Statutory Document No. 2024/0137

Proceeds of Crime Act 2008, Terrorism and Other Crime (Financial Restrictions) Act 2014

TRAVEL RULE (TRANSFER OF VIRTUAL ASSETS) CODE 2024

Laid before Tynwald:
Coming into Operation: *28 October 2024*

The Department of Home Affairs makes the following Code under section 157 of the Proceeds of Crime Act 2008 and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014, after carrying out the consultations required by those sections[1].

1   Title

This Code is the Travel Rule (Transfer of Virtual Assets) Code 2024.

2   Commencement

This Code comes into operation on 28 October 2024.[2]

3   Application

This Code applies to relevant persons undertaking the activity of —

> (a)   a virtual asset service provider; or

> (b)   an intermediary virtual asset service provider.

4   Interpretation

> (1)   In this Code —

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[1] Section 157(4) of the Proceeds of Crime Act 2008 and section 68(4) of the Terrorism and Other Crime (Financial Restrictions) Act 2014 require the Department of Home Affairs to consult any body or person that appears to it to be appropriate, before making a Code under those sections.
[2] Section 223(5) of the Proceeds of Crime Act 2008 and section 68(5) of the Terrorism and Other Crime (Financial Restrictions) Act 2014 require a Code made under section 157 of the Proceeds of Crime Act 2008 or section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014 to be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the Code is laid or at the next following sitting so resolves, the Code ceases to have effect.

"**Accurate**" means information that the relevant person has verified for accuracy;

"**AML/CFT Code**" means the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019;

"**AML/CFT legislation**" means the requirements of —

(a) sections 7 to 11 and 14 of the *Anti-Terrorism and Crime Act 2003*;

(b) Part 3 of the *Proceeds of Crime Act 2008*;

(c) Parts 2 to 4 of the *Terrorism and Other Crime (Financial Restrictions) Act 2014*;

(d) financial sanctions which have effect in the Island; and

(e) any instrument of a legislative character made under one of the Acts mentioned in sub-paragraphs (a) to (c).

"**batch file transfer**" means a bundle of individual virtual asset transfers from a single originator grouped together by the originator for transmission to a VASP of a beneficiary or beneficiaries;

"**beneficiary**" means the intended recipient of a virtual asset in a virtual asset transfer and includes any ultimate owner or controller of a beneficiary;

"**customer**" means a person as defined in paragraph 3 of the AML/CFT Code;

"**customer due diligence**" (except in the expression "**enhanced customer due diligence**") means the measures specified in paragraphs 8 to 14, 16 to 22, 36, 37, and 39 of the AML/CFT Code for the purpose of identifying and verifying the identity of customers, any beneficial owners and other persons;

"*de minimis* **transfer**" means a virtual asset transfer below 1,000 euros or currency equivalent;

"**intermediary virtual asset service provider**" means a virtual asset service provider that provides exchange, transfer or safekeeping and/or administration services to, or for, the virtual asset service provider of the originator or beneficiary but does not have a business relationship with either the originator or the beneficiary;

"**internal disclosure**" means a disclosure made under paragraphs 25(c) (reporting procedures) and 26 (internal disclosures) of the AML/CFT Code;

"**legal entity**" means a body corporate, firm or other body that is a legal person under the law by which it is governed;

"**originator**" means a person who holds a virtual asset account and allows a virtual asset transfer from that account or, where there is no virtual asset account, who provides instructions to a VASP to carry out a virtual asset transfer;

"**relevant person**" means a person carrying on business in the regulated sector which is included in paragraphs 2(6)(a) to (t) of Schedule 4 to the *Proceeds of Crime Act 2008*;

"**suspicious activity**" means activity as defined in paragraph 3 of the AML/CFT Code;

"**transaction**" includes an attempted transaction;

"**unhosted wallet**" means a virtual asset wallet that allows a person who is not a relevant person to store, transfer and exercise full control over their virtual assets;

"**unhosted wallet transfer**" means the transfer of a virtual asset either —

(a)   by an originator from an unhosted wallet to the VASP of a beneficiary; or

(b)   by the VASP of the originator to the unhosted wallet of a beneficiary,

with the purpose of making the virtual asset available to the beneficiary.

"**unique account identifier**" means the unique customer account identifier issued by the VASP;

"**unique transaction identifier**" means a combination of letters, numbers or symbols, which is unique to the virtual asset transfer;

"**virtual asset**" has the meaning given to it in paragraph 1 of Schedule 4 to the *Proceeds of Crime Act 2008* or the equivalent meaning in another jurisdiction;

"**virtual asset transfer**" means any transaction, on behalf of an originator, with a view to making a virtual asset available to a beneficiary, irrespective of whether the originator and the beneficiary are the same person; and

"**virtual asset service provider**" or "**VASP**" has the meaning given to it in paragraph 1 of Schedule 4 to the *Proceeds of Crime Act 2008* or the equivalent meaning in another jurisdiction.

(2)   In this Code, a reference to an amount of currency expressed in euros is to be construed as meaning that amount converted into, and expressed as, an amount of any other currency, including fiat or convertible virtual currency.

(3)   All virtual asset transfers under this Code are considered to be cross-border transfers regardless of whether the originator and beneficiary are located in the same country or different countries.

