



Isle of Man
Government

Reiltys Ellan Vannin



DEPARTMENT OF HOME AFFAIRS

FURTHER CONSULTATION

Draft Anti-Money Laundering and Countering the
Financing of Terrorism Code 2015

05 January 2015

Contents

Section	Page no.
Consultation summary	
Glossary	3
Introduction	4
Background	4
Proposals	5
Summary of Key Changes	5
Questions	6
Feedback to Consultation	7
Appendix A	Consultation draft of the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 (see separate document)
Appendix B	The six consultation criteria
Appendix C	List of persons or bodies consulted regarding these proposals

Consultation Summary

Glossary

2013 Code	the Money Laundering and Terrorist Financing Code 2013, currently in force
2014 Code	the draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2014, consulted upon in August 2014
2015 Code	the draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2015, consulted upon in this paper
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AML/CFT	the Island's anti-money laundering and countering of terrorism financing
Legislation	legislation which includes: <ul style="list-style-type: none">(a) the <i>Anti-Terrorism and Crime Act 2003</i>;(b) Part 3 of the <i>Proceeds of Crime Act 2008</i>;(c) the <i>Terrorism (Finance) Act 2009</i>¹;(d) the <i>Terrorist Asset-Freezing etc. Act 2010</i> (of Parliament) as applied to the Island;(e) any statutory document currently in operation under any of those enactments for example the <i>Money Laundering and Terrorist Financing Code 2013</i>
CDD	Customer Due Diligence
The Department	the Department of Home Affairs
The Draft Order	Proceeds of Crime (Business in the Regulated Sector) Order 2014
EI	Eligible Introducer
FATF	Financial Action Task Force
FSC	Financial Supervision Commission
IMF	International Monetary Fund
MLRO	Money Laundering Reporting Officer
NPO's	Non-Profit Organisations
PEP	Politically Exposed Person
POCA	the <i>Proceeds of Crime Act 2008</i>
SNPO's	Specified Non-Profit Organisations

¹Following the introduction of the Terrorism and Other Crime (Financial Restrictions) Act 2014 (the 2014 Act) on 01 January 2015, this Act is repealed and its provisions contained entirely within the 2014 Act.

Introduction

This is the second consultation on the draft Anti-Money Laundering and Countering the Financing of Terrorism Code. The first consultation took place in August 2014 and covered three linked matters:

- changes to Schedule 4 of the Proceeds of Crime Act 2008 ("POCA"), being made by the draft Proceeds of Crime (Business in the Regulated Sector) Order 2014 ("the draft Order");
- replacement of the Money Laundering and Terrorist Financing Code 2013 with the draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2014 ("the 2014 Code"); and
- proposals for potential simplification of certain requirements.

The first consultation document together with the summary of responses is available on the Department's website at <http://www.gov.im/ConsultationDetail.gov?id=455>.

No material changes have been made to the proposed amendment to Schedule 4 to POCA following the first consultation and a copy of the draft Order may be accessed via the above website.

The responses received in relation to the proposals for potential simplification of certain requirements have been reviewed in detail and the revised proposals have been incorporated into the draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 ("the 2015 Code").

Background

The Financial Action Task Force ("FATF") is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering and combating terrorist financing ("AML/CFT") standard.

In June 2012 the Council of Ministers issued a strong commitment to following international standards in [combatting money laundering and the financing of terrorism and proliferation](#).

A link to the FATF 40 recommendations, can be found [here](#).

In October 2012, the Island joined MONEYVAL, the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. The aim of MONEYVAL is to ensure that its members have in place effective systems for AML/CFT and comply with the relevant international standards in these fields.

MONEYVAL assesses its members' compliance with all relevant international standards, especially the FATF 40 recommendations, in the legal, financial and law enforcement sectors through a peer review process of mutual evaluations. MONEYVAL's reports provide highly detailed feedback on ways to improve the effectiveness of domestic regimes to combat money laundering and terrorist financing; as well as recommendations for strengthening states' capacities to co-operate internationally in these areas. The MONEYVAL assessments will in future take the place of International Monetary Fund ("IMF") assessments in relation to AML/CFT matters.

A team from MONEYVAL will be visiting the Isle of Man in the first half of 2016 to assess the Island's measures in respect of AML/CFT. This on-site evaluation will focus on effectiveness of the Island's AML/CFT measures and will be preceded by a detailed questionnaire dealing with the Island's technical compliance with the FATF 40 Recommendations. That questionnaire will have to be completed in the third quarter of 2015.

