



## ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM CODE 2019

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Statutory Document No. 2019/0202



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

## **ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM CODE 2019<sup>1</sup>**

*Laid before Tynwald:* 21 May 2019  
*Coming into Operation:* 1 June 2019

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 consultation required by those sections<sup>1</sup>.

### **PART 1 - INTRODUCTORY**

#### **1 Title**

This Code is the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019.

#### **2 Commencement**

This Code comes into operation on 1 June 2019<sup>2</sup>.

#### **3 Interpretation**

(1) In this Code —

“**acceptable applicant**” means a customer in relation to whom the conditions of paragraph 16(3) (acceptable applicants) are met;

“**AML/CFT**” means anti-money laundering and countering the financing of terrorism;

“**AML/CFT legislation**” means the requirements of —

<sup>1</sup> 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.

<sup>2</sup> 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.

- (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) this Code,

**“beneficial owner”** means a natural person who ultimately owns or controls the customer, or on whose behalf a transaction or activity is being conducted and includes —

- (a) in the case of a legal person other than a company whose securities are listed on a recognised stock exchange, a natural person who ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) 25% or more of the shares or voting rights in the legal person;
- (b) in the case of any legal person, a natural person who otherwise exercises ultimate effective control or significant influence over the management of the legal person;
- (c) in the case of a legal arrangement, the trustee or other person who exercises ultimate effective control or significant influence over the legal arrangement; and
- (d) in the case of a foundation, a natural person who otherwise exercises ultimate effective control or significant influence over the foundation;

**“beneficiary”** includes any ultimate owner or controller of a beneficiary;

**“business in the regulated sector”** has the meaning assigned by paragraph 2(1)(a) of Schedule 4 to the Proceeds of Crime Act 2008;

**“business relationship”** means an arrangement between two or more persons where —

- (a) at least one of those persons is acting in the course of a business; and
- (b) the purpose of the arrangement is to facilitate the carrying on of business in the regulated sector between those persons on a frequent, habitual or regular basis;

**“business risk assessment”** has the meaning given in paragraph 5 (business risk assessment);

**“collective investment scheme”** has the meaning given in section 1 of the Collective Investment Schemes Act 2008;

**“competent authority”** means all Isle of Man administrative and law enforcement authorities concerned with AML/CFT, including the Isle of Man Financial Services Authority, the Isle of Man Gambling Supervision Commission, the Department of Home Affairs, the Isle of Man

Constabulary, the Financial Intelligence Unit, the Attorney General, and the Customs and Excise and Income Tax Divisions of the Treasury;

“**convertible virtual currency**” has the meaning assigned by paragraph 2(6)(r) Schedule 4 to the Proceeds of Crime Act 2008;

“**customer**” of a relevant person —

- (a) means a person —
  - (i) seeking to form a business relationship or seeking to carry out an occasional transaction; or
  - (ii) carrying on a business relationship or carrying out an occasional transaction,  
with a relevant person who is carrying on business in the regulated sector in or from the Island;
- (b) in relation to an insurer includes the person beneficially entitled to the assets to fund the premium; and
- (c) in any case where a financial product (including a life assurance policy) has been assigned or transferred by its holder to another person (“**the assignee**”), includes the assignee;

“**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 for the purpose of identifying and verifying the identity of customers, any beneficial owners and other persons;

“**customer risk assessment**” has the meaning given in paragraph 6 (customer risk assessment);

“**designated business**” means a person that is registered by the Isle of Man Financial Services Authority to undertake designated business listed in Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015;

“**director**” includes any person occupying the position of director by whatever name called;

“**eligible introducer**” refers to a person (“**the eligible introducer**”) who introduces a customer to a relevant person under the circumstances covered in paragraph 19 (eligible introducers). It includes situations where reliance, in relation to verification of a customer’s identity, is placed on the eligible introducer. The verification is not required to be produced to the relevant person if the conditions in paragraph 19 are satisfied;

“**employee**” and “**worker**” of a relevant person have the same meanings as in section 173 of the Employment Act 2006 and include an individual who —

- (a) works under a contract of employment or any other contract of service for a relevant person;
- (b) practises alone or with others under the terms of a partnership agreement for a relevant person;

- (c) is otherwise engaged within the business of a relevant person, in all cases where the individual undertakes to do or perform, directly or indirectly, any work or service for a relevant person, whether or not engaged directly by a relevant person or through another entity forming part of the group of entities of which a relevant person is a part, and a relevant person is not by virtue of the contract a customer of the individual; or
- (d) is a director or officer of a relevant person;

**“enhanced customer due diligence”** means the steps specified in paragraph 15 (enhanced customer due diligence) which are additional to the measures specified in paragraphs 8 to 14, 16 to 22, 36, 37 and 39 for the purpose of identifying and verifying the identity of customers, any beneficial owners and other persons;

**“exempted occasional transaction”** means an occasional transaction (whether a single transaction or a series of linked transactions) where the amount of the transaction or, the aggregate in the case of a series of linked transactions, is less in value than —

- (a) €5,000 in relation to an activity being undertaken which is included in Class 8(1) (bureau de change) and Class 8(3) (cheque encashment) of the Regulated Activities Order;
- (b) €1,000 in relation to an activity being undertaken which is included in Class 8(4) (money transmission services apart from cheque encashment) of the Regulated Activities Order and paragraph 2(6)(r) (convertible virtual currency) of Schedule 4 to the Proceeds of Crime Act 2008; or
- (c) €15,000 in any other case;

**“external disclosure”** means a disclosure made under paragraphs 25(f) (reporting procedures) and 27 (external disclosures);

**“external regulated business”** means business conducted outside the Island that is undertaking an activity equivalent to one specified in paragraph 2(6)(a) to (r) or (11)(c) of Schedule 4 to the Proceeds of Crime Act 2008 and —

- (a) is subject to AML/CFT requirements;
- (b) is regulated or supervised under the law of a jurisdiction listed on List C for AML/CFT purposes by an authority (whether a governmental or professional body and whether in the Island or elsewhere) empowered (whether by law or by the rules of the body) to regulate or supervise such business for such purposes; and
- (c) the relevant person has no reason to believe that the jurisdiction in question does not apply, or insufficiently applies, the FATF Recommendations in respect of the external regulated business;

“**FATF Recommendations**” means the Recommendations made by the Financial Action Task Force (“**FATF**”) which are recognised as the international standards in relation to AML/CFT;

“**financing of terrorism**” includes the financing of proliferation and is to be construed in accordance with the definitions of “**financing**”, “**terrorism**” and “**proliferation**” in section 3 of the Terrorism and Other Crime (Financial Restrictions) Act 2014;

“**foundation**” means a foundation established under the Foundations Act 2011 or a foundation or similar entity established under the law of another jurisdiction;

“**group**”, in relation to a body corporate (“**B**”), means —

- (a) **B**;
- (b) any other body corporate that is **B**’s holding company (“**H**”) or **B**’s subsidiary; and
- (c) any other body corporate that is a subsidiary of **H**,

and “**subsidiary**” and “**holding company**” shall be construed in accordance with section 1 of the Companies Act 1974 or section 220 of the Companies Act 2006 (as applicable);

“**insurer**” means a person authorised to carry on insurance business under section 8 of the Insurance Act 2008 or to whom a permit is issued under section 22 of that Act;

“**insurance intermediary**” means a person registered as an insurance intermediary under section 25 of the Insurance Act 2008;

“**insurance manager**” means a person registered as an insurance manager under section 25 of the Insurance Act 2008;

“**internal disclosure**” means a disclosure made under paragraphs 25(c) (reporting procedures) and 26 (internal disclosures);

“**introducer**” refers to a person (“**the introducer**”) who provides elements of customer due diligence to a relevant person on behalf of a customer under the circumstances covered in paragraph 9 (introduced business). However, reliance in relation to the customer due diligence is not placed on an introducer within the meaning of paragraph 19 (eligible introducers);

“**legal arrangement**” includes —

- (a) an express trust; or
- (b) any other arrangement that has a similar legal effect (including a *fiducie*, *treuhand* or *fideicomiso*),

and includes a person acting for, or on behalf of, a legal arrangement referred to in paragraph (a) or (b) such as a trustee;

- “**legal person**” includes any body corporate or unincorporate capable of establishing a business relationship with a relevant person or of owning property;
- “**life assurance policy**” has the same meaning as “long term business” in accordance with the Insurance Regulations 2018<sup>3</sup>, as those Regulations have effect from time to time and any instrument or enactment from time to time amending or replacing those Regulations;
- “**List A**” is a list maintained by the Department of Home Affairs on its website specifying jurisdictions regarding which the FATF (or a FATF-style regional body) has made a call on its members and other jurisdictions to apply countermeasures to protect the international financial system from the ongoing and substantial risks of ML/FT emanating from the jurisdiction;
- “**List B**” is a list maintained by the Department of Home Affairs on its website specifying jurisdictions with strategic AML/CFT deficiencies and those that may be considered to pose a higher risk of ML/FT;
- “**List C**” is a list maintained by the Department of Home Affairs on its website specifying jurisdictions which are considered to have an AML/CFT regime of equivalent standard to that of the Island in relation to key areas of the FATF Recommendations;
- “**ML/FT**” means money laundering and financing of terrorism or both, and includes attempted money laundering and financing of terrorism or both;
- “**money laundering**” means an act that falls within section 158(11) of the Proceeds of Crime Act 2008;
- “**Money Laundering Reporting Officer**” or “**MLRO**” means an individual appointed under paragraph 23 (Money Laundering Reporting Officer) and paragraph 24 (Money Laundering Reporting Officer – insurers, insurance managers and insurance intermediaries) and includes a deputy MLRO appointed under paragraph 23(3);
- “**National Risk Assessment**” is a jurisdiction’s evaluation of its ML/FT risks which aims to ensure that actions are co-ordinated domestically to combat ML/FT and proliferation, as required under the FATF Recommendations;
- “**nominee company**” means a wholly-owned subsidiary that complies with paragraphs 2.7 or 3.1 of Schedule 1 to the Financial Services (Exemptions) Regulations 2011<sup>4</sup> as it has effect from time to time and any instrument or enactment from time to time amending or replacing those regulations or similar legislation in a jurisdiction included in List C;
- “**occasional transaction**” means any transaction (whether a single transaction or series of linked transactions), other than a transaction carried out in the

