



Statutory Document No. 144/08

INSURANCE ACT 1986

INSURANCE (ANTI-MONEY LAUNDERING) REGULATIONS 2008

Laid before Tynwald

15th July 2008

Coming into operation

1st September 2008

In exercise of the powers conferred on the Insurance and Pensions Authority (“the Authority”) by section 32 of, and Schedule 4 to, the Insurance Act 1986¹, and of all other enabling powers, and having consulted the Treasury and such other organisations and persons as appear to the Authority to be likely to be affected, the following Regulations are hereby made:—

Citation, commencement and application

1. (1) These Regulations may be cited as the Insurance (Anti-Money Laundering) Regulations 2008 and, subject to section 32(3) of the Act, shall come into operation on the 1st September 2008.

(2) These Regulations are to be followed by all insurers and, where any procedures are required to be established under these Regulations, an insurer may be asked to demonstrate compliance with such procedures.

Definitions

2. In these Regulations –

“the Act” means the Insurance Act 1986;

“applicant” means a person or body seeking to effect a contract of insurance with an insurer (whether directly with an insurer or through an introducer) and includes a person specified in regulation 10;

“beneficial owner” means the individual who ultimately owns or controls the applicant or on whose behalf a transaction or activity is being concluded;

“board” means the board of directors of the insurer or, where the insurer has no board of directors, the governing body of the insurer;

“business relationship” has the meaning given by paragraph 2 of the Code;

¹ 1986 c.24

“the Code” means the Criminal Justice (Money Laundering) Code 2007²;

“customer due diligence” means, in relation to an applicant or policyholder —

- (a) carrying out the identification procedures specified in paragraphs 5 to 8 of the Code; and
- (b) establishing the source of funds and source of wealth of that person in connection with the application or policy (as the context requires);

“enhanced customer due diligence” means the requirements as set out in these Regulations together with such additional reasonable measures appropriate to the degree of money laundering or terrorist financing risk associated with the proposed business relationship;

“FATF” means the Financial Action Task Force;

“Financial Crime Unit” means the Financial Crime Unit of the Isle of Man Constabulary;

“Guidance Notes” means the Guidance Notes made by the Authority under section 24C of the Act which apply to the class (or classes) of business undertaken by the insurer ;

“insurer” includes insurers which are authorised under section 6 of the Act or which hold permits issued under section 25 of the Act;

“introducer” means a person who by way of business, whether or not receiving commission, fees or other payment for the services provided, introduces an applicant to an insurer or undertakes the ongoing servicing of a policyholder;

“Money Laundering Reporting Officer” means an individual appointed by an insurer under paragraph 14(1) of the Code;

“politically exposed persons” means persons entrusted with prominent public functions, their immediate family members or persons known to have influence over the decisions of such persons;

“sanctions notices” means —

- (a) lists of people and organisations designated and proscribed by the Isle of Man Government for the purposes of United Nations, European Union and national sanctions and other restrictive measures; and
- (b) United Nations, European Union and national embargoes and restrictions on trading or other involvement with people, organisations or territories;

“senior management” means a director, chief executive or manager of the insurer.

Branches and subsidiaries

3. (1) Subject to paragraph (2), where an insurer has branches or subsidiaries in other jurisdictions, practices and procedures consistent with these Regulations must be operated throughout all parts of the organisation.

² SD 712/07

(2) An insurer must meet the specific requirements of regulators and authorities in those other jurisdictions. However, where the requirements of another jurisdiction differ from those required by these Regulations the insurer must comply with —

- (a) the requirements of these Regulations; and
- (b) any requirements imposed on the insurer in the other jurisdiction which are more onerous than those imposed by these Regulations.

(3) An insurer must inform the Authority when a foreign branch or subsidiary is unable to comply with paragraph (1) or (2). This notification is to be undertaken as soon as it becomes known to the insurer that a breach of this regulation has occurred.

Outsourced and delegated functions

4. Where an insurer outsources or delegates any functions (including where an insurer is managed by an insurance manager or employs contractors) it remains the ultimate responsibility of the insurer to ensure that the activities or work carried out on its behalf are completed in accordance with these Regulations, and that adequate procedures are in place which meet the requirements of these Regulations.

