



ISLE OF MAN FINANCIAL SERVICES AUTHORITY

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Moneylenders and Providers of financial guarantees / commitments

Sector Specific AML/CFT Guidance Notes

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Whilst this publication has been prepared by the Financial Services Authority, it is not a legal document and should not be relied upon in respect of points of law. Reference for that purpose should be made to the appropriate statutory provisions.

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Version history

Version 2 (August 2021)	<p>Updates to reflect changes to the main structure of the AML/CFT Handbook</p> <p>Updates made to provide additional guidance and clarification regarding the definition of lending</p>
Version 3 (February 2025)	<p>Updates to reflect the new definition of “lending”.</p> <p>Additional guidance added around the different types of lending.</p> <p>Additional wording added around the scope of the different activities.</p> <p>Update to the wording for the activity of ‘Lending’.</p> <p>Updated links to legislation.</p> <p>Update to NRA section.</p>

1. Foreword

For the purposes of this sector specific guidance, the term moneylenders, refers to a business conducting activity included in paragraph 2(6)(l) [Schedule 4 to the Proceeds of Crime Act 2008](#) ("POCA").

The activity is defined as follows:

"lending" means providing credit to any person by way of business, whether in cash or any other form, with the expectation that the credit provided will be repaid along with any interest due.

(l) subject to sub-paragraph (15), lending for and on behalf of customers;

Included in this is -

- (a) consumer credit;
- (b) mortgage credit;
- (c) factoring, with or without recourse; and;
- (d) the finance of commercial transactions (including financial leasing and forfeiting).

2. Terminology

"Lending" – for the avoidance of doubt where a loan is transferred to a new debtor or a new creditor, the 'lending' relationship continues with the new parties.

Where a customer or group of customers are transferred to a new lender, the lender may be able to avail themselves of the simplified measures at Paragraph 22 of the Code. See section 4.8 of the Handbook for further details.

"Consumer credit" – this means that loans between a lender and a borrower are within the scope of the legislation; this explicitly includes the provision of credit (including mortgages), the financing of commercial transactions and transferring debt to another party such as factoring. For the avoidance of doubt a where a loan is transferred to a new debtor or a new creditor, the lending relationship continues with the new parties.

"Mortgage credit" – means an agreement for the provision of credit to a person on the security of a mortgage of a freehold or leasehold estate or interest in land.

"Factoring" – means where a company which supplies goods or services on credit, assigns (by way of legal assignment) its unpaid invoices (that is, book debts or other receivables) to a finance company (factor) at a discount for immediate cash to provide working capital.

"Non-recourse factoring" – where the factor takes the credit risk of the invoices not being paid.

"Recourse factoring" – where the company retains the credit risk of the invoices not being paid. If invoices are not paid the factor can sell them back to the company or receive payment under an indemnity from the company.

"Financial leasing" – whereby the legal ownership of an asset lies with the 'lessor' and a 'lessee' only has the right to use the asset. In economic substance, a finance lease is a loan of money with the asset as security. The 'economic' ownership of the asset – the risks and rewards of ownership – lies with the lessee. In substance the finance lessee buys the asset with a loan from the finance lessor. Essentially, a finance lease may be viewed as an arrangement under which one person (the lessor) provides the money to buy an asset which is used by another (the lessee) in return for an interest charge.

"Forfaiting" – is a method of trade finance that allows exporters to obtain cash by selling their medium and long-term foreign accounts receivable at a discount to a forfeiter, a specialised finance firm or a department in a bank. Forfaiting can help exporters improve cash flow, particularly when pursuing sales to foreign buyers who depend on longer financing terms which can stretch for months or years.

3. Scope of the Activity

3.1 Lending

Lending does not include those **facilitating** lending between a lender and a borrower in cases such as a car dealership arranging the finance between a lender and the consumer. The relationship in this instance would be between the customer and the lender.

Lending is not intended to capture the provision of credit which is **incidental** to the person's main business and the lending provided by the same person selling the goods. This would include credit provided by retailers for goods / services where a line of credit is extended to the customer, with an understanding that this will be paid within an agreed time period – e.g. where merchants or retailers extend a line of credit to the customer for the purchase of goods and materials. Fundamentally, in instances such as this, no cash / money is 'lent' by the vendor to the customer, the vendor allows the customer to take receipt of the products / services on

the understanding that the payment will be settled at a later date under the terms of their agreement.

