

Isle of Man

Ellan Vannin

SD 2019/0203

**DESIGNATED BUSINESSES
(AMENDMENT) ORDER 2019**



DESIGNATED BUSINESSES (AMENDMENT) ORDER 2019

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Statutory Document No. 2019/0203

*Designated Businesses (Registration and Oversight) Act 2015*

DESIGNATED BUSINESSES (AMENDMENT) ORDER 2019

<i>Laid before Tynwald:</i>	<i>18th June 2019</i>
<i>Approved by Tynwald:</i>	<i>18th June 2019</i>
<i>Coming into operation:</i>	<i>1 June 2019</i>

The Isle of Man Financial Services Authority makes the following Order under section 4(4) and 35(1) of the Designated Businesses (Registration and Oversight) Act 2015, having consulted in accordance with section 35(4) of that Act¹.

1 Title

This Order is the Designated Businesses (Amendment) Order 2019.

2 Commencement

This Order comes into operation on 1 June 2019².

3 Substitution of Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015

For Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015 (designated businesses and exemptions), substitute the text set out in the Schedule to this Order.

¹ Section 35(4) of the Designated Businesses (Registration and Oversight) Act 2015 requires the Authority to consult the Treasury, the Department of Home Affairs and any other body or person that it considers appropriate, before making an order under that section.

² Section 35(3) of the Designated Businesses (Registration and Oversight) Act 2015 specifies that an Order made under section 4 of the Act must be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the order is laid or at the next following sitting fails to approve it, it ceases to have effect.

MADE 22 MAY 2019

K BADGEROW

Chief Executive of the Isle of Man Financial Services Authority

M WATERHOUSE

Member of the Isle of Man Financial Services Authority

SCHEDULE

[Article 3]

**SUBSTITUTION OF SCHEDULE 1 TO THE DESIGNATED BUSINESSES
(REGISTRATION AND OVERSIGHT) ACT 2015****SCHEDULE 1**

[Section 4]

DESIGNATED BUSINESSES AND EXEMPTIONS**PART 1 – DESIGNATED BUSINESSES**

- 1 The businesses listed in the table below are designated businesses for the purposes of this Act.

Designated businesses for the purposes of the Act	
1.	A legal professional undertaking any of the following activities, subject to paragraph 4 – (a) managing any assets belonging to a client; (b) the provision of legal services which involve the 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 – (i) the sale or purchase of land; (ii) managing bank, savings or security accounts; (iii) organising contributions for the promotion, formation, operation or management of bodies corporate; (iv) the sale or purchase of a business; or (v) the creation, operation or management of a legal person or legal arrangement.
2.	An external accountant.
3.	A tax adviser.
4.	A payroll agent, as defined in paragraph 3.
5.	A business which provides lending in respect of products other than consumer products for and on behalf of customers, subject to paragraph 5.
6.	A business which provides financial leasing arrangements in respect of products other than consumer products and on behalf of customers, subject to paragraph 5.
7.	A business which provides financial guarantees and commitments in respect of products other than consumer products for and on behalf of customers, subject to paragraph 5.
8.	An estate agent, subject to paragraph 6.
9.	A business which deals in goods or services of any description

	(including dealing as an auctioneer) whenever a transaction or series of linked transactions involves accepting a total cash payment (in any currency) that is equivalent to at least €15,000.
10.	A business which provides safe custody facilities for cash or liquid securities, deposit boxes or other secure storage facilities, subject to paragraph 7.
11.	A business engaged in convertible virtual currency activity.
12.	A specified non-profit organisation.

2 In the table above -

“convertible virtual currency activity” means issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies, including cryptocurrencies, virtual assets or similar concepts where the concept is accepted by persons as a means of payment of goods or services, a unit of account, a store of value or a commodity;

“estate agent” means a person who practices, or carries on business, as an estate agent, within the meaning of section 15 of the *Estate Agents Act 1975*;

“external accountant” means a person who provides accountancy services to a third party –

- (a) including audit services in respect of a body corporate and insolvency services; but
- (b) excluding a person who provides those services if –
 - (i) that person is employed by a public authority;
 - (ii) that person is employed by an undertaking which does not provide accountancy services to a third party by way of business; or
 - (iii) that person’s duties relate solely to the provision of accountancy services to his or her employer;

“legal professional” means a person who is –

- (a) an advocate within the meaning of the *Advocates Act 1976*;
- (b) a registered legal practitioner within the meaning of the *Legal Practitioners Registration Act 1986*;
- (c) a notary public within the meaning of the *Advocates Act 1995* and the Notaries Regulations 2000³, as those Regulations have effect from time to time and any instrument or enactment from time to time amending or replacing those Regulations; or
- (d) any other person who provides legal services to third parties, except for any such person who is employed by a public authority

³ SD 671/00 as amended by SD 0850/02

or an undertaking which does not provide legal services to a third party, by way of business;

“**lending**” includes –

- (a) consumer credit;
- (b) mortgage credit;
- (c) factoring; and
- (d) the finance of commercial transactions;

“**public authority**” has the meaning given in section 6 of the *Human Rights Act 2001*;

“**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, fraternal or philanthropic purposes with the intention of benefiting the public or a section of the public –

