

APPENDIX I

Statutory Document No. 956/07



EUROPEAN COMMUNITIES (ISLE OF MAN) ACT 1973

**THE EC WIRE TRANSFERS REGULATION
(ENFORCEMENT) REGULATIONS 2007**

Laid before Tynwald 11th December 2007

Coming into operation 15th December 2007

In exercise of the powers conferred on the Council of Ministers by section 2B of the European Communities (Isle of Man) Act 1973^(a), and of all other powers enabling it in that behalf, the following Regulations are hereby made :-

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the EC Wire Transfers Regulation (Enforcement) Regulations 2007, and shall come into operation on 15th December 2007.

(2) In these Regulations—

“body corporate” includes a limited liability company constituted under the Limited Liability Companies Act 1996^(b) (an Act of Tynwald) and, in relation to such a company, any reference to a director or other officer of a body corporate is a reference to a member and to the company’s manager and registered agent;

^(a) 1973 c.14

^(b) 1996 c.19

“competent authority” in relation to any payment service provider means the competent authority specified for such a payment service provider by regulation 2;

“the EC Regulation” means Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on the information on the payer accompanying transfers of funds^(c);

“payer” means either a natural or legal person who holds an account and allows a transfer of funds from that account, or, where there is no account, a natural or legal person who places an order for a transfer of funds;

“payee” means a natural or legal person who is the intended final recipient of transferred funds;

“payment service provider” means a natural or legal person whose business includes the provision of transfer of funds services;

“intermediary payment service provider” means a payment service provider, neither of the payer nor of the payee, that participates in the execution of transfers of funds;

“transfer of funds” means any transaction carried out on behalf of a payer through a payment service provider by electronic means, with a view to making funds available to a payee at a payment service provider, irrespective of whether the payer and the payee are the same person;

“UK Payment Area” means the United Kingdom, Isle of Man, Bailiwick of Guernsey and Bailiwick of Jersey.

Competent Authority

2. (1) The competent authority for the purpose of these Regulations shall be—

^(c) OJ L 345, 8.12.2006, p.1; as applied as part of the law of the Isle of Man by SD 332/07

^(d) 1998 c.4

- (a) the Financial Supervision Commission (“the Commission”) for payment service providers that are licensed by the Commission under Section 6 of the Banking Act 1998^(d) in respect of banking business;
- (b) the Treasury for any other payment service provider.

(2) The relevant competent authority shall effectively monitor, and take necessary measures with a view to ensuring, the compliance of payment service providers for whom it is responsible with the requirements of the EC Regulation (as it applies in the Island).

Offences

3. (1) A payment service provider is guilty of an offence in respect of any transfer of funds to which the EC Regulation applies—

- (a) in the case of the payment service provider of the payer, if he is in contravention of any requirement in—
 - (i) Article 5(1) read with Article 6(1) (information accompanying transfers of funds within the UK Payment Area);
 - (ii) Article 5(2) read with Article 5(3) or (4) (whichever is relevant) (verification of information);
 - (iii) Article 5(5) (record keeping);
 - (iv) Article 6(2) (information to be provided following request);
 - (v) Article 7(1) read with Article 7(2) (information accompanying transfers of funds from the UK Payment Area to outside the UK Payment Area);
- (b) in the case of the payment service provider of the payee, if he is in contravention of any requirement in Article 8 (detection of missing information), 9(1) or the third paragraph of Article 9 (transfers of funds with missing or incomplete information) or Article 11 (record keeping);

- (c) in the case of the intermediary payment service provider, if he is in contravention of any requirement in Article 12 (keeping information on the payer with the transfer) or 13(3), (4) or (5) (use of a payment system with technical limitations).

(2) A person is not guilty of an offence under this regulation if he took all reasonable steps and exercised all due diligence to avoid committing the offence.

Information

4. The Schedule shall have effect in order to facilitate the obtaining, by or on behalf of the competent authority, of information for the purpose of ensuring compliance with the EC Regulation.

Penalties and proceedings

5. (1) A payment service provider guilty of an offence under regulation 3, or paragraph 2(b) or (c) of the Schedule is liable –
- (a) on conviction on information, to custody for a term not exceeding 2 years or to a fine, or both;
 - (b) on summary conviction, to custody for a term not exceeding 3 months or to a fine not exceeding £5,000, or both.