Financing of terrorism

5. In addition to the prevention of money laundering, these Regulations also apply to countering the financing of terrorism, and this must be considered by an insurer when establishing and carrying out procedures.

Non co-operative countries

6. (1) An insurer must have procedures in place to examine applicants who are situated or incorporated in any country appearing on the list of FATF Non Co-operative Countries & Territories.

(2) Where an applicant is one to which paragraph (1) applies, the insurer must undertake appropriate enhanced customer due diligence and must obtain senior management approval to continue the business relationship.

Waivers and concessions

7. (1) An insurer need not comply with regulations 8 to 14, 16, 24 and 25 where —

- (a) a premium is payable to the insurer in one instalment of an amount not exceeding £7,500; or
- (b) a regular premium is payable to the insurer and where the total payable in respect of any one calendar year does not exceed £2,500.

(2) An insurer need not comply with regulations 8 to 14, 16, 24 and 25 where a policy has neither a surrender value nor a maturity value (for example, term insurance);

(3) Notwithstanding paragraphs (1) and (2), having paid due regard to the money laundering risk, an insurer may consider it appropriate —

- (a) to comply immediately with the requirements of the regulations referred to in those paragraphs; or
- (b) to comply with the requirements of the regulations referred to in those paragraphs, but to defer compliance until a claim is made or the policy is cancelled.

(4) Where a claim is made on a policy with neither a surrender value nor a maturity value (for example on the occurrence of an event), and the amount of the settlement is greater than that set out in paragraph (1)(a) or (b) (as the context requires) the insurer must undertake reasonable measures to satisfy itself as to the identity of the policyholder or claimant (if not the policyholder).

(5) Where a policy is cancelled resulting in the repayment of premium(s) and the amount of the settlement is greater than that set out in paragraphs (1)(a) or (b) (as the context requires), the insurer must undertake reasonable measures to satisfy itself as to the identity of the applicant or claimant (if different to the policyholder) and must also ensure it is satisfied as to the original source of wealth and source of funds.

(6) An insurer need not comply with paragraph (4) where 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 policyholder(s) where invoices for services or goods have been provided to the insurer,

and the insurer believes the services or goods to have been supplied.

Customer due diligence

8. (1) Unless regulation 7(1) or (2) applies, where customer due diligence is required, it must be obtained as soon as is reasonably practicable after the applicant applies to enter into a business relationship with an insurer.

(2) In the event that an applicant is permitted to utilise a business relationship prior to the completion of the customer due diligence process, the insurer must apply risk management measures to control the type and volume of transactions that may be performed.

Customer due diligence requirements

9. (1) An insurer must undertake reasonable measures to verify the identity of the applicant and beneficial owner and satisfy itself as to the source of the applicant's funds and wealth. In the absence of satisfactory evidence the business relationship must not proceed any further.

(2) Where evidence of identity is required, an insurer must hold either original documents or suitably certified copies of original documents of identification on its

files, or must have undertaken a form of investigation which has satisfied the insurer as to the identification of the person concerned.

(3) An insurer must use reliable, independent source documents, data or information.

(4) An insurer must not delegate the responsibility for customer due diligence to another party. However, collection of information, including documents, may be delegated to an introducer in accordance with the requirements of regulation 21 or further outsourced in accordance with the requirements of regulation 22.

Beneficial ownership and controllers

10. (1) An applicant for a business relationship includes —

- (a) the person(s) beneficially entitled to the assets to be used to fund a premium for the policy;
- (b) any person who is able to exercise control over the policy; or
- (c) any other person on whose behalf an applicant is acting.

(2) An insurer must undertake reasonable measures to establish the identity of a person, natural or legal, to which paragraph (1) applies in accordance with regulation 9.

Legal persons or bodies

11. (1) Where the applicant is a legal person or body, an insurer must satisfy itself as to the legal status of that person or body (including its existence and identity), its nature and that any person acting on its behalf is appropriately authorised to do so.

(2) An insurer must take reasonable measures to understand the ownership and control structure of the legal person or body.

Beneficiary of a life policy

12. The verification of the identity of a beneficiary named or nominated under a life insurance policy to receive any benefits arising following a claim or event may take place after the business relationship has been established provided that it takes place at or before the time of payout or at or before the time the beneficiary exercises a right vested under the policy. This regulation does not apply to a beneficiary under a trust.

