



**Isle of Man**

*Ellan Vannin*

**AT 11 of 2018**

**ANTI-MONEY LAUNDERING AND OTHER  
FINANCIAL CRIME (MISCELLANEOUS  
AMENDMENTS) ACT 2018**





**Isle of Man**

*Ellan Vannin*

## **ANTI-MONEY LAUNDERING AND OTHER FINANCIAL CRIME (MISCELLANEOUS AMENDMENTS) ACT 2018**

### **Index**

<b>Section</b>	<b>Page</b>
<b>PART 1 – INTRODUCTORY</b>	<b>6</b>
1 Short title .....	6
2 Commencement .....	6
<b>PART 2 – CODES RELATING TO MONEY LAUNDERING AND THE FINANCING OF PROLIFERATION AND TERRORISM</b>	<b>6</b>
3 Proceeds of Crime Act 2008 amended .....	6
4 Terrorism and Other Crime (Financial Restrictions) Act 2014 amended .....	7
<b>PART 3 – CRIMINAL JURISDICTION IN RELATION TO CERTAIN OFFENCES</b>	<b>7</b>
5 Criminal Justice Act 1991 amended .....	7
6 Sections 13 and 15 Fraud Act 2017 repealed .....	13
<b>PART 4 – PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN REQUIREMENTS</b>	<b>13</b>
7 Anti-Terrorism and Crime Act 2003 amended .....	13
8 Financial Intelligence Unit Act 2016 amended .....	14
9 Proceeds of Crime Act 2008 amended .....	14
<b>PART 5 – ADDITIONAL GAMBLING DECISIONS SUBJECT TO APPEAL</b>	<b>15</b>
10 Gambling (Amendment) Act 2006 amended .....	15
<b>PART 6 – ADDITIONAL RECORD KEEPING REQUIREMENTS IN RESPECT OF FOUNDATIONS</b>	<b>15</b>
11 Foundations Act 2011 amended .....	15

---

<b>PART 7 – POWER TO MAKE ENQUIRIES IN RELATION TO INFORMATION SUBMITTED FOR REGISTRATION</b>		<b>16</b>
12	Partnership Act 1909 amended .....	16
13	Companies Act 1931 amended .....	17
14	Limited Liability Companies Act 1996 amended .....	17
15	Companies Act 2006 amended .....	17
16	Foundations Act 2011 amended.....	17
<b>PART 8 – AML/CFT INVESTIGATIONS</b>		<b>18</b>
17	Financial Services Act 2008 amended.....	18
18	Insurance Act 2008 amended.....	18



**Isle of Man**

*Ellan Vannin*

## **ANTI-MONEY LAUNDERING AND OTHER FINANCIAL CRIME (MISCELLANEOUS AMENDMENTS) ACT 2018**

<i>Signed in Tynwald:</i>	<i>19 June 2018</i>
<i>Received Royal Assent:</i>	<i>19 June 2018</i>
<i>Announced to Tynwald:</i>	<i>19 June 2018</i>

**AN ACT** to amend the Anti-Terrorism and Crime Act 2003, the Proceeds of Crime Act 2008, the Terrorism and Other Crime (Financial Restrictions) Act 2014 and the Financial Intelligence Unit Act 2016, to amend certain record-keeping provisions of the Foundations Act 2011, to amend the Companies Act 1931, the Companies Act 2006, the Foundations Act 2011, the Limited Liability Companies Act 1996 and the Partnership Act 1909 in order to provide powers to make enquiries in respect of information to be registered, in accordance with recommendations specified in the Fifth Round Mutual Evaluation Report of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism; to amend the Criminal Justice Act 1991 to make provision for the jurisdiction of courts in the Island in relation to certain criminal offences; to amend the Gambling (Amendment) Act 2006 to add to the decisions that may be appealed under Schedule 4 to that Act and to amend the matters in respect of which there may be a stay pending an appeal; to amend Schedule 1 to the Financial Services Act 2008 in relation to the persons in respect of which an AML/CFT investigation may be conducted and Schedule 5 to the Insurance Act 2008 so as to apply certain powers available under it to such investigations; and for connected purposes.