Lending is not intended to include the **credit** of time to compensate, or pay, for the provision of goods and services. The Authority's primary consideration is in where cash / money, or any other form of financial accommodation, is provided for goods or services.

It should be noted that a lending relationship does not conclude until all debts owed to the lender have been settled (or written off by the lender); even if new loans are not being made, the collection of debt from customers continues to be lending activity.

Critically, when considering the scope of lending as an activity, and what is and is not intended to be caught, it is the flow of funds linked to the activity that creates the potential ML/FT risks.

3.2 Financial leasing and Financial guarantees

This sector guidance is also applicable to entities that provide financial leasing arrangements and financial guarantees and commitments. These activities are included in paragraphs 2(6)(n) and 2(6)(m) Schedule 4 to POCA.

These activities are defined as follows:

- (m) subject to sub-paragraph (15), providing financial leasing arrangements in respect of products other than consumer products for and on behalf of customers;
- (n) subject to sub-paragraph (15), providing financial guarantees and commitments in respect of products other than consumer products for and on behalf of customers;

The following paragraphs of schedule 4 to POCA are also relevant:

- (15) Sub-paragraph (6)(l), (m) or (n) 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.
- (16) For the purposes of sub-paragraph (15) “**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.

(17) For the purposes of sub-paragraph (16) –

(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.

By virtue of being included in Schedule 4 to POCA, the above businesses are subject to the [Anti-Money Laundering and Countering the Financing of Terrorism Code 2019](#) (“the Code”). Also, these sectors are included in the [Designated Businesses \(Registration and Oversight\) Act 2015](#) which came into force in October 2015. The Financial Supervision Authority (“the Authority”) oversees this sector for Anti-Money Laundering and Countering the Financing of Terrorism (“AML/CFT”) purposes.

4. Introduction

The purpose of this document is to provide some guidance specifically for these sectors in relation to AML/CFT. This document should be read in conjunction both with Code and the main body of the [AML/CFT Handbook](#) (“the Handbook”).

Though the guidance in the Handbook, and this sector specific guidance, is neither legislation nor constitutes legal advice, it is persuasive in respect of contraventions of AML/CFT legislation dealt with criminally, by way of civil penalty or in respect of the Authority's considerations of a relevant person's (as such a term is defined in paragraph 3 of the Code) regulatory / registered status and the fit and proper status of its owners and key staff where appropriate.

This document covers unique money laundering and financing of terrorism (“ML/FT”) risks that may be faced by the sector and provides further guidance in respect of approaches to customer due diligence where it may vary across between sectors.

The [FATF - Guidance for a Risk-Based Approach - Real Estate Sector](#) includes some risk factors in relation to lending businesses. In particular it highlights that data such as beneficial ownership information and other financial details provided to mortgage lenders, from those seeking mortgages, can be key to identifying ML/FT risks in the real estate sector.

It further highlights that a mortgage lenders’ ability to approve mortgages puts them in an effective position to immediately address any ML/FT risk by choosing not to approve certain mortgages that may be indicative of ML/FT activity.

4.1 National Risk Assessment

The Island’s [National Risk Assessment](#) (“NRA”) was published in 2015 and was updated in 2020. Moneylenders must ensure their business risk assessment (and customer risk assessments where necessary) take into account any relevant findings of the NRA.

Typology reports indicate that the most common vulnerability faced by lenders is where cash is drawn down from the provider and then repaid with the proceeds of crime, either very quickly afterwards or over a short repayment period. This allows for the exchange of criminal proceeds with clean money from the loan provider and provides the criminal with documented evidence of a seemingly legitimate source of funds. Early repayments carry a risk that the funds have emanated from a criminal lifestyle. Similarly early repayment of loans and then the taking out of another loan soon afterwards is also a recognised typology.

While there is a recognised typology concerning lending being used to fund TF activities, e.g. where a customer secures a loan for TF-related purposes without, of course, the intention of paying it back, no such cases have been identified in the IoM. The NRA sets out the main risks and vulnerabilities in further detail.