(2) Any person guilty of an offence under paragraph 2(a) or 3(2) of the Schedule, is liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding £5,000, or both.

(3) Where any body corporate is guilty of an offence under these Regulations, and that offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(4) No proceedings for an offence under these Regulations, other than a summary offence, shall be instituted except by or with the consent of the Attorney General.

(5) Paragraph (4) does not prevent the arrest, or the issue or execution of a warrant for the arrest, of any person in respect of such an offence, or the remand in custody or on bail of any person charged with such an offence, notwithstanding that the necessary consent to the institution of proceedings for the offence has not been obtained.

(6) Notwithstanding that the offences in regulation 3 and paragraph 2 of the Schedule are not, by virtue of the term of custody for which a person may be sentenced in respect of them, arrestable offences within the meaning of the Police, Powers and Procedures Act 1998^(e), section 27(1) of that Act shall apply to the offences as if they were mentioned therein, and the offences shall accordingly be arrestable offences within the meaning of the Act.

^(e) 1998 c.9

Regulation 4

SCHEDULE
INFORMATION

1. (1) The competent authority (or any person authorised by the competent authority for that purpose, either generally or in a particular case) (“the requesting authority”) may request any person in or resident in the Island to furnish to the requesting authority any information in his possession or control, or to produce to the requesting authority any document in his possession or control, which the requesting authority may require for the purpose of ensuring compliance with the EC Regulation; and any person to whom such a request is made shall comply with it within such time and in such manner as may be specified in the request.

(2) Nothing in sub-paragraph (1) shall require any person who has acted as counsel or solicitor for any person to disclose any privileged document or information in his possession in that capacity.

(3) Where a person is convicted of an offence under paragraph 2 of failing to furnish any information or produce any document, the court may make an order requiring him, within such period as may be specified in the order, to furnish the information or produce the document.

(4) The power conferred by this paragraph to request any person to produce documents shall include power to take copies of or extracts from any document so produced and to request that person or, where that person is a body corporate, any other person who is a present or past officer of, or is employed by, the body corporate, to provide an explanation of any such document.

2. Any person who –

- (a) without reasonable excuse, refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this Schedule;

- (b) intentionally furnishes false information or a false explanation to any person exercising his powers under this Schedule; or
- (c) with intent to evade the provisions of this Schedule, destroys, mutilates, defaces, secretes or removes any document,

is guilty of an offence.

3. (1) No information furnished or document produced (including any copy or extract made of any document produced) by any person in pursuance of a request made under this Schedule shall be disclosed except –

- (a) with the consent of the person by whom the information was furnished or the document was produced: provided that a person who has obtained information or is in possession of a document only in his capacity as servant or agent of another person may not give consent for the purposes of this subparagraph but such consent may instead be given by any person who is entitled to that information or to possession of that document in his own right;
- (b) to any person who would have been empowered under this Schedule to request that it be furnished or produced or any person holding or acting in any office under or in the service of the Crown in respect of the Government of the Isle of Man or the United Kingdom;
- (c) with a view to the institution of, or otherwise for the purposes of, any proceedings for an offence under these Regulations.

(2) Any person who, without reasonable excuse, discloses information or a document in contravention of paragraph (1) is guilty of an offence.

Made 22nd November 2007

Mary Williams
Chief Secretary

EXPLANATORY NOTE

[This Note is not part of the Regulations]

These Regulations provide for the implementation Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on the information on the payer accompanying transfers of funds (“the EC Regulation”), as applied as part of the law of the Island, with appropriate modifications, by the European Communities (Wire Transfers Regulation) (Application) Order 2007 [SD 332/07].

Regulation 2 provides that the Financial Supervision Commission is the competent authority for these Regulations in respect of payment service providers that are licensed by the Commission under Section 6 of the Banking act 1998 in respect of banking business, and the Treasury is the competent authority for any other payment service provider. The competent authority shall monitor, and take steps with a view to ensuring, compliance with the Regulations.

Regulation 3 sets out the offences under the EC Regulation.

Regulation 4 and the Schedule set out provisions for obtaining information in the course of ensuring compliance with the Regulations or taking proceedings under the Regulations.

Regulation 5 describes the penalties available for contravention of these Regulations. It also sets out provisions in respect of proceedings under these Regulations.