**BE IT ENACTED** by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

## PART 1 – INTRODUCTORY

### 1 Short title

The short title of this Act is the Anti-Money Laundering and Other Financial Crime (Miscellaneous Amendments) Act 2018.

### 2 Commencement

(1) This Act (other than section 1 and this section) comes into operation on such day or days as the Department of Home Affairs may by order appoint.

Tynwald procedure – laying only.

(2) An order under subsection (1) may include such consequential, incidental, supplementary, transitional and transitory provision as the Department of Home Affairs considers necessary or expedient.

## PART 2 – CODES RELATING TO MONEY LAUNDERING AND THE FINANCING OF PROLIFERATION AND TERRORISM

### 3 Proceeds of Crime Act 2008 amended

After section 157(2) of the *Proceeds of Crime Act 2008* (money laundering codes), insert –

- |       |  |
|-------|--|
| “(2A) | Additionally and without limiting subsection (2), a code may –   |
| (a)   | impose any of the requirements specified in subsection (2)(b) or (c) on a person to whom subsection (2B) applies; and  |
| (b)   | provide that a reference in it to an enactment or to a public document made under an enactment is to be construed as a reference to the enactment or the public document as amended from time to time. |
| (2B)  | This subsection applies to a trustee who is –  |
| (a)   | resident in the Island and is not carrying on business in the regulated sector or employed in or otherwise concerned in such a business; and   |
| (b)   | a foreign trustee.   |
| (2C)  | In this section, “foreign trustee” means a person who is not resident in the Island but is a trustee of a trust which is governed by the law of the Island. <b>22</b> .                                |

**4 Terrorism and Other Crime (Financial Restrictions) Act 2014 amended**

After section 68(2) of the *Terrorism and Other Crime (Financial Restrictions) Act 2014* (codes relating to the financing of proliferation and terrorism), insert —

- “(2A) Additionally and without limiting subsection (2), a code may —
  - (a) impose any of the requirements specified in subsection (2)(b) or (c) on a person to whom subsection (2B) applies; and
  - (b) provide that a reference in it to an enactment or to a public document made under an enactment is to be construed as a reference to the enactment or the public document as amended from time to time.
- (2B) This subsection applies to a trustee who is —
  - (a) resident in the Island and is not carrying on business in the regulated sector or employed in or otherwise concerned in such a business; and
  - (b) a foreign trustee.
- (2C) In this section, “foreign trustee” means a person who is not resident in the Island but is a trustee of a trust which is governed by the law of the Island. **22**.

**PART 3 — CRIMINAL JURISDICTION IN RELATION TO CERTAIN OFFENCES**

**5 Criminal Justice Act 1991 amended**

- (1) The *Criminal Justice Act 1991* is amended in accordance with subsections (2) to (4).
- (2) Immediately before Part 3 (miscellaneous and supplemental), insert —

**“PART 2A — JURISDICTION IN RELATION TO CERTAIN OFFENCES**

**26ZA Offences to which this Part applies**

P1993/36/1 and drafting

- (1) This Part applies to 2 groups of offences —
  - (a) any offence mentioned in subsection (2) (a "Group A offence"); and
  - (b) any offence mentioned in subsection (3) (a "Group B offence").

