

Statutory Document No. 2015/0073



Proceeds of Crime Act 2008

PROCEEDS OF CRIME (BUSINESS IN THE REGULATED SECTOR) ORDER 2015

Approved by Tynwald: 17 March 2015
Coming into Operation: 1 April 2015

The Department of Home Affairs makes the following Order under paragraph 3 of Schedule 4 to the Proceeds of Crime Act 2008.

1 Title

This Order is the Proceeds of Crime (Business in the Regulated Sector) Order 2015.

2 Commencement

If approved by Tynwald, this Order comes into operation on 1 April 2015.¹

3 Amendment of Schedule 4 to the Proceeds of Crime Act 2008

For paragraph 1 (business in the regulated sector) of Schedule 4 to the *Proceeds of Crime Act 2008* substitute the text set out in the Schedule to this Order.

4 Revocation

The Proceeds of Crime (Business in the Regulated Sector) Order 2013 is revoked.²

¹ Tynwald approval is required by section 223 of the Proceeds of Crime Act 2008.

² SD 2013/0097.

MADE 17 FEBRUARY 2015

JUAN WATTERSON
Minister for Home Affairs



SCHEDULE

[Article 3]

AMENDMENT OF SCHEDULE 4 TO THE PROCEEDS OF CRIME ACT 2008

1 Business in the regulated sector

- (1) A business is in the regulated sector to the extent it consists of —
- (a) business carried on by a building society within the meaning of section 7 of the *Industrial and Building Societies Act 1892*;
 - (b) business carried on by a society (other than a building society or credit union) registered under the *Industrial and Building Societies Act 1892*;
 - (c) any activity carried on for the purpose of raising money authorised to be borrowed under the *Isle of Man Loans Act 1974*;
 - (d) the business of an estate agent within the meaning of the *Estate Agents Act 1975*;
 - (e) the provision by way of business of audit services in respect of a body corporate;
 - (f) the business of an external accountant, where “**external accountant**” means any person who, by way of business, provides accountancy services to third parties. However, “external accountant” does not include accountants employed by —
 - (i) public authorities; or
 - (ii) undertakings which do not by way of business provide accountancy services to third parties;and, for the avoidance of doubt, does not include an employed person whose duties relate solely to the provision of accountancy services to his or her employer;
 - (g) any activity which is specified in sub-paragraph (h) that is undertaken by —
 - (i) an advocate within the meaning of the *Advocates Act 1976*;
 - (ii) a registered legal practitioner within the meaning of the *Legal Practitioners Registration Act 1986*;
 - (iii) a notary public within the meaning of the *Advocates Act 1995* and the Notaries Regulations 2000³; or
 - (iv) any other legal professional who by way of business provides legal services to third parties,

³ SD 671/00 as amended by SD 0850/02.

- except for any such persons who are employed by public authorities or undertakings which do not by way of business provide legal services to third parties;
- (h) when undertaken by a person referred to in subparagraph (g) —
 - (i) managing any assets belonging to a client;
 - (ii) the provision of legal services which involves participation in a financial or real property transaction (whether by assisting in the planning or execution of any such transaction or otherwise) by acting for, or on behalf of, a client in respect of —
 - (A) the sale or purchase of land;
 - (B) managing bank, savings or security accounts;
 - (C) organising contributions for the promotion, formation, operation or management of bodies corporate;
 - (D) the sale or purchase of a business; or
 - (E) the creation, operation or management of a legal person or legal arrangement;
 - (i) insurance business within the meaning of the *Insurance Act 2008*;
 - (j) the business of acting as an insurance manager for or in relation to an insurer within the meaning of the *Insurance Act 2008*;
 - (k) the business of insurance intermediary within the meaning of the *Insurance Act 2008*;
 - (l) any activity permitted to be carried on by a licence holder under a casino licence granted under the *Casino Act 1986* or on premises in respect of which a temporary premises certificate is in issue under Part IIA of that Act;
 - (m) a collective investment scheme within the meaning of section 1 of the *Collective Investment Schemes Act 2008*;
 - (n) the business of a bookmaker within the meaning of the *Gaming, Betting and Lotteries Act 1988*;
 - (o) the business of providing online gambling within the meaning of section 1 of the *Online Gambling Regulation Act 2001*;
 - (p) the business of engaging in any regulated activity within the meaning of the *Financial Services Act 2008*;
 - (q) investment business within the meaning of section 3 of the *Financial Services Act 2008* and Class 2 of Schedule 1 to the Regulated Activities Order 2011⁴ whether or not exclusions or

⁴SD 0884/11 as amended by SD 0373/13.