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<sup>3</sup> SD 2018/0192

<sup>4</sup> SD 0885/11 as amended by SD 0374/13, SD 0374/2013, SD 2016/0100, SD 2016/0186, SD 2017/0262, SD 2017/0345

course of an established business relationship, formed by a relevant person and for the purposes of this definition, a business relationship is an established business relationship if it is formed by a relevant person where that person has identified, and taken reasonable measures to verify the identity of the person who, in relation to the formation of that business relationship, was the customer;

**“officer”** includes —

- (a) a director or secretary;
- (b) in relation to a limited liability company to which the Limited Liability Companies Act 1996 applies, a member, manager or registered agent of such a company;
- (c) in relation to a company to which the Companies Act 2006 applies, a member, manager or registered agent of such a company;
- (d) in relation to a limited partnership with legal personality to which sections 48B to 48D of the Partnership Act 1909 apply —
  - (i) if a general partner is a natural person, that person;
  - (ii) if a general partner is a body corporate, the directors and officers of that body corporate;
  - (iii) if a general partner is a foundation, the council members (or equivalent) of that foundation;
- (e) in relation to a foundation, a member of the council (or equivalent) of the foundation; and
- (f) in relation to a legal arrangement, a trustee;
- (g) any person in accordance with whose directions or instructions any of the officers are accustomed to act unless the officer is accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
- (h) in respect of any other legal person or legal arrangement such persons as occupy a position equivalent to that of a director;
- (i) a liquidator;
- (j) a receiver;
- (k) a person holding an office under any relevant foreign law analogous to any of the offices specified in paragraphs (a) to (j), in respect of a legal person or legal arrangement; and
- (l) a person, who, in any way, whether directly or indirectly is concerned or takes part in the promotion, formation or management of a legal person or legal arrangement;

**“politically exposed person”** or **“PEP”** means any of the following —

- (a) a natural person who is or has been entrusted with prominent public functions (“P”), including —

- (i) a head of state, head of government, minister or deputy or assistant minister;
  - (ii) a senior government official;
  - (iii) a member of parliament;
  - (iv) a senior politician;
  - (v) an important political party official;
  - (vi) a senior judicial official;
  - (vii) a member of a court of auditors or the board of a central bank;
  - (viii) an ambassador, *chargé d'affaires* or other high-ranking officer in a diplomatic service;
  - (ix) a high-ranking officer in an armed force;
  - (x) a senior member of an administrative, management or supervisory body of a state-owned enterprise; or
  - (xi) a senior member of management of, or a member of, the governing body of an international entity or organisation;
- (b) any of the following family members of P, including —
- (i) a spouse;
  - (ii) a partner considered by national law as equivalent to a spouse;
  - (iii) a child;
  - (iv) a spouse or partner of a child;
  - (v) a brother or sister (including a half-brother or half-sister);
  - (vi) a spouse or partner of a brother or sister;
  - (vii) a parent;
  - (viii) a parent-in-law;
  - (ix) a grandparent; or
  - (x) a grandchild;
- (c) any natural person known to be a close associate of P, including —
- (i) a joint beneficial owner of a legal person or legal arrangement, or any other close business relationship, with P;
  - (ii) the sole beneficial owner of a legal person or legal arrangement known to have been set up for the benefit of P;
  - (iii) a beneficiary of a legal arrangement of which P is a beneficial owner or beneficiary; or
  - (iv) a person in a position to conduct substantial financial transactions on behalf of P;

**“regulated person”** means —

- (a) any person holding a financial services licence issued under section 7 of the Financial Services Act 2008;
- (b) any person authorised under section 8 the Insurance Act 2008;
- (c) any person registered under section 25 of the Insurance Act 2008;
- (d) a retirement benefits schemes administrator registered under section 36 of the Retirement Benefits Schemes Act 2000; or
- (e) a person holding an online gambling licence issued under section 4 of the Online Gambling Regulation Act 2001;

**“Regulated Activities Order”** means the Regulated Activities Order 2011 (as amended 2018) as it has effect from time to time and any instrument or enactment from time to time amending or replacing that Order<sup>5</sup>;

**“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;

**“sanctions list”** means the list of persons who are subject to international sanctions which apply in the Island which is maintained by the Customs and Excise Division of the Treasury;

**“senior management”** means the directors and officers or any other persons who are nominated to ensure that the relevant person is effectively controlled on a day-to-day basis and who have responsibility for overseeing the relevant person’s proper conduct;

**“shell bank”** means a bank (or shell securities provider) that is —

- (a) incorporated in a jurisdiction in which it has no physical presence; and
- (b) not affiliated with a financial services group that is subject to effective consolidated supervision,

and for the purposes of this definition —

**“consolidated supervision”** in relation to a financial services group, means supervision of the group by a regulatory body on the basis of the totality of its business, wherever conducted;

**“financial services group”** means a group of companies whose activities include to a significant extent activities that are, or if carried on in the Island would be, included in the Regulated Activities Order; and

**“physical presence”** means the presence of staff and management based in the jurisdiction who operate at a level at which they are able to make meaningful decisions in respect of the functions and activities of the bank;

**“source of funds”** means the origin of the particular funds or other assets involved in a business relationship or occasional transaction and includes the activity that generated the funds used in the business relationship or

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<sup>5</sup> SD884/11 as amended by SD0373/13, SD2016/0099, SD2016/0188, SD 2017/0344

occasional transaction, and the means through which the funds were transferred;

**“source of wealth”** means the origin of a customer’s entire body of wealth and includes the total assets of the customer;

**“suspicious activity”** means any activity, including the receipt of information, which in the course of a business relationship, occasional transaction or attempted transaction causes the relevant person to –

- (a) know or suspect; or
- (b) have reasonable grounds for knowing or suspecting,

that the activity is ML/FT or that the information is related to ML/FT;

**“technology risk assessment”** has the meaning given in paragraph 7 (technology risk assessment) and includes both new and developing technologies;

**“transaction”** includes an attempted transaction;

**“trusted person”** means –

- (a) a regulated person;
- (b) a nominee company owned by a regulated person, where the regulated person is responsible for the nominee company’s compliance with the AML/CFT legislation;
- (c) an advocate within the meaning of the Advocates Act 1976 or a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986 and who is registered as a designated business for those activities;
- (d) an accountant who is registered as a designated business for this activity;
- (e) a person who acts in the course of external regulated business; or
- (f) a nominee company owned by a person who acts in the course of external regulated business where that person is responsible for the nominee company’s compliance with AML/CFT requirements at least equivalent to those in this Code; and

**“unusual activity”** means any activity including the receipt of information during the course of a business relationship, occasional transaction or attempted transaction where –

- (a) the transaction has no apparent economic or lawful purpose, including a transaction which is –
  - (i) complex;
  - (ii) both large and unusual; or
  - (iii) of an unusual pattern;
- (b) the relevant person becomes aware of anything that causes the relevant person to doubt the identity of a person it is obliged to identify; or

- (c) the relevant person becomes aware of anything that causes the relevant person to doubt the good faith of a customer, beneficial owner, beneficiary, introducer or eligible introducer.
- (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.

## PART 2 – GENERAL REQUIREMENTS

### 4 Procedures and controls

- (1) A relevant person must not enter into or carry on a business relationship, or carry out an occasional transaction, with or for a customer or another person unless the relevant person –
  - (a) establishes, records, operates and maintains procedures and controls –
    - (i) in order to comply with each paragraph within Parts 3 to 9;
    - (ii) in relation to determining whether a customer, any beneficial owner, beneficiary, introducer or eligible introducer is included on the sanctions list; and
    - (iii) in relation to internal controls and communication matters that are appropriate for the purposes of forestalling and preventing ML/FT;
  - (b) takes appropriate measures for the purpose of making its employees and workers aware of –
    - (i) the AML/CFT legislation; and
    - (ii) the procedures and controls established, recorded, maintained and operated under head (a).
- (2) The procedures and controls referred to in sub-paragraph (1) must –
  - (a) have regard to the materiality and risk of ML/FT including whether a customer, beneficial owner, beneficiary, introducer or eligible introducer poses a higher risk of ML/FT;
  - (b) enable the relevant person to manage and mitigate the risks of ML/FT that have been identified by the relevant person when carrying out the requirements of this Code; and
  - (c) be approved by the senior management of the relevant person.
- (3) The ultimate responsibility for ensuring compliance with this Code is that of the relevant person, regardless of any outsourcing or reliance on third parties during the process.

## PART 3 – RISK BASED APPROACH

### 5 Business risk assessment

- (1) A relevant person must carry out an assessment that estimates the risk of ML/FT posed by the relevant person's business and customers.
- (2) The business risk assessment must be —
  - (a) undertaken as soon as reasonably practicable after the relevant person commences business;
  - (b) recorded in order to demonstrate its basis; and
  - (c) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep the assessment up-to-date.
- (3) The business risk assessment must have regard to all relevant risk factors, including —
  - (a) the nature, scale and complexity of the relevant person's activities;
  - (b) any relevant findings of the most recent National Risk Assessment relating to the Island;
  - (c) the products and services provided by the relevant person;
  - (d) the manner in which the products and services are provided, including whether the relevant person meets its customers;
  - (e) the involvement of any third parties for elements of the customer due diligence process, including where reliance is placed on a third party;
  - (f) customer risk assessments carried out under paragraph 6; and<sup>2</sup>
  - (g) any technology risk assessment carried out under paragraph 7.