Risk

13. (1) An insurer must assess the information required on each applicant or policyholder on a risk assessed basis in order to establish the inherent money laundering or terrorist financing risk.

(2) Where following such an assessment an applicant or policyholder is considered high risk, the insurer must undertake appropriate enhanced customer due diligence.

(3) An insurer must not apply simplified, or lower, levels of customer due diligence where there is a suspicion of money laundering or where the applicant or policyholder (including any party to the application or policy) is considered to be higher risk.

Purpose and intended nature

14. The insurer must satisfy itself (obtaining information where necessary) as to the purpose and intended nature of the business relationship.

Anonymous bonds etc

15. Anonymous bonds or contracts in fictitious names are not permitted and any such business relationships already in place must be treated as high risk and subjected to enhanced customer due diligence and ongoing monitoring.

Failure to obtain satisfactory evidence

16. Without prejudice to regulation 9(1), where an insurer is unable to obtain satisfactory evidence of identification it must consider making a suspicious transaction report to the Financial Crime Unit.

Complex and unusual large transactions etc

17. (1) An insurer must pay special attention to complex transactions, unusual large transactions, unusual patterns of transactions, and transactions that have no apparent or visible economic or lawful purpose, whether at inception or during the lifetime of a business relationship.

(2) An insurer must take reasonable steps to examine as far as possible the background and purpose of such transactions and to record its findings in writing. Whether the applicant is accepted by the insurer or not, the insurer must keep such records in accordance with regulations 28 to 30.

Existing business

18. (1) At any time during a business relationship the risk profile and circumstances of a policyholder or beneficial owner may change or additional information may come to the attention of an insurer. An insurer must continue to consider whether or not, at any time, additional customer due diligence information is required.

(2) The obligations of an insurer to consider and report any person are not limited to the application procedure nor is a transaction required to have occurred before additional information may be sought or a suspicion reported.

(3) An insurer must apply customer due diligence requirements to those parties referred to in regulation 10(1) on the basis of materiality and risk, and conduct due diligence on such existing relationships on a risk assessed basis in accordance with the requirements of regulation 13.

(4) Paragraphs (1) to (3) apply irrespective of any waiver under regulation 7(1) or (2) which applies, or has applied, during the business relationship.

Sanctions notices

19. (1) An insurer must have in place procedures which describe the system used to establish whether it maintains policies for the benefit of any of those individuals or organisations listed on, or transactions into jurisdictions appearing on, Sanctions Notices applicable to the Isle of Man.

(2) The procedures referred to in paragraph (1) must specify the actions to be taken should an individual, organisation or transaction be identified in respect of which a Sanctions Notice applies.

Politically exposed persons

20. (1) An insurer must have in place procedures to apply customer due diligence measures in respect of identifying whether any of the following is a politically exposed person —

- (a) an applicant;
- (b) a policyholder;
- (c) a beneficial owner of an applicant or the person funding a premium paid under a policy;
- (d) a settlor or trustee of a trust whose trustee is an applicant or policyholder;
- (e) a beneficiary named or nominated under a policy;
- (f) a beneficiary of a trust whose trustee is an applicant or policyholder; or
- (g) any natural person having power to direct the activities of an applicant or policyholder.

(2) In the event that any person mentioned in paragraph (1) is identified as being a politically exposed person, an insurer must determine, on a risk assessed basis, whether or not to apply appropriate enhanced customer due diligence measures to the application for a business relationship.

(3) Simplified or reduced customer due diligence, as set out in the Guidance Notes, must not be applied to an application for a business relationship in the event that any person mentioned in paragraph (1) is identified as a politically exposed person.

(4) An insurer must obtain senior management approval to accept an application for a business relationship where any person mentioned in paragraph (1) is identified as a politically exposed person.

(5) Where an application for a business relationship has been accepted without the applicant, or any other person mentioned in paragraph (1), being identified as a politically exposed person, and such a person is subsequently found to have been or becomes a politically exposed person, the policy (or policies) must be referred to senior management.

(6) Where an insurer is in a business relationship with a politically exposed person, it must effectively monitor the relationship on an ongoing basis having due regard to the inherent money laundering risk.