- (a) which has an annual or anticipated annual income of £5,000 or more;
- (b) which has remitted, or is anticipated to remit, at least £2,000 in any one financial year to one or more ultimate recipients in or from one or more higher risk jurisdictions; and
- (c) where the decision as to where to remit the funds is made within the Island;

and for the purposes of this definition “**higher risk jurisdiction**” means a jurisdiction which the specified non-profit organisation, having considered any relevant guidance, determines presents a higher risk of money laundering, the financing of terrorism or proliferation; and

“**tax adviser**” means a person who –

- (a) in the ordinary course of the person’s business gives advice to a third party about the third party’s tax affairs; and
- (b) has been appointed to give such advice either by the third party in relation to whose tax affairs the person advises or by another tax adviser to the third party.

- 3 (1) For the purpose of item 4 in the table above “**payroll agent**” means a person who is involved with the payment of earnings to, or for the benefit of, any individual.
- (2) Sub-paragraph (1) applies where the payroll agent is not the individual’s employer.
- (3) Sub-paragraph (1) also applies where—

- (a) the payroll agent is the individual's employer but the place of work of the individual being paid is outside the Island;
 - (b) the work being carried out by the individual is not being carried on directly for the payroll agent or any company within a group to which the payroll agent belongs; and
 - (c) the work being carried out by the individual is not the principal trade or business of the payroll agent.
- (4) Sub-paragraph (1) does not apply to a technical service provider who only provides services which support the provision of payroll services and at no time takes possession of the funds being transferred.

For the purpose of this sub-paragraph “**technical service provider**” means a person who supports the provision of payroll services by providing services including –

- (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 payroll services.

4 In the table above item 1 does not apply to a legal professional where the assets belonging to a client being managed represent only advance payment of fees.

5 (1) In the table above item 5, 6 or 7 does not apply where 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.

(2) For the purposes of sub-paragraph (1) “**parent undertaking**” means an undertaking which, in relation to another undertaking (a “**subsidiary**” (“**S**”)) –

- (a) owns or controls, whether directly or indirectly, shares or other interests in S together aggregating in excess of 50% of the votes exercisable at general or other meetings of S on any or all matters;
- (b) has a right to appoint or remove a majority of S's board of directors, or other governing body;
- (c) has the right to exercise a dominant influence over S –
 - (i) by virtue of the provisions contained in S'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 S; and
- “**undertaking**” means a natural person, body corporate, trustees of a trust, partnership, foundation or unincorporated association.
- (3) For the purpose of sub-paragraph (2) –
 - (a) a parent undertaking (“**X**”) is taken to have the right to exercise a dominant influence over a subsidiary undertaking (“**Y**”) only if X has a right to give directions with respect to the operating and financial policies of Y with which Y’s directors are, or governing body is, obliged to comply whether or not they are for the benefit of Y;
 - (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 relation to which the right is exercisable;
 - (ii) is permitted by the law under which that undertaking is established; and
 - (c) any undertaking which is a subsidiary of another undertaking (“**A**”) is also a subsidiary of any further undertaking of which A is a subsidiary.

6 In the table above item 8 does not apply where there is a grant of a tenancy agreement and the estate agent does not take possession of funds from a tenant.


7 In the table above item 10 does not apply where the facilities 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) the storage by legal professionals of legal documents other than documents of title.

PART 2 – PERSONS EXEMPT FROM THIS ACT

8 This Act does not apply to a person whilst acting in his or her capacity as any of the following –

- (a) a person licensed under the *Financial Services Act 2008*;

- (b) a person which is regarded as constituting a collective investment scheme established under, and conducted in compliance with, the *Collective Investment Schemes Act 2008*;
- (c) an authorised insurer within the meaning of the *Insurance Act 2008*;
- (d) a foreign insurer to whom the Authority has issued a permit under section 22 of the *Insurance Act 2008*;
- (e) a registered insurance manager or registered insurance intermediary under Part VI of the *Insurance Act 2008*;
- (f) a trustee or administrator of a retirement benefit scheme registered under the *Retirement Benefits Scheme Act 2000*;
- (g) the holder of a licence granted under the *Online Gambling Regulation Act 2001*;
- (h) the holder of any of the following —
 - (i) a bookmaker's permit granted under section 14 of the *Gaming, Betting and Lotteries Act 1988*;
 - (ii) a racecourse licence granted under section 22 of the *Gaming, Betting and Lotteries Act 1988*;
 - (iii) a licence to operate a totalisator on an approved racecourse granted under section 24 of the *Gaming, Betting and Lotteries Act 1988*; or
 - (iv) the holder of a casino licence granted under the *Casino Act 1986*. 

EXPLANTORY NOTE***(This note is not part of the Order)***

This Order replaces Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015 (“the Act”). Part 1 of the Schedule (designated businesses) has been expanded to include more detailed definitions of designated businesses. A number of definitions in Part 1 have also been amended to take into account the amendments made to Schedule 4 to the Proceeds of Crime Act 2008 (business in the regulated sector). These definitions have been amended to address scope gaps that have been identified. Part 2 of the Schedule (persons exempt from the Act) has been amended for greater clarity.