### 6 Customer risk assessment

- (1) A relevant person must carry out an assessment that estimates the risk of ML/FT posed by the relevant person's customer.
- (2) A customer risk assessment must be —
  - (a) undertaken prior to the establishment of a business relationship or the carrying out of an occasional transaction with or for that customer;
  - (b) recorded in order to be able to demonstrate its basis; and
  - (c) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep the assessment up-to-date.
- (3) The customer risk assessment must have regard to all relevant risk factors, including —
  - (a) the business risk assessment carried out under paragraph 5;

- (b) the nature, scale, complexity and location of the customer's activities;
- (c) the manner in which the products and services are provided to the customer;
- (d) the risk factors included in paragraph 15(5) and (7);
- (e) the involvement of any third parties for elements of the customer due diligence process, including where reliance is placed on a third party;
- (f) any risk assessment carried out under paragraph 9(4); and
- (g) whether the relevant person and the customer have met during the business relationship, or its formation, or in the course of an occasional transaction.

## 7 Technology risk assessment

- (1) A relevant person must carry out an assessment that estimates the risk of ML/FT posed by any technology to the relevant person's business.
- (2) The technology risk assessment must be —
  - (a) undertaken as soon as reasonably practicable after the relevant person commences business;
  - (b) undertaken prior to the launch or implementation of new products, new business practices and delivery methods including new delivery systems;
  - (c) undertaken prior to the use of new or developing technologies for both new and existing products;
  - (d) recorded in order to be able to demonstrate its basis; and
  - (e) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep it up-to-date.
- (3) The technology risk assessment must have regard to all relevant risk factors including —
  - (a) technology used by the relevant person to comply with AML/CFT legislation;
  - (b) the business risk assessment carried out under paragraph 5;
  - (c) the products and services provided by the relevant person;
  - (d) the manner in which the products and services are provided by the relevant person, considering delivery methods, communication channels and payment mechanisms;
  - (e) digital information and document storage;
  - (f) electronic verification of documents; and
  - (g) data and transaction screening systems.

## PART 4 – CUSTOMER DUE DILIGENCE AND ONGOING MONITORING

### 8 New business relationships

- (1) A relevant person must, in relation to each new business relationship, establish, record, maintain and operate the procedures and controls specified in sub-paragraph (3).
- (2) Subject to sub-paragraph (4), the procedures and controls must be undertaken –
  - (a) before a business relationship is entered into; or
  - (b) during the formation of that relationship.
- (3) Those procedures and controls are –
  - (a) identifying the customer;
  - (b) verifying the identity of the customer using reliable, independent source documents, data or information;
  - (c) verifying the legal status of the customer using reliable, independent source documents, data or information;
  - (d) obtaining information on the nature and intended purpose of the business relationship; and
  - (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.<sup>3</sup>
- (4) In exceptional circumstances the verification of the identity of the customer in accordance with sub-paragraphs (3)(b) and (c) may be undertaken after the formation of the business relationship if –
  - (a) it occurs as soon as reasonably practicable;
  - (b) the delay is essential so as not to interrupt the normal course of business;
  - (c) the customer has not been identified as posing a higher risk of ML/FT;
  - (d) the risks of ML/FT are effectively managed;
  - (e) the relevant person has not identified any unusual activity or suspicious activity;

- (f) the relevant person's senior management has approved the establishment of the business relationship and any subsequent activity until sub-paragraphs (3)(b) and (c) has been complied with; and
  - (g) the relevant person ensures that the amount, type and number of transactions is appropriately limited and monitored.
- (5) Except as provided in sub-paragraph (4) and Part 6, where the requirements of this paragraph are not met, the procedures and controls must provide that—
- (a) the business relationship must proceed no further;
  - (b) the relevant person must terminate the business relationship; and
  - (c) the relevant person must consider making an internal disclosure.

## 9 Introduced business

- (1) This paragraph applies where a customer is introduced to a relevant person by a person who provides elements of the customer due diligence (the “**introducer**”).
- (2) The relevant person must comply with —
- (a) this paragraph; and
  - (b) paragraph 8 or 11 (whichever is applicable).
- (3) The relevant person must carry out a customer risk assessment in accordance with paragraph 6 and sub-paragraph (4).
- (4) The risk assessment must include and take into account —
- (a) a risk assessment of the introducer;
  - (b) whether the introducer has met the customer;
  - (c) whether any elements of customer due diligence provided by the introducer have been obtained by the introducer —
    - (i) directly from the customer; or
    - (ii) from any third parties; and
  - (d) if sub-paragraph (4)(c)(ii) applies, indicate —
    - (i) how many third parties were involved in the process;
    - (ii) who those third parties were;
    - (iii) whether any of those third parties have met the customer;
    - (iv) whether any third party is a trusted person; and
    - (v) whether in the case of any third parties located outside of the Island, they are located in a List C jurisdiction.
- (5) If the risk assessment indicates higher risk, the relevant person must undertake enhanced customer due diligence on the customer in accordance with paragraph 15 including, taking reasonable measures to

establish the source of wealth of the customer and any beneficial owner of the customer.

- (6) If more than one third party located outside of the Island is involved in the process, as specified in sub-paragraph (4), sub-paragraph (7) applies.
- (7) Without limiting paragraph 8 or 11 (whichever is applicable), the relevant person must verify the identity of the customer using reliable, independent source documents, data or information obtained, either –
  - (a) directly from the customer;
  - (b) from the introducer, but only if the introducer has obtained such evidence of verification of identity –
    - (i) directly from the customer;
    - (ii) directly from a third party who has met the customer; or
  - (b) directly from a third party who has met the customer.
- (8) The relevant person must be satisfied that –
  - (a) any elements of customer due diligence information provided by the introducer conform to the requirements of this Code;
  - (b) any document, data or information used to verify the identity of the customer conform to the requirements of this Code; and
  - (c) there is no reason to doubt the veracity of the documents, data or information produced to verify the identity of the customer.
- (9) If the relevant person cannot be satisfied as to the identity of the customer in accordance with the relevant provisions of this Code –
  - (a) the business relationship or occasional transaction must proceed no further;
  - (b) the relevant person must consider terminating that business relationship; and
  - (c) the relevant person must consider making an internal disclosure.
- (10) For the purposes of this paragraph, a third party “involved in the process” does not include a third party in the same group as –
  - (a) the relevant person; or
  - (b) the introducer,provided that the third party is a trusted person.
- (11) For the avoidance of doubt, if further elements of customer due diligence other than evidence of verification of identity are obtained by the relevant person under sub-paragraph (7) then this should be reflected in the customer risk assessment carried out in accordance with paragraph 6 and sub-paragraph (4).

## 10 Continuing business relationships

- (1) A relevant person must, in relation to each continuing business relationship, establish, record, maintain and operate the procedures and controls specified in sub-paragraph (3).
- (2) The procedures and controls must be undertaken during a business relationship as soon as reasonably practicable.
- (3) Those procedures and controls are —
  - (a) an examination of the background and purpose of the business relationship;
  - (b) if satisfactory verification of the customer's identity was not obtained or produced, requiring such verification to be obtained or produced in accordance with paragraph 8;
  - (c) if satisfactory verification of the customer's identity was obtained or produced, a determination as to whether it is satisfactory; and
  - (d) if verification of the customer's identity is not satisfactory for any reason, requiring that the relevant person takes measures to verify the customer's identity in accordance with paragraph 8.
- (4) The relevant person must keep written records of any examination, steps, measures or determination made or taken under this paragraph.
- (5) Except as provided in Part 6, where the requirements of this paragraph are not met within a reasonable timeframe, the procedures and controls must provide that—
  - (a) the business relationship must proceed no further;
  - (b) the relevant person must consider terminating the business relationship; and
  - (c) the relevant person must consider making an internal disclosure.

## 11 Occasional transactions

- (1) A relevant person must, in relation to an occasional transaction, establish, record, maintain and operate the procedures and controls specified in sub-paragraph (3).
- (2) The procedures and controls must be undertaken before the occasional transaction is entered into.
- (3) Those procedures and controls are —
  - (a) identifying the customer;
  - (b) verifying the identity of the customer using reliable, independent source documents, data or information;
  - (c) verifying the legal status of the customer using reliable, independent source documents, data or information;

- (d) obtaining information on the nature and intended purpose of the occasional transaction; and
- (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 holders 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.
- (4) Subject to sub-paragraph (6), if the transaction is an exempted occasional transaction the requirements of sub-paragraphs (3)(b) and (c) cease to apply.
- (5) Subject to sub-paragraph (6), if the transaction is an exempted occasional transaction the requirements of paragraph 12(2)(a)(ii) cease to apply.
- (6) Sub-paragraphs (4) and (5) do not apply if —
  - (a) the customer is assessed as posing a higher risk of ML/FT; or
  - (b) the relevant person has identified any suspicious activity.
- (7) Except as provided in sub-paragraphs (4) and (5) and Part 6, where the requirements of this paragraph are not met, the procedures must provide that—
  - (a) the occasional transaction is not to be carried out; and
  - (b) the relevant person must consider making an internal disclosure.