(7) Failure to identify a person specified in regulation 20(1) as a politically exposed person will not automatically be considered a failure of systems or procedures

provided that reasonable and adequate measures have been undertaken in an attempt to make such an identification.

Introducers

21. (1) Where reliance is placed by an insurer in accordance with paragraph (3), before any business may be accepted from the introducer there must be in place written terms of business between the insurer and the introducer and the insurer must have in place written procedures in respect of the granting of such terms of business.

(2) An insurer must have procedures in place in respect of the ongoing monitoring of an introducer which must include information in respect of its regulatory status.

(3) Where an insurer is relying upon an introducer to collect information and evidence of identity or any form of customer due diligence on its behalf, and permits the introducer to retain this, it must take adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to customer due diligence requirements will be made available to the insurer by the introducer upon request and without delay.

(4) In order to satisfy itself to the extent required under paragraph (3), an insurer must undertake random testing of its procedures to ensure that requested documentation is made available without delay.

(5) The ultimate responsibility for customer due diligence remains with the insurer, irrespective of the involvement of an introducer.

(6) Any written terms of business between the insurer and the introducer must include wording which requires the introducer to supply to the insurer upon request and without delay suitably certified evidence of the customer due diligence information in any particular case; and must require an introducer to maintain a record of the evidence for the required period (as specified in regulation 29).

Outsourcing

22. (1) Where there is a contract to outsource any functions concerning the administration or operation of an insurer in respect of customer due diligence the person undertaking the outsourced function is to be treated, for the purposes of these Regulations, as if it were the insurer and its customer due diligence processes and documentation will be considered to be those of the insurer itself.

(2) Paragraph (1) applies whether or not the outsourced function is undertaken by a member of the same group as the insurer.

Compliance monitoring and control

23. (1) An insurer must have adequate compliance management arrangements taking into account the size and risk profile of its business.

(2) The Money Laundering Reporting Officer, Compliance Officer(s) and other appropriate staff of the insurer must have timely access to customer identification data, other customer due diligence information, transaction records and any other relevant information sufficient for them to perform their respective roles.

Source of funds and source of wealth

24.(1) An insurer must make enquiries as to how an applicant has acquired the monies to be used as premium for, or contribution to, a policy.

(2) An insurer must establish how any payment is to be made, from where and by whom. Where payment is made from an account other than in the name of the applicant the reasons for this must be understood and recorded and where considered necessary evidence of identity of the account holder should be obtained.

(3) The insurer must be satisfied that the monies received have come from expected account(s).

Payment out of monies

25. Where payment of monies is to be made by an insurer to an account other than in the name of the policyholder the reasons for this must be understood, documented and the insurer must consider, on a risk assessed basis, whether evidence of identity of the account holder should be obtained.

Money laundering reporting officer

26. (1) A suitably senior person must be appointed by the board of the insurer as Money Laundering Reporting Officer. The Money Laundering Reporting Officer must be able to act independently and report on money laundering matters directly to the board of the insurer where necessary.

(2) In the case of an insurer authorised under section 6 of the Act, the person appointed for the purposes of paragraph (1) must be resident in the Isle of Man.

(3) A Money Laundering Reporting Officer shall be treated as a manager for the purposes of section 20 of the Act and the provisions of that section shall apply.

(4) Where an insurer has a branch or subsidiary in another jurisdiction, an officer resident in that jurisdiction may be appointed to deal with suspicion reports raised in that jurisdiction. However, the Money Laundering Reporting Officer retains overall responsibility for the role in all jurisdictions.

(5) Where an insurer appoints a Money Laundering Reporting Officer who is not an employee of the insurer (for example where a member of staff of the insurance manager of the insurer provides this service) the Money Laundering Reporting Officer must be of sufficient seniority and experience to undertake the role, and must have a right of direct access to the board of the insurer to be effective in the exercise of his or her functions.

(6) The Money Laundering Reporting Officer must have access to all documents and files, wherever held, as are required to undertake the role, whether or not within the scope of any agreement between the insurer and insurance manager.

(7) Where a Money Laundering Reporting Officer holds that position for more than one insurer, paragraphs (1) and (2) apply to each appointment.

