying for goods and services in convertible virtual currencies. A suggestion was made that it should be clarified that “convertible” means convertible to fiat currency¹.

Response: The Department wishes to clarify that the definition only includes persons “in the business of” and therefore persons paying or accepting payment for goods and services are not caught because that is not a business activity. The Department also wishes to clarify that only virtual currencies that have equivalent value in fiat (real) currency and can be exchanged back-and-forth for fiat currency are caught by the definition.

- 6.3 One respondent was concerned that the inclusion of payroll agents would put Island based payroll agents at a commercial disadvantage to their UK counterparts.

Response: It is the view of the Department that UK payroll agents are caught by UK’s AML/CFT legislation as accountancy service providers. Further, it is the view of the Department that the application of the AML/CFT requirements to payroll agents is felt to be appropriate given the risks posed.

7 Responses Received in Relation to the Anti-Money Laundering and Countering the Financing of Terrorism Code 2014

- 7.1 Several respondents commented that the Code should be revised following the completion of the National Risk Assessment (NRA) project rather than before it.

Response: The Department agrees that the NRA project is an ongoing assessment of AML/CFT risks and that the outcome of such assessments should shape the national strategy and subsequent policy decisions.

The Island’s compliance with the FATF’s revised Recommendations is due to be assessed by MONEYVAL in early 2016. It is strategically important that the Island has compliant legislation in place at least twelve months prior to that assessment in order to demonstrate its effectiveness. For that reason, the Code must be updated prior to the completion of the NRA project.

- 7.2 Seven respondents commented that the revised Code was more user-friendly, easy to navigate and was easier to interpret but many suggested that it was too prescriptive and did not allow for a truly risk based approach.

Response: As detailed above, the proposed changes to the Code were to ensure FATF compliance ahead of the upcoming MONEYVAL visit. Following the completion of the NRA project, there may be scope to move to a more flexible approach if the results of the NRA suggest this is appropriate.

- 7.3 Several respondents highlighted that many of the FATF’s Recommendations relate to financial institutions (FIs) yet the proposed Code applies these requirements to both FIs and DNFBPs in seemingly equal measures.

Response: Recommendation 22 applies the customer due diligence and record-keeping requirements set out in Recommendations 10, 11, 12, 15 and 17, to DNFBPs with reference to the types of transaction performed. Schedule 4 of POCA defines the businesses and

¹ Paper money or coins of little or no intrinsic value in themselves and not convertible into gold or silver, but made legal tender by fiat (order) of the government (source Financial Times lexicon)

transactions to which the Code applies. Further, Recommendation 22 applies Recommendations 18 to 21 to all DNFBPs irrespective of the transaction. Where alternatives are provided for (e.g. thresholds), these are already built into the Code.

- 7.4 One respondent suggested that any country risk lists would be better placed on the Department's website rather than on the FSC's website.

Response: The Department considers it to be appropriate for the lists to be maintained on the websites of the Department of Home Affairs, the Insurance and Pensions Authority and the Financial Supervision Commission to ensure the information is more widely available.

- 7.5 One respondent suggested that the definition of a "Trusted Person" should be broadened from nominee companies of a Regulated Person where the Regulated Person is responsible for the nominee's compliance with the AML/CFT requirements to also include subsidiaries of a Regulated Person provided the same level of controls apply

Response: A nominee company in this context (by virtue of the Financial Services (Exemptions) Regulations 2011) is a company whose sole activity is to hold as nominee or bare trustee investments beneficially owned by other persons. The Department believes that it would be inappropriate to extend the definition of a Trusted Person to include subsidiaries undertaking activities outside of this narrow definition as to do so would extend the application of concessions beyond that envisaged as being deemed as acceptable by the FATF.

8 Responses Received in Relation to Simplified Due Diligence; Intermediary Pooled Accounts

- 8.1 The majority of responses received to the consultation focused on this section. Four questions were included in the responses and a summary of the responses to each of those questions is provided below. Many respondents did not answer the questions directly but provided a detailed response on the topic as a whole.

- 8.2 Broadly speaking, it was felt that the proposals would:

- increase the compliance burden rather than reducing it as intended;
- not provide a significant reduction in AML/CFT risks;
- lead to significant cost increases to the relevant person, the intermediary and the underlying customers; and
- make the Island's businesses significantly less competitive than those in jurisdictions such as the UK, Jersey and Guernsey.

The following is a summary of comments received in response to the specific questions posed in the consultation.

- 8.3 **Question 1)** Is the list of intermediaries and activities permitted to use the proposed simplified due diligence measures in Appendix C(4) appropriate?

- Allowed intermediaries should include those overseen by recognised bodies with no requirement to enquire as to their supervisory status.
- Non-Isle of Man fiduciary businesses should be included.
- It is unnecessary for nominees to be directly owned.
- Should be extended to include all financial institutions as defined by FATF.
- Should be extended to include DNFBPs.

- 8.4 **Question 2)** Are the conditions attached to the proposed simplified due diligence measures appropriate and can they reasonably be met?

- The requirement to maintain a separate pool for high risk customers is unworkable.
- It would be difficult to achieve consistency in risk rating between the relevant person and the intermediary.

- Obtaining identification information on the underlying customer from the outset would be impractical due to the volume of transactions and may lead to a delay in transactions being processed.
- It would be unreasonable to require the relevant person to take “ultimate responsibility” and would discourage them from accepting such business. This in turn would impact advocates as they have a requirement for their pooled accounts to be held at banks on Island.

8.5 **Question 3)** Do you agree that the proposed simplified due diligence measures provide an appropriate and sufficient reduction in the compliance burden?

- The proposals will have an adverse effect, cause additional work and therefore incur additional costs and make financial services businesses less competitive.
- The proposals put requirements on both the relevant person and the intermediary as to how they manage high risk customers. This goes against the ethos of each regulated entity determining its own risk appetite and managing its risk strategy.
- The relevant person should be able to rely upon an intermediary that is a trusted person to undertake customer due diligence without the requirement to obtain information on the underlying customer, provided that terms of business are in place.

8.6 **Question 4)** Should consideration be given to adding any further scenarios in which simplified due diligence measures could be used?

- The measures should be allowed to be applied more broadly than for pooled accounts only. Provisions are also required for when an intermediary is acting on behalf of their customer.
- The proposed concession which will allow a bank or investment business to treat an intermediary as its customer and remove the requirement to look through to the beneficial owner. This concession will only be available to those who are acting on behalf of a third party and are subject to AML/CFT oversight by the IPA, GSC, FSC or its delegates.
- The concession will require the intermediary to enter into terms of business with the bank or investment business which requires the intermediary to provide copies of due diligence evidence upon request and requires the bank or investment business to undertake periodic testing.

9 Outcome of the Consultation

- 9.1 The FSC has been in regular contact with a number of professional bodies and industry representatives from the finance and designated non-finance business and profession sectors to work towards a solution to the concerns raised in consultation whilst also ensuring that the revised proposals are within the risk appetite of the Government.
- 9.2 Proposals to address the concerns raised as a result of the consultation will be prepared, and a revised consultation will be issued early in January 2015.

17 December 2014
Department of Home Affairs



Isle of Man
Government

Reiltys Ellan Vannin



Copies of this document can be supplied
in a large print or audio format on request

Department of Home Affairs
"Homefield", 88 Woodbourne Road, Douglas, IM2 3AP
Tel.: 694300 E-mail: dhaconsultation@gov.im
www.gov.im/dha/consultations.gov