## 12 Beneficial ownership and control

- (1) This paragraph applies when a relevant person is operating any of the procedures and controls required by Parts 3, 4, 5 and 6.
- (2) A relevant person must, in the case of any customer —
  - (a) which is not a natural person —
    - (i) identify who is the beneficial owner of the customer, through any number of persons or arrangements of any description; and
    - (ii) subject to paragraphs 11(4), 11(5), 16(2) and 18(2) take reasonable measures to verify the identity of any beneficial owner of the customer, using reliable, independent source documents, data or information;
  - (b) subject to paragraphs 17 and 21, determine whether the customer is acting on behalf of another person and, if so —

- (i) identify that other person; and
    - (ii) take reasonable measures to verify that other person's identity using reliable, independent source documents, data or information;
  - (c) determine whether a person is acting on behalf of a customer and verify that any person purporting to act on behalf of the customer is authorised to do so; and, if so —
    - (i) identify that other person; and
    - (ii) take reasonable measures to verify the identity of that person using reliable, independent source documents, data or information.
- (3) Without limiting sub-paragraph (2) a relevant person must, in the case of a legal arrangement, identify and take reasonable measures to verify the identity of the beneficial owner —
  - (a) in the case of an express trust, by identifying —
    - (i) the trustees or any other controlling party;
    - (ii) any known beneficiaries;
    - (iii) any class of beneficiaries and, in respect of a class of beneficiaries where it is not reasonably practicable to identify each beneficiary details sufficient to identify and describe the class of persons who are beneficiaries;
    - (iv) the protector (if any);
    - (v) the enforcer (if any);
    - (vi) the settlor, or other person by whom the legal arrangement is made or on whose instructions the legal arrangement is formed; and
    - (vii) any other natural person exercising ultimate effective control over the trust traced through any number of persons or arrangements of any description; and
  - (b) in the case of other types of legal arrangement by identifying any natural persons in equivalent or similar positions to those mentioned in head (a), traced through any number of persons or arrangements of any description.
- (4) Without limiting sub-paragraph (2) a relevant person must, in the case of a foundation, identify and take reasonable measures to verify the identity of the beneficial owner by identifying —
  - (a) the council members (or equivalent);
  - (b) any known beneficiaries;
  - (c) any class of beneficiaries, and in respect of a class of beneficiaries where it is not reasonably practicable to identify each beneficiary,

- details sufficient to identify and describe the class of persons who are beneficiaries;
- (d) the founder and any other dedicator; and
  - (e) any other natural person exercising ultimate effective control over the foundation through any number of persons or arrangements of any description.
- (5) Without limiting sub-paragraphs (2) and (4), in respect of a customer that is a legal person, the relevant person must identify and take reasonable measures to verify the identity of the beneficial owner by —
- (a) obtaining the identity of the beneficial owner who ultimately has a controlling interest in the legal person;
  - (b) if it is not possible to comply with head (a) or where no natural person is the ultimate beneficial owner, identifying and taking reasonable measures to verify the identity of any natural person who exercises control of the legal person; and
  - (c) if it is not possible to comply with head (a) or (b), or where no natural person is the ultimate beneficial owner, identifying and taking reasonable measures to verify the identity of any natural person who exercises control of the legal person through other means, such as acting as a senior managing official.
- (6) Without limiting sub-paragraphs (2) to (5), in the case of a customer that is a legal arrangement or a legal person the relevant person must —
- (a) obtain the name and address of any other natural person who has the power to direct the customer's activities and take reasonable measures to verify that information using reliable, independent source documents, data or information;
  - (b) obtain information concerning the person by whom, and the method by which, binding obligations may be entered into or imposed on the customer; and
  - (c) obtain information to understand the nature of the customer's business and the ownership and control structure of the customer.
- (7) Subject to paragraph 21(1) and without limiting sub-paragraphs (2) to (6), the relevant person must not, in the case of a customer that is a legal person or a legal arrangement, make any payment or loan to, or on behalf of, a beneficial owner of that person or for the benefit of a beneficiary of that arrangement unless it has —
- (a) identified the recipient or beneficiary of the payment or loan;
  - (b) on the basis of materiality and risk of ML/FT, verified the identity of the recipient or beneficiary using reliable, independent source documents, data or information; and
  - (c) understood the nature and purpose of that payment or loan in accordance with paragraph 13.

- (8) Without limiting sub-paragraphs (2) to (7) in the case of a life assurance policy, an insurer must —
  - (a) identify any named beneficiary;
  - (b) in respect of a class of beneficiaries where it is not reasonably practicable to identify each beneficiary, obtain details sufficient to identify and describe the class of persons who are beneficiaries, to satisfy the insurer that it will be able to verify the identity of the beneficiaries at the time of pay-out; and
  - (c) where a policy is assigned to an assignee, identify the assignee and take reasonable measures to verify their identity using reliable, independent source documents, data or information.
- (9) Without limiting sub-paragraphs (2) to (8) in the case of a life assurance policy, an insurer must not make any payment or loan to a beneficiary or assignee of a life assurance policy unless it has verified the identity of each beneficiary or assignee using reliable, independent source documents, data or information.
- (10) Without limiting sub-paragraphs (2) to (9) in the case of a life assurance policy where a payment is to be made by an insurer to an account not in the name of the customer or beneficiary —
  - (a) the reasons for this must be understood and recorded; and
  - (b) this account holder must be identified, and on the basis of materiality and risk of ML/FT reasonable measures must be taken to verify the identity of the account holder using reliable, independent source documents, data or information.
- (11) Except as provided in Part 6, where the requirements of this paragraph are not met within a reasonable timeframe, the procedures and controls must provide that —
  - (a) the business relationship must proceed no further;
  - (b) the relevant person must consider terminating the business relationship; and
  - (c) the relevant person must consider making an internal disclosure.

### 13 Ongoing monitoring

- (1) A relevant person must perform ongoing and effective monitoring of any business relationship or occasional transaction, including —
  - (a) a review of information and documents held for the purpose of customer due diligence and enhanced customer due diligence to ensure they are up-to-date, accurate and appropriate, in particular where the transaction or relationship poses a higher risk of ML/FT;
  - (b) appropriate scrutiny of transactions and other activities to ensure that they are consistent with —

- (i) the relevant person's knowledge of the customer, the customer's business and risk profile and source of funds of the transaction;
    - (ii) the business risk assessment carried out under paragraph 5;
    - (iii) the customer risk assessment carried out under paragraph 6; and
    - (iv) any technology risk assessments carried out under paragraph 7; and
  - (b) monitoring whether the customer, beneficial owner, beneficiary, introducer or eligible introducer is listed on the sanctions list.
- (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 enhanced customer due diligence 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 enhanced customer due diligence in accordance with paragraph 15, unless the relevant person reasonably believes conducting enhanced customer due diligence will tip off the customer; and
  - (b) make an internal disclosure.
- (4) The extent and frequency of any monitoring under this paragraph must be determined —
- (a) on the basis of materiality and risk of ML/FT;
  - (b) in accordance with the risk assessments carried out under Part 3; and
  - (c) having particular regard to whether a customer poses a higher risk of ML/FT.
- (5) A relevant person must record the date when each review of the business relationship takes place and details of any examination, steps, measures or determination made or taken under this paragraph.

## PART 5 – ENHANCED MEASURES

### 14 Politically exposed persons

- (1) A relevant person must establish, record, maintain and operate appropriate procedures and controls for the purpose of determining whether any of the following is, or subsequently becomes, a PEP –
  - (a) any customer;
  - (b) any natural person having power to direct the activities of a customer;
  - (c) any beneficial owner or known beneficiary; and
  - (d) in relation to a life assurance policy, the beneficiary and any beneficial owner of the beneficiary.
- (2) A relevant person must establish, record, maintain and operate appropriate procedures and controls for requiring the approval of its senior management before –
  - (a) any business relationship is established with;
  - (b) any occasional transaction is carried out with; or
  - (c) a business relationship is continued with,a domestic PEP who has been identified as posing a higher risk of ML/FT, or any foreign PEP.
- (3) A relevant person must take reasonable measures to establish the source of wealth of –
  - (a) a domestic PEP who has been identified as posing a higher risk of ML/FT; and
  - (b) any foreign PEP.
- (4) A relevant person must perform ongoing and effective enhanced monitoring of any business relationship with –
  - (a) a domestic PEP who has been identified as posing a higher risk of ML/FT; and
  - (b) any foreign PEP.
- (5) To avoid doubt, this paragraph does not affect the requirement for the relevant person to conduct enhanced customer due diligence in accordance with paragraph 15 where the person identified as a PEP has been assessed as posing a higher risk of ML/FT.
- (6) Where the requirements of this paragraph are not met within a reasonable timeframe, the procedures and controls must provide that –
  - (a) the business relationship or occasional transaction must proceed no further;

- (b) the relevant person must consider terminating the relationship;  
and
  - (c) the relevant person must consider making an internal disclosure.
- (7) In this paragraph —
- “domestic PEP”** means a PEP who is or has been entrusted with prominent public functions in the Island and any family members or close associates of the PEP, regardless of the location of that PEP, those family members or close associates; and
- “foreign PEP”** means a PEP who is or has been entrusted with prominent public functions outside of the Island and any family members or close associates of the PEP, regardless of the location of that PEP, those family members or close associates.

## 15 Enhanced customer due diligence

- (1) A relevant person must establish, record, maintain and operate appropriate procedures and controls in relation to undertaking enhanced customer due diligence.
- (2) Enhanced customer due diligence includes —
  - (a) considering whether additional identification information needs to be obtained and, if so, obtaining such additional information;
  - (b) considering whether additional aspects of the identity of the customer need to be verified by reliable independent source documents, data or information and, if so, taking reasonable measures to obtain such additional verification;
  - (c) taking reasonable measures to establish the source of the wealth of a customer;
  - (d) undertaking further research, where considered necessary, in order to understand the background of a customer and the customer’s business; and
  - (e) considering what additional ongoing monitoring should be carried out in accordance with paragraph 13 and carrying it out.
- (3) A relevant person must conduct enhanced customer due diligence —
  - (a) where a customer poses a higher risk of ML/FT as assessed by the customer risk assessment;
  - (b) without limiting paragraph 13, in the event of any unusual activity;  
and
  - (c) without limiting paragraph 26, in the event of any suspicious activity, unless the relevant person reasonably believes conducting enhanced customer due diligence will tip off the customer.