Although there are a comparatively large number of registered moneylending businesses in the IoM the volume and level of transactions dealt with are low compared to many other DNFBP sectors. The majority of customers are domestic with a sizeable proportion known to the lenders. There are no domestic typologies for ML or TF relating to moneylending in the IoM. The risk for ML is assessed as medium low and for TF as low.

At the time of publication of this document the NRA is currently undergoing a revision. Further to this, a standalone [Moneylenders](#) Risk Assessment will be produced, and relevant persons should ensure that this, along with any other sectoral or topical risk assessment that may be pertinent to their business, is considered when reviewing their own policies and procedures, including their business risk assessment.

5. Risk Guidance

The moneylending industry is a broad sector and for the purposes of this guidance includes those entities that provide financial leasing arrangements and financial guarantees and commitments. The ML/FT risks will vary for each business based on a wide range of factors such as the type of products they supply, their customers and delivery channels.

The Code mandates that a number of risk assessments are completed –

- a business risk assessment (paragraph 5);
- a customer risk assessment (paragraph 6); and
- a technology risk assessment (paragraph 7)

These risk assessments should be used to adopt a risk-based approach in assessing the risks relating to its business, its customers and any technology used. The facilitation of ML/TF is a serious problem that businesses should be aware of and whilst utilising a risk-based approach cannot provide a full guarantee to a firm that it will be protected from being used to facilitate ML/TF it can assist businesses in understanding its risks and implementing AML/CFT measures to manage and mitigate these risks effectively.

Vigilance should govern all aspects of the business' dealings with its customers, including:

- customer instructions;
- transactions into and out of customer accounts, or one-off transactions as applicable;
- ongoing monitoring of the business relationship; and
- technology / security issues if there is an online element to the business relationship.

5.1 General Higher Risk Indicators

As with the basic elements of a risk assessment, discussed in chapter 2 of the Handbook, the following activities may increase the risk of the relationship. Just because an activity / scenario is listed below it does not automatically make the relationship high risk, the customer's rationale / nature / purpose of the business relationship etc. should be considered in all cases.

If a business is unable to obtain a satisfactory explanation from a customer in the event of the following situations, features, or activities, or any other features which cause it concerns, it should be determined whether this is suspicious or unusual activity. Please refer to chapter 5 of the Handbook for further detail of the Island's suspicious activity reporting regime.

As stated in paragraph 13 (Ongoing monitoring) of the Code:

13 Ongoing monitoring

(2) Where a relevant person identifies any unusual activity in the course of a business relationship or occasional transaction the relevant person must –

- (a) perform appropriate scrutiny of the activity;
- (b) conduct EDD in accordance with paragraph 15; and
- (c) consider whether to make an internal disclosure.

(3) Where a relevant person identifies any suspicious activity in the course of a business relationship or occasional transaction the relevant person must –

- (a) conduct EDD in accordance with paragraph 15 of the Code, unless the relevant person believes conducting EDD will tip off the customer; and
- (b) make an internal disclosure.

This list of higher risk indicators is by no means exhaustive, and relevant persons should be vigilant for any transactions where suspicion may be aroused and take appropriate measures. Also please see the list of red flags included at 3.2.

- Where a customer is reluctant to provide normal information or provides only minimal information.
- Where a customer's documentation cannot be readily verified.
- The customer is reluctant to provide the business with complete information about the nature and purpose of the relationship including the purpose of the loan.
- The customer is located in a higher risk jurisdiction.
- Transactions involving numerous jurisdictions.
- The customer is reluctant to meet personnel from the firm in person and / or uses a "front person".
- The customer engages in frequent transactions with different lenders.
- The customer has been rejected by other lenders.
- The customer wishes to repay earlier than anticipated and is unwilling to provide a rationale as to why and the source of the new funds.
- The customer is not concerned with early repayment fees, interest rates or other charges.
- The customer who draws down the loan is not the same party repaying the loan.
- The customer overpays the loan and seeks to claim back the difference.
- The customer has no discernible reason for using the businesses' services, or the businesses' location.
- The customer has a history of changing lenders and using a number of businesses in different jurisdictions.
- The customer's address is associated with multiple accounts that do not appear to be related.
- The customer is known to be experiencing extreme financial difficulties.
- The nature of activity does not seem in line with the customer's usual pattern of activity.