- (2) The Group A offences are –
- (a) an offence under any of the following provisions of the *Theft Act 1981* –
    - (i) section 7 (theft);
    - (ii) section 19 (false accounting);
    - (iii) section 21 (false statements by company directors, etc);
    - (iv) section 23 (blackmail);
    - (v) section 24 (handling stolen goods);
    - (vi) section 24A (dishonestly retaining a wrongful credit);
  - (b) an offence under any of the following provisions of the *Fraud Act 2017* –
    - (i) section 3 (fraud);
    - (ii) section 8 (possession etc. of articles for use in frauds);
    - (iii) section 9 (making or supplying articles for use in frauds);
    - (iv) section 11 (participating in fraudulent business);
    - (v) section 12 (obtaining services dishonestly);
  - (c) an offence under any of the following provisions of the *Forgery Act 1952* –
    - (i) section 2 (forgery of certain documents with intent to defraud);
    - (ii) section 3 (forgery of certain documents with intent to defraud or deceive);
    - (iii) section 4 (forgery of other documents with intent to defraud or to deceive a misdemeanour);
    - (iv) section 5 (forgery of seals and dies);
    - (v) section 6 (uttering);
    - (vi) section 7 (demanding property on forged documents, etc);
    - (vii) section 8 (possession of forged documents, seals, and dies);
    - (viii) section 9 (making or having in possession paper or implements for forgery);
    - (ix) section 10 (purchasing or having in possession certain paper before it has been duly stamped and issued);
    - (x) section 11 (forgery of a passport);



- (d) an offence under any of the following provisions of the *Coinage Offences Act 1980* —
  - (i) section 1 (counterfeiting);
  - (ii) section 2 (gilding, silvering, filing and altering);
  - (iii) section 3 (impairing platinum, gold, silver, cupro-nickel or bronze coin and unlawful possession of filings etc);
  - (iv) section 4 (defacing and uttering defaced coins);
  - (v) section 5 (uttering and possession with intent to utter);
  - (vi) section 6 (buying or selling, etc counterfeit coin for lower value than its denomination);
  - (vii) section 7 (importing and exporting, etc counterfeit coin);
  - (viii) section 8 (making, possessing and selling medals resembling platinum, gold, silver or cupro-nickel coin);
  - (ix) section 9 (making, mending and having possession of coining implements); and
- (e) an offence under any of the following provisions of the *Customs and Excise Management Act 1986* —
  - (i) section 176 (counterfeiting documents, etc);
  - (ii) section 176A (prohibition on importation and exportation of false identity documents, etc).
- (3) The Group B offences are —
  - (a) conspiracy to commit a Group A offence;
  - (b) conspiracy to defraud;
  - (c) attempting to commit a Group A offence;
  - (d) incitement to commit a Group A offence.
- (4) The Department of Home Affairs may by order amend subsection (2) or (3) by adding or removing any offence.  
Tynwald procedure – approval required.
- (5) An order under subsection (4) may contain any consequential, incidental, supplementary, transitional and transitory provisions which the Department of Home Affairs considers necessary or expedient.

## **26ZB Jurisdiction in respect of Group A offences**

P1993/36/2 and drafting

- (1) Subject to subsection (2), for the purposes of this Part “relevant event”, in relation to any Group A offence, means any act or omission or other event (including any result of one or more acts or omissions) proof of which is required for conviction of the offence.
- (2) In relation to an offence under section 3 of the *Fraud Act 2017* (fraud), “relevant event” includes –
  - (a) if the fraud involved an intention to make a gain and the gain occurred, that occurrence;
  - (b) if the fraud involved an intention to cause a loss or to expose another to a risk of loss and the loss occurred, that occurrence.
- (3) For the purpose of determining whether or not a particular event is a relevant event in relation to a Group A offence, any question as to where it occurred is to be disregarded.
- (4) A person may be guilty of a Group A offence if any of the events which are relevant events in relation to the offence occurred in the Island.

## **26ZC Questions immaterial to jurisdiction in the case of certain offences**

P1993/36/3 and drafting

- (1) A person may be guilty of a Group A or Group B offence whether or not that person was –
  - (a) a British citizen at any material time;
  - (b) in the Island at any such time.
- (2) On a charge of conspiracy to commit a Group A offence, or on a charge of conspiracy to defraud in the Island, the defendant may be guilty of the offence whether or not –
  - (a) the defendant became a party to the conspiracy in the Island;
  - (b) any act or omission or other event in relation to the conspiracy occurred in the Island.
- (3) On a charge of attempting to commit a Group A offence, the defendant may be guilty of the offence whether or not –
  - (a) the attempt was made in the Island;
  - (b) it had an effect in the Island.