- (4) For the avoidance of doubt, if higher risk of ML/FT within the meaning of sub-paragraph (3)(a) is assessed, then paragraphs 8(4), 11(4), 11(5), 16 to 19, 20(2), (3), (5) and 21 do not apply.
- (5) Matters that pose a higher risk of ML/FT include —
  - (a) a business relationship or occasional transaction with a customer that is resident or located in a jurisdiction in List A; and
  - (b) a customer that is the subject of a warning in relation to AML/CFT matters issued by a competent authority or equivalent authority in another jurisdiction.
- (6) If sub-paragraph (5)(a) or (b) applies, the relevant person's senior management must approve the establishment, or continuation, of the business relationship or the occasional transaction.
- (7) Matters that may pose a higher risk of ML/FT include —
  - (a) activity in a jurisdiction the relevant person deems to be higher risk of ML/FT;
  - (b) a business relationship or occasional transaction with a customer resident or located in a jurisdiction in List B;
  - (c) activity in a jurisdiction in List A or B;
  - (d) a situation that by its nature presents an increased risk of ML/FT;
  - (e) a business relationship or occasional transaction with a PEP;
  - (f) a company that has nominee shareholders or shares in bearer form;
  - (g) the provision of high risk products;
  - (h) the provision of services to high-net-worth individuals;
  - (i) a legal arrangement;
  - (l) persons performing prominent functions for international organisations;
  - (k) circumstances in which the relevant persons and the customer have not met —
    - (i) during the business relationship or during its formation; or
    - (ii) in the course of an occasional transaction; and
  - (l) if the beneficiary of a life assurance policy is a legal person or legal arrangement.
- (8) Except as provided in Part 6, where the requirements of this paragraph are not met within a reasonable timeframe, the procedures and controls must provide that —
  - (a) the business relationship or occasional transaction must proceed no further;
  - (b) the relevant person must consider terminating that relationship; and
  - (c) the relevant person must consider making an internal disclosure.

## PART 6 – EXEMPTIONS AND SIMPLIFIED MEASURES

### 16 Acceptable applicants

- (1) If each of the conditions in sub-paragraph (3) are met, verification of the identity of a customer is not required to be produced for –
  - (a) a new business relationship in accordance with paragraph 8(3)(b) and (c); or
  - (b) an occasional transaction in accordance with paragraph 11(3)(b) and (c).
- (2) If each of the conditions in sub-paragraph (3) are met, paragraph 12(2)(a) ceases to apply.
- (3) The conditions referred to in sub-paragraphs (1) and (2) are that the relevant person –
  - (a) has identified the customer and has no reason to doubt that identity;
  - (b) has not identified the customer as posing a higher risk of ML/FT;
  - (c) knows the nature and intended purpose of the business relationship or occasional transaction;
  - (d) has not identified any suspicious activity; and
  - (e) is satisfied that –
    - (i) the customer is acting on its own behalf and not on behalf of a third party; and
    - (ii) either the customer –
      - (A) is a trusted person; or
      - (B) is a company listed on a recognised stock exchange or a wholly owned subsidiary of such a company in relation to which the relevant person has taken reasonable measures to establish that there is effective control of the company by an individual, group of individuals or another legal person or legal arrangement (and such persons are treated as beneficial owners for the purposes of this Code).

### 17 Persons in a regulated sector acting on behalf of a third party

- (1) This paragraph applies only to a regulated person holding a licence to carry on regulated activities under –
  - (a) Class 1 (deposit taking);
  - (b) Class 2 (investment business);
  - (c) Class 3 (services to collective investment schemes); or
  - (d) Class 8 (money transmission services),

- of the Regulated Activities Order.
- (2) Where the regulated person determines that a customer is acting on behalf of another person who is an underlying client of the customer (“**underlying client**”), the regulated person need not comply with paragraph 12(2)(b) if each of the following conditions are met –
- (a) the regulated person is satisfied that the customer is a person specified in sub-paragraph (6);
  - (b) the regulated person is satisfied the customer is regulated and supervised, or monitored for and has measures in place for compliance with, customer due diligence and record keeping requirements in line with FATF Recommendations 10 (Customer Due Diligence) and 11 (Record Keeping);
  - (c) the customer has identified and verified the identity of the underlying client in accordance with paragraphs 8 to 12 or with AML/CFT requirements at least equivalent to those in this Code and has no reason to doubt that identity;
  - (d) the customer has risk assessed the underlying client in accordance with paragraph 6 or with AML/CFT requirements at least equivalent to those in this Code and has confirmed to the regulated person that any underlying client in the arrangement does not pose a higher risk;
  - (e) the regulated person and the customer know the nature and intended purpose of the business relationship with the underlying client;
  - (f) the customer has taken reasonable measures to establish the source of funds of the underlying client;
  - (g) neither the regulated person nor the customer has identified any suspicious activity;
  - (h) written terms of business are in place between the regulated person and the customer in accordance with sub-paragraph (3); and
  - (i) the customer does not pose a higher risk of ML/FT.
- (3) The written terms of business referred to in sub-paragraph (2)(h) must require the customer to –
- (a) supply to the regulated person information concerning the identity of any underlying client –
    - (i) in the case of a customer to whom sub-paragraph (6)(a), (b), (c) or (e) applies, on request; and
    - (ii) in relation to a customer to whom sub-paragraph 6(d), (f) or (g) applies, immediately;
  - (b) supply to the regulated person immediately on request copies of the documents, data or information used to verify the identity of the underlying client and all other due diligence information held

- by the customer in respect of the underlying client in any particular case;
- (c) confirm to the regulated person that the arrangement does not involve an underlying client in the arrangement who has been assessed as higher risk by the customer;
  - (d) inform the regulated person specifically of each case where the customer is not required or has been unable to verify the identity of an underlying client;
  - (e) inform the regulated person if the customer is no longer able to comply with the provisions of the written terms of business because of a change of the law applicable to the customer; and
  - (f) do all things as may be required by the regulated person to enable the regulated person to comply with its obligations under sub-paragraph (2).
- (4) In satisfying the conditions of sub-paragraph (2), the regulated person must take reasonable measures to ensure that —
- (a) the documents, data or information supplied or to be supplied are satisfactory; and
  - (b) the customer due diligence procedures and controls of the customer are fit for purpose.
- (5) The regulated person must take reasonable measures to satisfy itself that —
- (a) the procedures for implementing this paragraph are effective by testing them on a random and periodic basis at least once every 12 months; and
  - (b) the written terms of business confer the necessary rights required by this paragraph on the regulated person.
- (6) The persons referred to in sub-paragraph (2)(a) are —
- (a) a regulated person;
  - (b) a nominee company of a regulated person where the regulated person is responsible for the nominee company's compliance with the AML/CFT legislation;
  - (c) a collective investment scheme (except for a scheme within the meaning of Schedule 3 (exempt schemes) to the Collective Investment Schemes Act 2008) where the manager or administrator of such a scheme is a regulated person;
  - (d) where the person referred to in sub-paragraph (2)(a) is an equivalent scheme in a jurisdiction in List C where the manager or administrator of that scheme is a person referred to in head (f);
  - (e) a designated business;

- (f) a person who acts in the course of external regulated business but does not solely carry on activities equivalent to either or both of Class 4 (corporate services) or Class 5 (trust services) under the Regulated Activities Order; and
  - (g) a nominee company of a person specified in head (f) where that person is responsible for the nominee company's compliance with the AML/CFT requirements at least equivalent to those in this Code.
- (7) If suspicious activity is identified this paragraph ceases to apply and an internal disclosure must be made.
  - (8) If the regulated person is unable to comply with any of the provisions of this paragraph, this paragraph ceases to apply and the regulated person must comply with the requirements of Part 4.
  - (9) In this paragraph “**underlying client**” includes a beneficial owner of that underlying client.

## 18 Generic designated business

- (1) If each of the conditions in sub-paragraph (3) are met and the relevant person is conducting generic designated business, verification of the identity of a customer is not required to be produced for —
  - (a) a new business relationship in accordance with paragraph 8(3)(b) and (c); or
  - (b) an occasional transaction in accordance with 11(3)(b) and (c).
- (2) If each of the conditions in sub-paragraph (3) are met paragraph 12(2)(a)(ii) ceases to apply.
- (3) The conditions referred to in sub-paragraphs (1) and (2) are that the relevant person —
  - (a) has identified the customer and has no reason to doubt that identity;
  - (b) has not identified the customer as posing a higher risk of ML/FT;
  - (c) knows the nature and intended purpose of the business relationship or occasional transaction;
  - (d) has not identified any suspicious activity; and
  - (e) has taken reasonable measures to establish the source of funds in accordance with paragraph 8(3)(e).
- (4) In this paragraph —

“**generic designated business**” for the purpose of this paragraph means designated business carried on by a relevant person where the relevant person —

- (a) does not participate in financial transactions on behalf of a customer; and
- (b) does not administer or manage a customer's funds, with its own funds or other customer's funds, on a pooled bank account basis.