The previous assessment of the Island's AML/CFT measures by the IMF published in 2009 was generally positive, but it is extremely important that MONEYVAL's forthcoming report does not judge the Island to have failed to act on the IMF's recommendations or to have fallen behind in its compliance with evolving international standards.

A positive outcome from MONEYVAL's assessment is critical for the Island's international reputation, and for its continued economic prosperity. This is particularly true at a time when international finance centres are subject to increased scrutiny by the media, international bodies and governments.

Proposals

The previous consultation introduced the concept of allowing relevant persons to apply simplified due diligence measures, particularly in respect of Deposit Takers holding intermediary pooled accounts. While on the whole respondents were in favour of the principle to provide concessions in this area, 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.

Therefore based on constructive feedback received, new simplified due diligence measures have been drafted and incorporated into the draft 2015 Code.

Summary of key changes

The paragraphs below provides a general summary of the key changes between the draft 2014 Code and the draft 2015 Code included at Appendix B.

Acting on behalf of a third party:

Paragraph 21 of the draft 2015 Code allows any person licenced by the Financial Supervision Commission ("the FSC") under the Financial Services Act 2008 for Class 1, 2, 3 or 8 permissions to provide services to another business defined under paragraph 21(6) of the 2015 Code without the requirement to identify or verify the underlying client. Therefore, where an appropriate FSC licenceholder provides services to a business listed under paragraph 21(6), the FSC licenceholder is not required to undertake CDD procedures on the allowed business's underlying clients, unless the FSC licenceholder considers this course of action to be appropriate.

In relation to pooled intermediary accounts, if an allowed business holds client money in a separate and designated pooled client bank account, they may avail themselves of this concession. Examples of a pooled intermediary account which may be within the scope of this definition include (but are not limited to):

- an advocate holding an account for money to purchase a property;
- a CSP to hold money as an advance against fees or registry fees; or
- an e-gaming business holding players money.

Acquisition of a block of business:

There is currently a provision in the FSC's AML Handbook which allows a licenceholder to transfer its business to another licenceholder without the purchaser being required to conduct full CDD on the block of business. This concession does not exist in the legislation, therefore the Department is seeking to regularise this position with the draft concession at paragraph 22(1)(b).

Generic advice:

Where a relevant person undertakes an occasional transaction which meets the definition of an "Exempted Occasional Transaction" in paragraph 3, simplified due diligence procedures may be applied. The intent is to apply a risk based approach to the process and minimise the burden for low level and low risk transactions. It was identified that no such approach existed for non-financial transactions such as giving tax advice or certain types of legal advice. In order to reduce this burden and employ a consistent approach, a concession to this end has been drafted at paragraph 22(1)(a).

Questions

QUESTION 1:

Is the extent of persons who may avail themselves of the "persons in the regulated sector acting on behalf of a third party" concession appropriate?

If your response includes any suggestion for amendment, please also include the rationale for making your suggestion.

QUESTION 2:

Is the extent of persons to whom the "persons in the regulated sector acting on behalf of a third party" concession applies (businesses listed under paragraph 21(6)) appropriate?

If your response includes any suggestion for amendment, please also include the rationale for making your suggestion.

QUESTION 3:

Are the conditions attached to the proposed simplified measures under paragraphs 21 and 22 appropriate and can they reasonably be met?

If your response includes any suggestion for amendment, please also include the rationale for making your suggestion.

Feedback to the consultation

The draft 2015 Code has been prepared for the purposes of consultation, and is not yet in final form as further refinement to its layout and content may be undertaken in the light of the responses to this consultation.

If you have any views or observations, or there is some point of clarification you would like to receive, you are invited to respond either by writing to —

Tom Bateman, Legislation Manager
Department of Home Affairs
"Homefield", 88 Woodbourne Road
Douglas, IM2 3AP

or by emailing dhaconsultation@gov.im

The closing date for the receipt of comments is **Friday 29 January 2015**.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, together with the name of the person or body which submitted the response. If you are responding on behalf of a group it would be helpful if you could make your position within that group clear. To ensure that the process is open and honest responses can only be accepted if you provide your name with your response.

It may be useful, when giving your feedback, to make reference to the number and title of the specific provision(s) set out in the draft legislation that you wish to discuss.

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

APPENDIX A

**DRAFT ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF
TERRORISM CODE 2015**

See separate document.

APPENDIX B

CONSULTATION CRITERIA

The Six Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

APPENDIX C

LIST OF PERSONS OR BODIES CONSULTED REGARDING THIS CODE

- The Attorney General
- The Chief Constable
- Isle of Man Law Society
- Accountancy bodies
- Estate Agents
- Other persons in the financial sector



Isle of Man
Government

Reiltys Ellan Vannin



This document can be provided in a large print format upon 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