- (4) Subsection (1)(a) does not apply where jurisdiction is given to try the offence in question by an enactment which makes provision by reference to the nationality of the person charged.
- (5) Subsection (2) does not apply in relation to any charge of conspiracy brought by virtue of paragraphs 1 and 3 of Schedule 4 to the *Criminal Justice Act 2001*.
- (6) Subsection (3) does not apply in relation to any charge brought by virtue of section 26ZE.

### **26ZD Rules for determining certain jurisdictional questions relating to location of events**

P1993/36/4 and drafting

In relation to a Group A or Group B offence —

- (a) there is an obtaining of property in the Island if the property is either despatched from or received at a place in the Island; and
- (b) there is a communication in the Island of any information, instruction, request, demand or other matter if it is sent by any means —
  - (i) from a place in the Island to a place elsewhere; or
  - (ii) from a place elsewhere to a place in the Island.

### **26ZE Attempt**

P1981/47/1A and drafting

- (1) If this section applies to an act, what the person doing the act had in view shall be treated as an offence to which section 9 of the *Criminal Law Act 1981* applies.
- (2) This section applies to an act if —
  - (a) it is done in the Island; and
  - (b) it would fall within section 9 of the *Criminal Law Act 1981* as more than merely preparatory to the commission of a Group A offence but for the fact that that offence, if completed, would not be an offence triable in the Island.
- (3) Subsection (1) above is subject to section 26ZG (relevance of external law).
- (4) Where a person does any act to which this section applies, the offence which he or she commits shall for all purposes be treated as the offence of attempting to commit the relevant Group A offence.

## 26ZF Conspiracy and incitement

P1993/36/5(3)-(5) and drafting

- (1) A person may be guilty of conspiracy to defraud if —
  - (a) a party to the agreement constituting the conspiracy, or a party's agent, did anything in the Island in relation to the agreement before its formation;
  - (b) a party to it became a party in the Island (by joining it either in person or through an agent); or
  - (c) a party to it, or a party's agent, did or omitted anything in the Island in pursuance of it,and the conspiracy would be triable in the Island but for the fraud which the parties to it had in view not being intended to take place in the Island.
- (2) A person may be guilty of incitement to commit a Group A offence if the incitement —
  - (a) takes place in the Island; and
  - (b) would be triable in the Island but for what the person charged had in view not being an offence triable in the Island.
- (3) Subsections (1) and (2) are subject to section 26ZG.

## 26ZG Relevance of external law

P1993/36/6 and drafting

- (1) A person is guilty of an offence triable by virtue of section 26ZF(1) only if the pursuit of the agreed course of conduct would at some stage involve —
  - (a) an act or omission by one or more of the parties; or
  - (b) the happening of some other event,constituting an offence under the law in force where the act, omission or other event was intended to take place.
- (2) A person is guilty of an offence triable by virtue of section 26ZE or section 26ZF(2) only if what that person had in view would involve the commission of an offence under the law in force where the whole or any part of it was intended to take place.
- (3) Conduct punishable under the law in force in any place is an offence under that law for the purposes of this section, however it is described in that law.
- (4) Subject to subsection (6), a condition specified in subsection (1) or (2) shall be taken to be satisfied unless, not later than specified by the court, the defence serve on the prosecution a notice —

- (a) stating that, on the facts as alleged with respect to the relevant conduct, the condition is not in their opinion satisfied;
  - (b) showing their grounds for that opinion; and
  - (c) requiring the prosecution to show that it is satisfied.
- (5) In subsection (4) "the relevant conduct" means —
- (a) where the condition in subsection (1) is in question, the agreed course of conduct; and
  - (b) where the condition in subsection (2) is in question, what the defendant had in view.
- (6) The court, if it thinks fit, may permit the defence to require the prosecution to show that the condition is satisfied without the prior service of a notice under subsection (4).
- (7) In the Court of General Gaol Delivery the question whether the condition is satisfied shall be decided by the Deemster alone.

#### **26ZH Application of Part 2A**

Nothing in any provision of this Part applies to any act, omission or other event occurring before the commencement of that provision.”.