## 19 Eligible introducers

- (1) If a customer is introduced to a relevant person by a third party, other than an introducer to which paragraph 9 applies, the relevant person may, if it thinks fit, comply with this paragraph, instead of paragraphs 8 or 11 provided —
  - (a) the eligible introducer agrees to the relevant person doing so; and
  - (b) each of the conditions in sub-paragraphs (4) and (5) are met.
- (2) The relevant person must establish, maintain and operate customer risk assessment procedures in accordance with paragraph 6.<sup>4</sup>
- (3) The procedures and controls of this paragraph must be undertaken before a business relationship or occasional transaction is entered into.
- (4) Verification of a customer's identity is not required to be produced by the eligible introducer if the relevant person —
  - (a) has identified the customer and any beneficial owner and has no reason to doubt those identities;
  - (b) has not identified the customer as posing a higher risk of ML/FT;
  - (c) knows the nature and intended purpose of the business relationship;
  - (d) has taken reasonable steps to establish the source of funds including the measures specified in paragraph 8(3)(e);
  - (e) has not identified any suspicious activity;
  - (f) is satisfied that —
    - (i) the eligible introducer is a trusted person other than a nominee company of either a regulated person or a person who acts in the course of external regulated business; or
    - (ii) each of the conditions in sub-paragraph (5) are met; and
  - (g) has conducted a risk assessment of the eligible introducer and is satisfied that the eligible introducer does not pose a higher risk of ML/FT.
- (5) The conditions referred to in sub-paragraph (4)(f)(ii) are that —
  - (a) the relevant person and the eligible introducer are bodies corporate in the same group;
  - (b) the group operates AML/CFT programmes and procedures which conform to Parts 4 and 5 and paragraphs 33 to 37;

- (c) the operation of those programmes and procedures is supervised at a group level by an appropriate authority; and
  - (d) the group's AML/CFT policies adequately mitigate any risk associated with a jurisdiction for the time being specified on List A or List B.
- (6) The relevant person must not enter into a business relationship with a customer that is introduced by an eligible introducer unless written terms of business are in place between the relevant person and the eligible introducer.
- (7) Without limiting sub-paragraphs (4) and (5), those terms of business must require the eligible introducer to —
- (a) verify the identity of all customers introduced to the relevant person in accordance with paragraphs 8 to 12 or with AML/CFT requirements at least equivalent to those in this Code and has no reason to doubt those identities;
  - (b) take reasonable measures to verify the identity of any beneficial owners in accordance with paragraphs 8 to 12 or with AML/CFT requirements at least equivalent to those in this Code and has no reason to doubt those identities;
  - (c) establish and maintain a record of the verification of identity for at least 5 years calculated in accordance with paragraph 34(4);
  - (d) establish and maintain records of all transactions between the eligible introducer and the customer if the records are concerned with or arise out of the introduction (whether directly or indirectly) for at least 5 years calculated in accordance with paragraph 34(3);
  - (e) supply to the relevant person immediately on request, copies of the documents, data or information used to verify the identity of the customer and any beneficial owner and all other customer due diligence information held by the eligible introducer in any case;
  - (f) supply to the relevant person immediately copies of the documents, data or information used to verify the identity of the customer and any beneficial owner and all other customer due diligence information, held by the eligible introducer in any particular case if —
    - (i) the eligible introducer is to cease trading;
    - (ii) the eligible introducer is to cease doing business with the customer;
    - (iii) the relevant person informs the eligible introducer that it no longer intends to rely on the terms of business referred to in this paragraph; or
    - (iv) the eligible introducer informs the relevant person that it no longer intends to comply with the terms of business referred to in this paragraph;

- (g) inform the relevant person specifically of each case where the eligible introducer is not required or has been unable to verify the identity of the customer or any beneficial owner within a reasonable timeframe; and in such a case —
    - (i) the business relationship or occasional transaction must proceed no further;
    - (ii) the relevant person must consider terminating that business relationship; and
    - (iii) the relevant person must consider making an internal disclosure in relation to that business relationship or occasional transaction;
  - (h) inform the relevant person if the eligible introducer is no longer able to comply with the provisions of the written terms of business because of a change of the law applicable to the eligible introducer; and
  - (i) do all such things as may be required by the relevant person to enable the relevant person to comply with its obligation under subparagraph (9).
- (8) A relevant person must ensure that the procedures under this paragraph are fit for the purpose of ensuring that the documents, data or information used to verify the identity of the customer and any beneficial owner are satisfactory and that the procedures of the eligible introducer are likewise fit for that purpose.
- (9) A relevant person must take measures to satisfy itself that —
- (a) the procedures for implementing this paragraph are effective by testing them on a random and periodic basis at least once every 12 months; and
  - (b) the written terms of business confer the necessary rights on the relevant person to satisfy the requirements of this paragraph.
- (10) In order to rely on an eligible introducer a relevant person must —
- (a) take measures to satisfy itself that the eligible introducer is not itself reliant on a third party for the verification of identity of the customer; and
  - (b) take such measures as necessary to ensure it becomes aware of any material change to the eligible introducer's status or the status of the jurisdiction in which the eligible introducer is regulated.
- (11) Where the requirements of this paragraph are not met within a reasonable timeframe, the procedures must provide that —
- (a) the business relationship or occasional transaction must proceed no further;
  - (b) the relevant person must consider terminating that business relationship; and

- (c) the relevant person must consider making an internal disclosure.
- (12) The ultimate responsibility for ensuring that procedures comply with the terms of this Code remains with the relevant person and not with the eligible introducer.

## 20 Insurance

- (1) This paragraph applies to —
  - (a) an insurer; and
  - (b) an insurance intermediary.
- (2) Where the contract of insurance is a contract for which —
  - (a) the annual premium is less than €1,000 or the single premium, or series of linked premiums, is less than €2,500; or
  - (b) there is neither a surrender value nor a maturity value (for example, term insurance),an insurer or insurance intermediary need comply only with paragraph 13 of Part 4.<sup>5</sup>
- (3) In respect of a contract of insurance satisfying sub-paragraph (2) an insurer or insurance intermediary may, having paid due regard to the risk of ML/FT, consider it appropriate to comply with Parts 4 and 5 (if applicable) but to defer such compliance unless a claim is made or the policy is cancelled.
- (4) If —
  - (a) a claim is made under a contract of insurance that has neither a surrender value nor a maturity value (for example on the occurrence of an insured event); and
  - (b) the amount of the settlement is greater than €2,500,the insurer or insurance intermediary must identify the customer or claimant and take reasonable measures to verify the identity using reliable, independent source documents, data or information.
- (5) An insurer or insurance intermediary need not comply with sub-paragraph (4) if a settlement of the claim is to —
  - (a) a third party in payment for services provided (for example to a hospital where health treatment has been provided);
  - (b) a supplier for services or goods; or
  - (c) the customer where invoices for services or goods have been provided to the insurer or insurance intermediary,and the insurer or insurance intermediary believes the services or goods to have been supplied in respect of the insured event.
- (6) If —

- (a) a contract of insurance is cancelled resulting in the repayment of premiums; and
  - (b) the amount of the settlement is greater than €2,500,  
the insurer or insurance intermediary, must comply with Parts 4 and 5 (if applicable).
- (7) Sub-paragraphs (2), (3) and (5) do not apply if —
- (a) the customer is assessed as posing a higher risk of ML/FT; or
  - (b) the insurer or insurance intermediary has identified any suspicious activity.
- (8) If the insurer or insurance intermediary has identified any suspicious activity the relevant person must make an internal disclosure.

## 21 Miscellaneous

- (1) In respect of a pension, superannuation or similar scheme that provides retirement benefits to employees, if contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme, the relevant person —
- (a) may treat the employer, trustee or any other person who has control over the business relationship, including the administrator or the scheme manager, as the customer; and
  - (b) need not comply with paragraph 12(2)(b).
- (2) Where —
- (a) a customer is —
    - (i) a collective investment scheme (except for a scheme within the meaning of Schedule 3 (exempt schemes) to the Collective Investment Schemes Act 2008), or
    - (ii) an equivalent arrangement in a jurisdiction in List C; and
  - (b) the manager or administrator of such a scheme or equivalent arrangement is —
    - (i) a regulated person; or
    - (ii) a person who acts in the course of external regulated business,
- the relevant person need not comply with paragraph 12(2)(b).
- (3) The Isle of Man Post Office need not comply with Part 4, if it sees fit, when—
- (a) it issues or redeems a postal order up to the value of £50;
  - (b) it issues or administers funds on behalf of other Government Departments or Statutory Boards;

- (c) the value of up to £650 in cash of £5,000 by other means of payment is accepted in relation to —
  - (i) payment for services provided by a Government Department or Statutory Board;
  - (ii) payments on behalf of utilities and telecom service providers;
  - (iii) payments on behalf of a third party from customers of that party in respect of provision by that third party of goods or services; or
  - (iv) donations on or behalf of a charity, provided that the charity is registered in the Island.
- (4) Sub-paragraphs (1), (2) and (3) do not apply if —
  - (a) the customer is assessed as posing higher risk of ML/FT or;
  - (b) the relevant person has identified any suspicious activity.
- (5) If the relevant person has identified any suspicious activity the relevant person must make an internal disclosure.

## 22 Transfer of a block of business

- (1) This paragraph applies where the relevant person (the “**purchaser**”) acquires a customer or group of customers from another relevant person (the “**vendor**”).
- (2) The acquired customer or group of customers constitutes a new business relationship for the purchaser and customer due diligence in respect of that new business relationship may be provided to the purchaser by the vendor, if each of the conditions in sub-paragraph (3) are met.
- (3) The conditions referred to in sub-paragraph (2) are that—
  - (a) the vendor is, or was —
    - (i) a regulated person;
    - (ii) a collective investment scheme (except for a scheme within the meaning of Schedule 3 (exempt schemes) to the Collective Investment Schemes Act 2008) where the manager or administrator of such a scheme is a regulated person, or where the vendor is an equivalent scheme in a jurisdiction in List C where the manager or administrator of that scheme is a person referred to in sub-head (iv);
    - (iii) a designated business; or
    - (iv) a person who acts in the course of external regulated business but does not solely carry on activities equivalent to either or both of Class 4 (corporate services) or Class 5 (trust services) under the Regulated Activities Order; and
  - (b) the purchaser —

- (i) has identified the customer and any beneficial owner of the customer and has no reason to doubt those identities;
  - (ii) undertakes a risk assessment of the customer and has not identified the customer as posing a higher risk of ML/FT;
  - (iii) knows the nature and intended purpose of the business relationship;
  - (iv) has taken reasonable measures to establish the source of funds;
  - (v) has not identified any suspicious activity; and
  - (vi) has put in place appropriate measures to remedy, in a timely manner, any deficiencies in the customer due diligence of the acquired customer or group of customers.
- (4) Where a customer has been identified by the vendor or purchaser as posing a higher risk of ML/FT the purchaser must undertake its own enhanced customer due diligence in respect of that customer in accordance with paragraph 15.