- exemptions contained within the Order or the Financial Services (Exemptions) Regulations 2011⁵ apply;
- (r) corporate services or trust services within the meaning of section 3 of the *Financial Services Act 2008* and Classes 4 and 5 of Schedule 1 to the Regulated Activities Order 2011 whether or not exclusions or exemptions for that class contained within the Order or the Financial Services (Exemptions) Regulations 2011 apply;
 - (s) deposit taking within the meaning of section 3 of the *Financial Services Act 2008* and Class 1 of Schedule 1 to the Regulated Activities Order 2011 whether or not exclusions or exemptions for that class contained within the Order or the Financial Services (Exemptions) Regulations 2011 apply;
 - (t) business carried on by a society registered as a credit union within the meaning of the *Credit Unions Act 1993*;
 - (u) acting as a retirement benefits schemes administrator within the meaning of Part 6 of the *Retirement Benefits Schemes Act 2000*;
 - (v) acting by way of business as the trustee of a retirement benefits scheme within the meaning of the *Retirement Benefits Schemes Act 2000*;
 - (w) any activity carried on for the purpose of raising money by a local authority;
 - (x) the business of a *bureau de change*;
 - (y) the business of the Post Office in respect of any activity undertaken on behalf of the National Savings Bank;
 - (z) any activity involving money (including any representation of monetary value) transmission services or cheque encashment facilities;
 - (aa) the provision of safe custody facilities for cash or liquid securities on behalf of other persons;
 - (bb) the business of dealing in goods of any description (including dealing as an auctioneer) whenever a transaction involves accepting a total cash payment of euro 15,000 or more;
 - (cc) administering or managing money on behalf of other persons;
 - (dd) services to collective investment schemes as defined in section 3 of the *Financial Services Act 2008* and Class 3 of Schedule 1 to the Regulated Activities Order 2011 whether or not exclusions or exemptions for that class contained within the Order or the Financial Services (Exemptions) Regulations 2011⁶ apply;
 - (ee) any business involving the issuing and managing of means of payment (including but not limited to credit and debit cards,

⁵SD 0885/11 as amended by SD 0374/13.

⁶SD0885/11.

- cheques, traveller's cheques, money orders, bankers' drafts and electronic money);
- (ff) subject to paragraph (4), the business of lending including, but not limited to, consumer credit, mortgage credit, factoring and the finance of commercial transactions in respect of products other than consumer products for and on behalf of customers;
 - (gg) subject to paragraph (4), the business of providing financial leasing arrangements in respect of products other than consumer products for and on behalf of customers;
 - (hh) subject to paragraph (4), the business of providing financial guarantees and commitments in respect of products other than consumer products for and on behalf of customers;
 - (ii) subject to paragraph (5), the provision of safe custody facilities, deposit boxes or other secure storage facilities suitable for high-value physical items or assets, jewellery, precious metals and stones, bullion or documents of title;
 - (jj) the business of a tax adviser as defined by the *Income Tax Act 1970*;
 - (kk) the activity of a specified non-profit organisation;
 - (ll) the business of a payroll agent;
 - (mm) the business of issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies, including crypto-currencies or similar concepts where the concept is accepted by persons as a means of payment for goods or services, a unit of account, a store of value or a commodity;
 - (nn) the business of selling or supplying controlled machines within the meaning of the *Gaming (Amendment) Act 1984*.
- (2) A business is not in the regulated sector by reason of the provisions of subparagraph (1)(h)(i) in relation to managing any assets belonging to a client where those assets only represent advance payment of fees.
- (3) A business is not in the regulated sector by reason of the provisions of subparagraphs (1)(p) or (r) in relation only to the service of the conveyance of letters, documents or parcels or communication by post or any other means.
- (4) A business is not in the regulated sector by reason only of the provisions of subparagraphs (1)(ff), (gg) or (hh) if the lending, leasing or provision of guarantees or commitments (as the case may be) is made by —
- (a) a parent undertaking to a subsidiary of that parent undertaking;
 - (b) a subsidiary of a parent undertaking to the parent undertaking; or