- (3) In section 21 (evidence or information for use outside the Island), subsection (7) is repealed.
- (4) In section 21(9), paragraph (c) is repealed.

#### **6 Sections 13 and 15 Fraud Act 2017 repealed**

Sections 13 and 15 of the *Fraud Act 2017* are repealed.

### **PART 4 – PENALTIES FOR FAILURE TO COMPLY WITH CERTAIN REQUIREMENTS**

#### **7 Anti-Terrorism and Crime Act 2003 amended**

- (1) The *Anti-Terrorism and Crime Act 2003* is amended in accordance with subsection (2).
- (2) In paragraph 1(6) of Schedule 6 (financial information), for “on summary conviction to a fine not exceeding £5,000”, substitute —
  - “ —
    - (a) on summary conviction to a fine not exceeding level 5 on the standard scale or to custody for a term not exceeding 6 months, or to both;

- (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both. **22**.

## 8 Financial Intelligence Unit Act 2016 amended

- (1) The *Financial Intelligence Unit Act 2016* is amended in accordance with subsection (2).
- (2) For section 20(5) (offence for failing to comply with request), substitute —
  - “(5) A person guilty of an offence under subsection (1), (3) or (4) is liable —
    - (a) on summary conviction to a fine not exceeding level 5 on the standard scale or to custody for a term not exceeding 6 months, or to both;
    - (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both. **22**.

## 9 Proceeds of Crime Act 2008 amended

- (1) The *Proceeds of Crime Act 2008* is amended in accordance with subsections (2) and (3).
- (2) In section 163A (production orders: offences) —
  - (a) omit subsection (2); and
  - (b) for subsection (4), substitute —
    - “(4) A person guilty of an offence under subsection (1) or (3) is liable —
      - (a) on summary conviction to a fine not exceeding level 5 on the standard scale or to custody for a term not exceeding 6 months, or to both;
      - (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both. **22**.
- (3) In section 176 (disclosure orders: offences) —
  - (a) omit subsection (2); and
  - (b) for subsection (4), substitute —
    - “(4) A person guilty of an offence under subsection (1) or (3) is liable —
      - (a) on summary conviction to a fine not exceeding level 5 on the standard scale or to custody for a term not exceeding 6 months, or to both;
      - (b) on conviction on information to a fine or to custody for a term not exceeding 2 years, or to both. **22**.

## PART 5 – ADDITIONAL GAMBLING DECISIONS SUBJECT TO APPEAL

### 10 Gambling (Amendment) Act 2006 amended

- (1) The *Gambling (Amendment) Act 2006* is amended in accordance with subsections (2) and (3).
- (2) In section 8(1) (stay pending appeal) for “section 7(1)(c) to (e)”, substitute “section 19 of the *Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018* (public statements) **22**”.
- (3) In Schedule 4 (decisions subject to appeal), immediately after paragraph 28, insert –

*“Gambling generally*

29. Any decision made or action taken by the Commissioners under any of the sections listed in section 34(2) of the *Gambling (Anti-Money Laundering and Countering the Financing of Terrorism) Act 2018*. **22**.

## PART 6 – ADDITIONAL RECORD KEEPING REQUIREMENTS IN RESPECT OF FOUNDATIONS

### 11 Foundations Act 2011 amended

- (1) The *Foundations Act 2011* is amended in accordance with subsections (2) to (5).
- (2) In section 4 (application for the establishment of a foundation) –
  - (a) after subsection (4)(a), insert –
    - “(aa) the information contained in the foundation rules, other than any information –
      - (i) from which a person can or may be identified; and
      - (ii) specifying any assets dedicated to the foundation;”;and
  - (b) after subsection (4), insert –
    - “(4A) Where the foundation rules are not in English, the foundation must provide an accurate English translation of the information specified in section 4(4)(aa) to the Registrar.”.
- (3) In section 41 (documents to be kept at business address of foundation) –
  - (a) in subsection (1), omit “or outside”; and
  - (b) after subsection (2)(f) insert –