## PART 7 – REPORTING AND REGISTERS

### 23 Money Laundering Reporting Officer

- (1) A relevant person must appoint a Money Laundering Reporting Officer (“**MLRO**”) to exercise the functions required under paragraphs 25 and 27.
- (2) To be effective in the exercise of those functions an MLRO must –
  - (a) be sufficiently senior in the organisation of the relevant person or have sufficient experience and authority;
  - (b) have a right of direct access to the officers of the relevant person;
  - (c) have sufficient time and resources to properly discharge the responsibilities of the position; and
  - (d) retain responsibility for all external disclosures, including where a branch or subsidiary is in another jurisdiction.
- (3) A relevant person may appoint a Deputy Money Laundering Reporting Officer (“**Deputy MLRO**”) in order to exercise the functions required under paragraphs 25 and 27 in the MLRO’s absence.

### 24 Money Laundering Reporting Officer: insurers, insurance intermediaries and insurance managers

- (1) Without limiting paragraph 23, the MLRO of an insurer, an insurance intermediary or an insurance manager must –
  - (a) in the case of an insurer authorised under section 8 of the Insurance Act 2008, an insurance intermediary or an insurance manager

- registered under section 25 of the Insurance Act 2008, be resident in the Island;
- (b) be treated as a principal control officer for the purposes of the notice required under section 29(1) of the Insurance Act 2008; and
  - (c) be sufficiently senior in the organisation or have sufficient experience and authority including where the MLRO is not an employee of the insurer<sup>6</sup>.
- (2) Where an MLRO holds more than one appointment sub-paragraph (1) applies to each appointment.

## 25 Reporting procedures

A relevant person must establish, record, maintain and operate reporting procedures and controls that —

- (a) enable its officers and all other persons involved in its management, and all appropriate employees and workers to know to whom any suspicious activity is to be disclosed;
- (b) ensure that there is a clear reporting chain to the MLRO;
- (c) require an internal disclosure to be made to the MLRO if any information, or other matters that come to the attention of the person handling that business, are in that person's opinion suspicious activity;
- (d) ensure that the MLRO has full access to any other information that may be of assistance and that is available to the relevant person;
- (e) require the MLRO to consider internal disclosures in light of all other relevant information available to the MLRO for the purpose of determining whether the activity is, in the MLRO's opinion, suspicious activity;
- (f) enable the information to be provided as soon as is practicable to the Financial Intelligence Unit as an external disclosure if the MLRO knows or suspects, or has reasonable grounds for knowing or suspecting, the activity is ML/FT; and
- (g) ensure the registers required by paragraphs 28 and 29 are maintained and completed in accordance with those paragraphs.

## 26 Internal disclosures

Where a relevant person identifies any suspicious activity in the course of a business relationship or occasional transaction the relevant person must —

- (a) conduct enhanced customer due diligence in accordance with paragraph 15, unless the relevant person reasonably believes

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<sup>6</sup> For example is part of an insurance manager.

conducting enhanced customer due diligence will tip off the customer; and

- (b) make an internal disclosure.

## 27 External disclosures

- (1) Where an internal disclosure has been made, the MLRO must assess the information contained within the disclosure to determine whether there are reasonable grounds for knowing or suspecting that the activity is ML/FT.
- (2) The MLRO must make an external disclosure to the Financial Intelligence Unit in accordance with the reporting procedures and controls established under paragraph 25 as soon as is practicable if the MLRO —
  - (a) knows or suspects; or
  - (b) has reasonable grounds for knowing or suspecting, that the activity is ML/FT.
- (3) A disclosure under sub-paragraph (2) does not breach —
  - (a) any obligation of confidence owed by the MLRO; or
  - (b) any other restriction on the disclosure of information (however imposed).

## 28 Registers of disclosures

- (1) A relevant person must establish and maintain separate registers of —
  - (a) all internal disclosures;
  - (b) all external disclosures; and
  - (c) any other disclosures to the Financial Intelligence Unit.
- (2) The registers must include details of —
  - (a) the date on which the disclosure is made;
  - (b) the person who made the disclosure;
  - (c) for internal disclosures, whether it is made to the MLRO or deputy MLRO;
  - (d) for external disclosures, the reference number supplied by the Financial Intelligence Unit; and
  - (e) information sufficient to identify any relevant papers or records.
- (3) The registers of disclosures required by sub-paragraph (1) may be contained in a single document if the details required to be included in those registers under sub-paragraph (2) can be presented separately for each type of disclosure on request by a competent authority.

**29 Register of money laundering and financing of terrorism enquiries**

- (1) A relevant person must establish and maintain a register of all ML/FT enquiries received by it from competent authorities.
- (2) The register must be kept separate from other records and include —
  - (a) the date of the enquiry;
  - (b) the nature of the enquiry;
  - (c) the name and agency of the enquiring officer;
  - (d) the powers being exercised; and
  - (e) details of the account or transactions involved.

**PART 8 – COMPLIANCE AND RECORD KEEPING**

**30 Monitoring and testing compliance**

- (1) A relevant person must establish, record, maintain and operate appropriate procedures and controls for monitoring and testing compliance with the AML/CFT legislation, so as to ensure that —
  - (a) the relevant person has robust and recorded arrangements for managing the risks identified by the business risk assessment carried out in accordance with paragraph 5;
  - (b) the operational performance of those arrangements is suitably monitored; and
  - (c) prompt action is taken to remedy any deficiencies in arrangements.
- (2) A report to the senior management of the relevant person must be submitted, at least annually, describing —
  - (a) the relevant person's AML/CFT environment including any developments in relation to AML/CFT legislation during the period covered by the report;
  - (b) progress on any internal developments during the period covered by the report in relation to the relevant person's policies and procedures and controls for AML/CFT;
  - (c) any activities relating to compliance with this Code that have been undertaken by the relevant person during the period covered by the report; and
  - (d) the results of any testing undertaken in accordance with subparagraph (1).
- (3) A relevant person must ensure that there is a suitable person at management level that is responsible for the functions specified in this paragraph.
- (4) To be effective in the exercise of the functions the suitable person must —

- (a) be sufficiently senior in the organisation of the relevant person or have sufficient experience and authority;
- (b) have a right of direct access to the officers of the relevant person; and
- (c) have sufficient time and resources to properly discharge the responsibilities of the position.

### **31 New staff appointments**

A relevant person must establish, record, maintain and operate appropriate procedures and controls to enable the relevant person to satisfy itself of the integrity of new officers of the relevant person and of all new appropriate employees and workers.

### **32 Staff training**

- (1) A relevant person must provide or arrange education and training, including refresher training, at least annually, for —
  - (a) all officers;
  - (b) any other persons involved in its senior management; and
  - (c) appropriate employees and workers.
- (2) The education and training referred to in sub-paragraph (1) must make those persons aware of —
  - (a) the provisions of the AML/CFT legislation;
  - (b) any personal obligations in relation to the AML/CFT legislation;
  - (c) the reporting procedures and controls established under Part 7;
  - (d) the relevant person's policies and procedures and controls for AML/CFT as required by paragraph 4;
  - (e) the recognition and handling of unusual activity and suspicious activity;
  - (f) their personal liability for failure to report information or suspicions in accordance with internal procedures and controls, including the offence of tipping off; and
  - (g) new methods and developments, including information on current techniques, methods and trends in ML/FT.
- (3) Where there have been significant changes to AML/CFT legislation, or the relevant person's policies and procedures, the relevant person must provide appropriate education and training to the persons referred to in sub-paragraph (1) within a reasonable timeframe.
- (4) The relevant person must maintain records which demonstrate compliance with this paragraph.

### 33 Record keeping

A relevant person must keep —

- (a) a copy of the documents obtained or produced under Parts 3 to 6, paragraphs 37 and 39, including identification information, account files, business correspondence records and the results of any analysis undertaken (or information that enables a copy of such documents to be obtained);
- (b) a record of all transactions carried out in the course of business in the regulated sector, including identification information, account files, business correspondence records and the results of any analysis undertaken (or information that enables a copy of such records to be obtained); and
- (c) such other records as are sufficient to permit reconstruction of individual transactions and compliance with this Code.

### 34 Record retention

- (1) A relevant person must keep the records required by this Code for at least the period specified in sub-paragraph (3) or (4).
- (2) To avoid doubt, the obligation in sub-paragraph (1) continues to apply after a person ceases to be a relevant person.
- (3) In the case of records required to be kept under sub-paragraph 33(b), the records must be kept for a period of 5 years from the date of the completion of the transaction.
- (4) In the case of records to which sub-paragraph (3) does not apply, the records must be kept for a period of 5 years beginning on the date on which —
  - (a) all activities relating to an occasional transaction or a series of linked transactions were completed; or
  - (b) in respect of all other activities —
    - (i) the business relationship was formally ended; or
    - (ii) if the business relationship was not formally ended, when all activities relating to the relationship were completed.
- (5) Without limiting sub-paragraph (1), if —
  - (a) an external disclosure has been made to the Financial Intelligence Unit under paragraphs 25(f) and 27;
  - (b) the relevant person knows or believes that a matter is under investigation by a competent authority; or
  - (c) the relevant person becomes aware that a request for information or an enquiry is underway by a competent authority,

the relevant person must retain all relevant records for as long as required by the competent authority.

### **35 Record format and retrieval**

- (1) To avoid doubt, the obligations of this paragraph continue to apply after a person ceases to be a relevant person.
- (2) In the case of any records required to be established and maintained under this Code —
  - (a) if the records are in the form of hard copies kept in the Island, the relevant person must ensure that they are capable of retrieval without undue delay;
  - (b) if the records are in the form of hard copies kept outside the Island, the relevant person must ensure that the copies can be sent to the Island and made available within 7 working days; and
  - (c) if the records are not in the form of hard copies (such as records kept on a computer system), the relevant person must ensure that they are readily accessible in or from the Island and that they are capable of retrieval without undue delay.
- (3) A relevant person may rely on the records of a third party in respect of the details of payments and transactions by customers if it is satisfied that the third party will —
  - (a) produce copies of the records on request; and
  - (b) notify the relevant person if the third party is no longer able to produce copies of the records on request.