5   Originator obligations

(1)   Where a relevant person sends a virtual asset to a VASP, the relevant person must obtain and hold the information as specified in sub-paragraph (2) and submit it to the VASP —

(a)   immediately; and

(b)   by secure means.

(2)   For the purposes of sub-paragraph (1), the specified information is —

(a)   the name of the beneficiary;

(b)   the unique account identifier of the beneficiary;

(c)   the name of the originator;

(d)   the unique account identifier of the originator;

(e)   where the beneficiary or the originator does not have a unique account identifier, a unique transaction identifier; and

(f)   one of the following —

(i)   the originator's address;

(ii)   a national identity number of the originator;

(iii)   the originator's date and place of birth.

(3)   In the case of a batch file transfer, the information specified in sub-paragraph (2) does not have to accompany each individual virtual asset transfer provided that —

(a)   each individual virtual asset transfer within the batch is accompanied by the unique account identifier or, if there is no unique account identifier, the unique transaction identifier; and

(b)   the batch is accompanied by the remaining information specified in sub-paragraph (2).

(4)   Where the originator is a legal entity, the relevant person must obtain and hold from the legal entity —

(a)   the registered name, or if there is no registered name, the trading name;

(b)   the unique account identifier, or if there is no unique account identifier, the unique transaction identifier; and

(c)   the registered office address, or if different, or if there is none, the principal place of business.

(5)   The specified information pertaining to the originator in paragraph 5(2) must be accurate.

6   Beneficiary obligations

(1)   Where a relevant person receives a virtual asset from a VASP, the relevant person must ensure that —

(a)   it has received the information specified in paragraph 5(2); and

(b)   the information is accurate and consistent with its own records in respect of the beneficiary's name and, where applicable, the beneficiary's unique account identifier.

(2)   When a relevant person receives a virtual asset from any person, including a VASP, it must ensure that it has effective risk-based policies and procedures in place for the purposes of —

(a)   determining whether any of the information specified in paragraph 5(2) is missing, incomplete, or where applicable, is inconsistent with the relevant person's own records; and

(b)   where a default is identified pursuant to sub-paragraph (2)(a) —

(i)   determining whether to apply the virtual asset transfer to the beneficiary's unique account;

(ii)   determining the appropriate follow-up action to ensure compliance with this Code; and

(iii)   considering whether to make an internal disclosure.

(3)   Paragraph 5 shall apply to a relevant person irrespective of whether the relevant person and the beneficiary are the same person.

(4)   Where the beneficiary is a legal entity, the relevant person must obtain and hold from the legal entity —

(a)   the registered name, or if there is no registered name, the trading name;

(b)   the unique account identifier, or if there is no unique account identifier, the unique transaction identifier; and

(c)   the registered office address, or if different, or if there is none, the principal place of business.

7   Unhosted wallet transfers

Where a relevant person is facilitating an unhosted wallet transfer, the relevant person must obtain from its customer (whether originator or beneficiary) the information specified in paragraph 5(2)(a) to (e).

8   *De minimis* transfers

(1)   Subject to sub-paragraph (2), if the virtual asset transfer is a *de minimis* transfer, the requirements of paragraph 5(2)(f) cease to apply.

(2)   Sub-paragraph (1) does not apply if the relevant person has identified any suspicious activity in relation to its customer (whether originator or beneficiary).

9   Customer due diligence and record keeping

(1)   Any requirement under this Code for a relevant person to obtain any of the information specified in paragraph 5(2), shall constitute a customer due diligence measure within the meaning of the AML/CFT Code.

(2)   Paragraphs 33 to 35 of the AML/CFT Code shall apply to a relevant person that —

   (a)   sends a virtual asset pursuant to paragraph 5;

   (b)   receives a virtual asset pursuant to paragraph 6,

   as if the information obtained pursuant to this Code was listed in paragraph 33 of the AML/CFT Code and, for the avoidance of doubt, any person who fails to comply with the requirements of paragraph 33 of that Code in respect of that information shall be guilty of an offence under paragraph 42 of that Code.

(3)   Any information obtained by a relevant person in compliance with this paragraph must be made available to the Isle of Man Financial Intelligence Unit on request.

10   Offences and penalties

(1)   A person who fails to comply with any requirements of this Code is guilty of an offence, and liable —

   (a)   on summary conviction, to custody for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale or both; or

   (b)   on conviction on information, to custody not exceeding 2 years or to a fine, or to both.[3]

(2)   Sub-paragraph (2), (3), (4) and (5) of paragraph 42 of the AML/CFT Code shall apply to an offence under sub-paragraph (1) as if it were an offence under paragraph 42(1) of the AML/CFT Code.

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[3] Under section 157(2ZA) of the Proceeds of Crime Act 2008 and section 68(2ZA) of the Terrorism and Other Crime (Financial Restrictions) Act 2014, the Isle of Man Financial Services Authority may by regulations require a person whom it is satisfied has contravened a provision of this code to pay a civil penalty in respect of the contravention, provided that criminal proceedings have not been commenced in respect of the contravention.

MADE 22 AUGUST 2024

JANE POOLE-WILSON
Minister for Justice and Home Affairs

EXPLANATORY NOTE

(This note is not part of the Code)

This Code implements the requirements of the Financial Action Task Force's Recommendation 16 in respect of virtual asset transfers obligations for the virtual asset sector operating in or from the Isle of Man.