- “(g) a register of the names and addresses of all founders of the foundation;
  - (h) a register of the names and addresses of all known beneficiaries under the foundation; and
  - (i) proof of registration of the foundation. **22**.
- (4) In section 45 (amendment of the foundation instrument) —
  - (a) after “foundation instrument”, insert “or information contained in the foundation rules specified in section 4(4)(aa)” in —
    - (i) subsection (1); and
    - (ii) subsection (4) in both places;
  - (b) at the end of subsection (3)(a) omit “and”;
  - (c) after subsection (3)(a), insert —
    - “(aa) a copy of the information specified in section 4(4)(aa) as amended; and”;
  - (d) in subsection (5), after “to amend the foundation instrument”, insert “or information contained in the foundation rules specified in section 4(4)(aa)”;
  - (e) in the section heading after “foundation instrument”, insert “or foundation rules”.
- (5) In section 48 (register to be kept and made available for public inspection) after subsection (2) insert —
  - “(2A) The Registrar must include in the register the information contained in the foundation rules specified in section 4(4)(aa). **22**.”

## PART 7 — POWER TO MAKE ENQUIRIES IN RELATION TO INFORMATION SUBMITTED FOR REGISTRATION

### 12 Partnership Act 1909 amended

In the *Partnership Act 1909*, after section 56, insert —

#### “56A Department not liable for accuracy of information submitted

- (1) To avoid doubt, the Department is not liable for the accuracy of any document submitted for inclusion on any register or index it maintains under this Act.
- (2) Despite subsection (1), the Department may make such enquiries as it considers appropriate in the circumstances to establish the accuracy of any such information. **22**.



**13 Companies Act 1931 amended**

In the *Companies Act 1931*, after section 285A, insert —

**“285B Department not liable for accuracy of information submitted**

- (1) To avoid doubt, the Department is not liable for the accuracy of any document submitted for inclusion on any register it maintains under this Act.
- (2) Despite subsection (1), the Department may make such enquiries as it considers appropriate in the circumstances to establish the accuracy of any such information. **22**.

**14 Limited Liability Companies Act 1996 amended**

In the *Limited Liability Companies Act 1996*, after section 11D, insert —

**“11E Department not liable for accuracy of information submitted**

- (1) To avoid doubt, the Department is not liable for the accuracy of any document submitted for registration under this Act.
- (2) Despite subsection (1), the Department may make such enquiries as it considers appropriate in the circumstances to establish the accuracy of any such information. **22**.

**15 Companies Act 2006 amended**

In the *Companies Act 2006*, after section 206, insert —

**“206A Registrar not liable for accuracy of information submitted**

- (1) To avoid doubt, the Registrar is not liable for the accuracy of any document submitted for inclusion on any register he or she maintains under this Act.
- (2) Despite subsection (1), the Registrar may make such enquiries as he or she considers appropriate in the circumstances to establish the accuracy of any such information. **22**.

**16 Foundations Act 2011 amended**

In the *Foundations Act 2011*, after section 50, insert —

**“50A Registrar not liable for accuracy of information submitted**

- (1) To avoid doubt, the Registrar is not liable for the accuracy of any information submitted for inclusion on the register.

- (2) Despite subsection (1), the Registrar may make such enquiries as he or she considers appropriate in the circumstances to establish the accuracy of any such information. **22**.

## PART 8 – AML/CFT INVESTIGATIONS

### 17 Financial Services Act 2008 amended

In Schedule 1, paragraph 2(1)(ba) to the *Financial Services Act 2008* (functions), after “regulated activities” insert “, regulated insurance activities or regulated pensions activities **22**”.

### 18 Insurance Act 2008 amended

After paragraph 6(1)(h) in Schedule 5 to the *Insurance Act 2008*, insert –

**23**; or

- (i) any investigation into potential liability arising from a breach of AML/CFT requirements within the meaning (for the time being) of the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 as it has effect from time to time and any instrument or enactment from time to time amending or replacing that Code. **22**.

-----  
*Published by Authority*