- (c) a subsidiary of a parent undertaking to another subsidiary of that parent undertaking.
- (5) A business is not in the regulated sector by reason only of the provisions of subparagraph (1)(ii) if the services provided are —
- (a) the storage of goods such as luggage, household items or motor vehicles;
 - (b) the storage of non-physical property such as computer data;
 - (c) the secure transportation of high value items;
 - (d) the offering of safe custody on an occasional or very limited basis, such as hotels providing a safe for use by guests; or
 - (e) legal professionals storing legal documents other than documents of title.
- (6) For the purposes of subparagraph (1) —
- “higher risk jurisdiction” is a jurisdiction which the business in the regulated sector determines presents a higher risk of money laundering, the financing of terrorism or of proliferation having considered any relevant guidance;
- “payroll agent” is a person that is involved with the payment of earnings to or for the benefit of any individual, where the payroll agent is not that individual’s employer, but does not include services provided by technical service providers, which support the provision of payment services, without the technical services provider entering at any time into possession of the funds to be transferred;
- “specified non-profit organisation” means a body corporate or other legal person, the trustees of a trust, a partnership, other unincorporated association or organisation or any equivalent or similar structure or arrangement, established solely or primarily to raise or distribute funds for charitable, religious, cultural, educational, political, social or fraternal purposes with the intention of benefiting the public or a section of the public and which has —
- (a) an annual or anticipated annual income of £5,000 or more; and
 - (b) remitted, or is anticipated to remit, at least 30% of its income in any one financial year to one or more ultimate recipients in or from one or more higher risk jurisdictions;
- “technical service provider” means a person that supports the provision of payment services by providing services including (but not limited to) services of the following kinds, but that does not, at any time, possess the funds to be transferred —
- (a) the processing and storage of data;
 - (b) trust and privacy protection services;
 - (c) data and entity authentication;

- (d) information technology and communication network provision; and
- (e) the provision and maintenance of terminals and devices used for payment services.

(7) For the purposes of subparagraph (4) –

“parent undertaking” means an undertaking which, in relation to another undertaking (a “subsidiary”) –

- (a) owns or controls, whether directly or indirectly, shares or other interests in the subsidiary together aggregating in excess of 50 per cent of the votes exercisable at general or other meetings of the subsidiary on any or all matters;
- (b) has a right to appoint or remove a majority of its board of directors, or other governing body;
- (c) has the right to exercise a dominant influence over the subsidiary –
 - (i) by virtue of the provisions contained in the subsidiary’s constitutional documents, or
 - (ii) by virtue of a control contract; or
- (d) controls, alone or pursuant to an agreement with other persons, a majority of the voting rights in the subsidiary; and

“undertaking” means a natural person, body corporate, trustees of a trust, partnership, foundation or unincorporated association.

(8) For the purpose of subparagraph (7) –

- (a) an undertaking is taken to have the right to exercise a dominant influence over another undertaking only if it has a right to give directions with respect to the operating and financial policies of that other undertaking with which its directors are, or governing body is, obliged to comply whether or not they are for the benefit of that other undertaking;
- (b) a “control contract” means a contract in writing conferring a dominant influence right which –
 - (i) is of a kind authorised by the constitutional documents of the undertaking in relating to which the right is exercisable; and
 - (ii) is permitted by the law under which that undertaking is established; and
- (c) any undertaking which is a subsidiary of another undertaking is also a subsidiary of any further undertaking of which that other is a subsidiary. .

EXPLANATORY NOTE

(This note is not part of the Order)

This Order replaces paragraph 1 of Schedule 4 to the *Proceeds of Crime Act 2008* (the Act). That paragraph sets out the list of businesses that are businesses in the regulated sector for the purposes of the Act. The substituted paragraph 1 updates the list to ensure that all relevant businesses are subject to the anti-money laundering and control of terrorist financing provisions of the Act.

The main change made in the substituted paragraph 1 is the inclusion of certain categories of business that pose a higher potential money laundering and terrorist financing risk. This change will aid the Island in meeting its obligations under international requirements.