- The customer enquires about how to terminate a business relationship without explaining their reasons fully.
- The customer exhibits unusual concern with the businesses' compliance with Government reporting requirements and/or AML/CFT policies and procedures.

5.2 Red Flags

In addition to the above higher risk indicators, there are some factors that are likely to be “red flags” in relation to that particular relationship or occasional transaction and would therefore usually be suspicious activity. If a relevant person identifies suspicious activity appropriate steps as explained in section 3 of this document, and the Code, must be taken. This list of red flags is by no means exhaustive and is as follows:

- where it is identified a customer provides false or misleading information;
- where it is identified a customer provides suspicious identification documents;
- the customer does not provide the business with relevant / accurate information about the nature and intended or ongoing purpose of the relationship, including anticipated account activity;
- the customer is secretive / evasive when asked to provide more information;
- when requested, the customer refuses to identify a legitimate source of funds or source of wealth;
- the customer only wishes to pay in cash;
- the customer refuses to provide details on beneficial owners of an account or provides information which is false, misleading or substantially incorrect;
- the customer enquires about how quickly they can end a business relationship where it is not expected;
- where the business relationship is ended unexpectedly by the customer and the customer accepts unusually high fees to terminate the relationship without question;
- the customer appears to be acting on behalf of someone else and does not provide satisfactory information regarding whom they are acting for;
- the customer is known to have criminal / civil / regulatory proceedings against them for crime, corruption, misuse of public funds or is known to associate with such persons; and
- the customer is interested in paying higher charges to keep their identity secret.

5.3 Risk factors specific to the sector

There is a risk that ML could occur through the acceleration of an agreed repayment schedule, either by means of lump sum repayments, or early termination or settlement. It is important to be vigilant as explained above, lenders should be aware that early repayments carry a risk that the funds have emanated from a criminal lifestyle.

When considering repayments, it is expected these would normally be made from the customer's own bank or building society accounts by direct debit or bank transfer.

Repayments in cash have inherent risks, such as the lack of audit trail and difficulty in establishing the source of the cash and should not be encouraged. If a lender accepts occasional payments from third parties, for example, on settlement of the agreement, it must have determined the source of these funds, as per the requirements of the Code (further details provided in section 4.1 of this document).

6. Customer due diligence

Part 4 of the Code requires relevant persons to undertake customer due diligence and ongoing monitoring in relation to all business relationships. Chapter 3 of the Handbook provide guidance on how to identify and verify the identity of the customer in relation to both a natural and legal person. Also, guidance on the timing of identification and verification of identity is provided. For details of particular concessions which may be applicable please see Chapter 4 of the Handbook.

In all cases where the requirements of Part 4 of the Code cannot be met (Paragraphs 8(5), 9(9), 10(5), 12(11), 14(6), 15(8) and 19(11)) the procedures and controls must provide that –

- (a) the business relationship must proceed no further;
- (b) the relevant person must consider terminating¹ the business relationship; and
- (c) the relevant person must consider making an internal disclosure.

6.1 Source of funds

Paragraph 8(3)(e) of the Code requires the taking of reasonable measure to establish the source of funds for all new business relationships.

8 New business relationships

- (e) taking reasonable measures to establish the source of funds, including where the funds are received from an account not in the name of the customer —
- (i) understanding and recording the reasons for this;
 - (ii) identifying the account holder and on the basis of materiality and risk of ML/FT taking reasonable measures to verify the identity of the account holder using reliable, independent source documents, data or information; and
 - (iii) if the account holder is assessed as posing a higher risk of ML/FT, satisfying the requirements in paragraph 15.

¹ In relation to a new business relationship (paragraph 8) the business relationship must be terminated.

As explained above, the source of funds will typically be from the customer themselves or from a third party. Where fees are being paid by a third party, the business should identify and verify the identity of this third party. It should also seek to establish the relationship between the customer and the third party and consider the rationale for the payment and whether this appears reasonable. Please also see section 3.8 of the Handbook for further details on source of funds and source of wealth.