## **PART 9 – MISCELLANEOUS**

### **36 Financial groups**

- (1) This paragraph applies to a relevant person if —
  - (a) the relevant person is the head office of a financial group; and
  - (b) the relevant person is —
    - (i) licensed under Class 1 (deposit taking) or Class 2 (investment business) of the Regulated Activities Order; or
    - (ii) is an insurer.
- (2) If sub-paragraph (1) applies —
  - (a) the financial group must have group wide programmes in respect of AML/CFT which are applicable to all branches and majority owned subsidiaries of the financial group that include —
    - (i) requirements in accordance with paragraphs 30, 31 and 32;

- (ii) policies and procedures for sharing information required for the purposes of customer due diligence and ML/FT risk management;
  - (iii) the provision at group level of compliance, audit and AML/CFT functions;
  - (iv) the provision at group level to obtain customer, account and transaction information from branches and subsidiaries when necessary for AML/CFT purposes; and
  - (v) adequate safeguards on the confidentiality and use of information exchanged between the financial group.
- (3) In this paragraph –

“**financial group**” means a group that consists of a parent company or any other type of legal person exercising control and coordinating functions over the rest of the group for the application of group supervision under the Core Principles, together with branches and/or subsidiaries that are subject to AML/CFT policies and procedures at the group level; and

“**Core Principles**” refers to the Core Principles for Effective Banking Supervision issued by the Basel Committee on Banking Supervision, the Objectives and Principles for Securities Regulation issued by the International Organization of Securities Commissions, and the Insurance Core Principles issued by the International Association of Insurance Supervisors.

### 37 Branches, subsidiaries and agents

- (1) This paragraph applies to a relevant person if a branch or subsidiary is undertaking an activity which is equivalent to any activity included in Schedule 4 to the Proceeds of Crime Act 2008.
- (2) A relevant person must ensure that a branch or subsidiary takes measures consistent with this Code and guidance issued by a competent authority for AML/CFT.
- (3) A relevant person who cannot comply with sub-paragraph (2) for any reason must apply appropriate additional measures to manage the ML/FT risk.
- (4) Without limiting sub-paragraph (3), a reason for being unable to comply with sub-paragraph (2) may include being prevented from doing so by the laws or regulations of the jurisdiction to which the branch or subsidiary is subject.
- (5) A relevant person must inform the relevant competent authority immediately when the person or a branch or subsidiary is unable to take any of the measures referred to in sub-paragraph (2).
- (5) If a relevant person is licensed under Class 8(2)(a) (provision and execution of payment services directly) of the Regulated Activities Order

the relevant person must ensure that any agents they use or operate through, are included in the relevant person's procedures and controls required by paragraph 4. The relevant person must also monitor compliance of the agent with the requirements.<sup>6</sup>

- (6) In this paragraph, a "branch or subsidiary" means a branch or majority owned subsidiary of the relevant person in a jurisdiction outside the Island.<sup>7</sup>

### 38 Shell banks

- (1) A relevant person must not —
- (a) enter into or continue a business relationship; or
  - (b) carry out an occasional transaction,
- with a shell bank.
- (2) A relevant person must take adequate measures to ensure that —
- (a) it does not enter into or continue a business relationship; or
  - (b) carry out an occasional transaction,
- with a respondent institution that permits its accounts to be used by a shell bank.

### 39 Correspondent services

- (1) This paragraph applies to a business relationship or an occasional transaction, which involves correspondent services or similar arrangements.
- (2) A relevant person must not enter into or continue a business relationship or carry out an occasional transaction to which this paragraph applies with a respondent institution in another jurisdiction unless it is satisfied that the respondent institution does not permit its accounts to be used by shell banks.
- (3) Before entering into a business relationship or carrying out an occasional transaction to which this paragraph applies, a relevant person must —
- (a) obtain and document sufficient information about the respondent institution to fully understand and risk assess the nature of its business and its customer base;
  - (b) determine from publically available information —
    - (i) the reputation of the respondent institution;
    - (ii) the quality of supervision to which it is subject;
    - (iii) whether it has been subject to investigation or regulatory action in respect of ML/FT; and
    - (iv) whether the respondent institution is included on the sanctions list.

- (c) assess and document the AML/CFT procedures and controls maintained by the respondent institution, and ascertain that they are adequate and effective;
  - (d) ensure that the approval of the relevant person's senior management is obtained; and
  - (e) clearly understand and document the respective responsibilities of each institution including the relevant person and the respondent institution with respect to AML/CFT measures.
- (4) If a business relationship or occasional transaction to which this paragraph applies involves a payable-through account, a relevant person must be satisfied that the respondent institution –
- (a) has taken measures that comply with the requirements of the FATF Recommendations 10 (Customer due diligence) and 11 (Record keeping) with respect to every customer having direct access to the account; and
  - (b) will provide on request the relevant person with relevant verification of the identity of the customer in accordance with this Code or to AML/CFT requirements at least equivalent to those in this Code.
- (5) In this paragraph –
- “correspondent services”** means banking, money or value transfer services or other similar relationships provided by a financial institution in one jurisdiction (**“the correspondent institution”**) to a financial institution or designated business in another jurisdiction (**“the respondent institution”**); and
- “payable-through account”** means an account maintained by a correspondent institution that may be operated directly by the customer of the respondent institution.

#### 40 Fictitious, anonymous and numbered accounts

A relevant person must not set up or maintain an account in a name that it knows, or has reasonable cause to suspect, is fictitious, an anonymous account, or a numbered account for any new or existing customer.

#### 41 Responding to customer due diligence requests – trustees

- (1) This paragraph applies to a person acting as a trustee, who is licensed under Class 5 (trust services) of the Regulated Activities Order.
- (2) On request from a person to which sub-paragraph (3) applies, a trustee may disclose any information it holds relating to –
  - (a) the trust;
  - (b) the beneficiaries of the trust; or

- (c) the assets of the trust.
- (3) This sub-paragraph applies to —
  - (a) a competent authority;
  - (b) a designated business, where a trustee and a designated business have a business relationship in relation to the trust; and
  - (c) a regulated person, where a trustee and a regulated person have a business relationship in relation to the trust.
- (4) The power to disclose information under sub-paragraph (2) has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, common law, contract or otherwise.
- (5) A trustee must maintain accurate and up-to-date records in writing regarding basic information on regulated agents of, and service providers to, the trust.
- (6) A trustee must disclose its status when entering into a business relationship or carrying out an occasional transaction with a designated business or regulated person.
- (7) In this paragraph —
  - “**regulated agent**” means a regulated person acting in relation to the trust on behalf of —
    - (a) the settlor;
    - (b) the trustee;
    - (c) the protector (if any);
    - (d) the beneficiaries; and
    - (e) any other natural person exercising ultimate effective control over the trust; and
  - “**service provider**” means a person who provides services to the trustee in relation to the trust and includes —
    - (a) a provider of investment advice; or
    - (b) a provider of managerial services, accountancy services, tax advisory services, legal services, trust services or company services.

## PART 10 – OFFENCES AND REVOCATIONS

### 42 Offences

- (1) A person who contravenes the 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 to both; or
  - (b) on conviction on information, to custody not exceeding 2 years or to a fine, or to both<sup>7</sup>.
- (2) In determining whether a person has complied with any of the requirements of this Code, a court may take account of —
  - (a) any relevant supervisory or regulatory guidance given by a competent authority that applies to that person; or
  - (b) in a case where no guidance falling within head (a) applies, any other relevant guidance issued by a body that regulates, or is representative of, any trade, business, profession or employment carried on by that person.
- (3) In proceedings against a person for an offence under this paragraph, it is a defence for the person to show that it took all reasonable measures to avoid committing the offence.
- (4) If an offence under this paragraph is committed by a body corporate or foundation and it is proved that the offence —
  - (a) was committed with the consent or connivance of; or
  - (b) was attributable to neglect on the part of,an officer of the body, the officer, as well as the body, is guilty of the offence and liable to the penalty provided for it.
- (5) If an offence under this paragraph is committed by a partnership that does not have legal personality, or by an association other than a partnership or body corporate, and it is proved that the offence —
  - (a) was committed with the consent or connivance of; or
  - (b) was attributable to neglect on the part of,a partner in the partnership or a person concerned in the management or control of the association, the partner or the person concerned, as well as the partnership or association, is guilty of the offence and liable to the penalty provided for it.

### 43 Revocations

The following are revoked —

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<sup>7</sup> 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.

- (a) the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015<sup>8</sup>;
- (b) the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Code 2018<sup>9</sup>;
- (c) Insurance (Anti-Money Laundering) Regulations 2008<sup>10</sup>; and
- (d) Guidance Notes on Anti-Money Laundering and Preventing the Financing of Terrorism for Insurers (Long-Term Business)<sup>11</sup>.

**MADE 2 MAY 2019**

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<sup>8</sup> SD 2015/0102

<sup>9</sup> SD 2018/0242

<sup>10</sup> SD144/08

<sup>11</sup> SD 2015/0316

## ENDNOTES

### Table of Endnote References

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<sup>1</sup> The format of this legislation has been changed as provided for under section 75 of, and paragraph 2 of Schedule 1 to, the Legislation Act 2015. The changes have been approved by the Attorney General after consultation with the Clerk of Tynwald as required by section 76 of the Legislation Act 2015.

<sup>2</sup> Para (f) amended by SD2019/0457.

<sup>3</sup> Para (e) amended by SD2019/0457.

<sup>4</sup> Subpara (2) amended by SD2019/0457.

<sup>5</sup> Subpara (2) substituted by SD2019/0457.

<sup>6</sup> Editorial Note: Substituted text contained a second subpara (5).

<sup>7</sup> Para 37 substituted by SD2019/0457.