(8) The Money Laundering Reporting Officer must submit, not less than annually, a report to the board of the insurer describing the business' anti-money laundering environment, progress on internal or external developments and activities undertaken during the reporting period and any money laundering or terrorist financing issues or risks to which the insurer may be exposed.

Suspicion reporting procedure

27. (1) An insurer must have procedures for raising suspicions by employees or directors and for subsequent reporting to the Financial Crime Unit.

(2) The obligation to make a report also applies to funds where there are reasonable grounds for the insurer to suspect that the funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

(3) All suspicious transactions, including attempted transactions, must be reported regardless of the amount or nature of the transaction.

Record keeping

28. (1) The records prepared and maintained by an insurer on its policyholder relationships and transactions must be such that —

- (a) the requirements of all legislation, including the Code, these Regulations and the Guidance Notes, are met;
- (b) competent third parties are able to assess the insurer's observance of money laundering policies and procedures;
- (c) any transactions effected via the insurer can be reconstructed; and
- (d) the insurer is able to satisfy, within a reasonable time, any enquiries or court orders from the appropriate authorities as to disclosure of information.

(2) Any records retained in electronic or microfilm format must be viewable and legible and be capable of being reproduced in a physical format that is acceptable to the Authority and the courts of the Isle of Man and in accordance with the requirements of those courts.

(3) Reproduced records are acceptable if they are a true representation of the original physical document and must be legible, complete and sufficient to comply with the requirements of paragraph (1) or as otherwise specified by the Authority or the courts.

Retention periods

29. (1) For the purposes of regulation 21(6), the "required period" is at least 5 years from the date when —

- (a) all activities relating to a one-off transaction or a series of linked transactions were completed;
- (b) the business relationship was formally ended; or

- (c) if the business relationship was not formally ended, when the last transaction was carried out.

(2) Where a report has been made to the Financial Crime Unit, or the insurer knows or believes that a matter is under investigation, the insurer must retain all relevant records for as long as required by the Financial Crime Unit.

Access to information

30. All customer due diligence records wherever held, and whether held by the insurer or not, must be available to the Money Laundering Reporting Officer, Compliance Officer and other competent staff for review and investigation purposes.

Staff screening

31. Every insurer and insurance manager must have in place appropriate and effective screening procedures when employing staff to ensure they have the integrity and abilities appropriate for their respective roles.

Training requirements

32. (1) An insurer must provide, or shall arrange provision of, appropriate and ongoing anti-money laundering and prevention of terrorist financing education and training for all staff. This must include —

- (a) information on new developments;
- (b) current money laundering and financing of terrorism techniques;
- (c) methods and trends;
- (d) a clear explanation of the relevant significant aspects of applicable laws and obligations; and
- (e) the requirements concerning suspicious transaction reporting.

(2) The insurer must provide additional specific training appropriate for senior management, specific anti-money laundering staff and holders of relevant key control positions.

(3) Where an insurer outsources or delegates any functions, it remains the responsibility of the insurer to ensure that any staff who are undertaking any work on behalf of the insurer are trained in accordance with these Regulations.

Training records

33. Training records which demonstrate that appropriate training has been provided to all participants, including temporary staff, must be maintained by the insurer.

Training new employees

34. As soon as reasonably practicable after the commencement of employment, all new employees must be given education and training in the avoidance of money laundering and the prevention of terrorist financing in accordance with regulation 32.

Refresher training

35. (1) An insurer must provide, or arrange provision of, refresher courses at regular intervals, not less than annually, for senior management, specific anti-money laundering staff and holders of relevant key control positions, in order to maintain awareness and continued adherence to prevention procedures and regulatory requirements.

(2) Where there have been significant changes to legislative, regulatory or internal requirements or procedures, the insurer must provide, or arrange provision of, suitable training to make all staff aware of their responsibilities.

Compliance monitoring

36. An insurer must have procedures to ensure that the Money Laundering Reporting Officer, and Compliance Department if applicable, regularly monitors the implementation and operation of all anti-money laundering and terrorist financing procedures and controls. This must include monitoring the effectiveness of techniques employed for raising awareness and training of relevant staff.

Misuse of technological developments

37. An insurer must regularly consider, and where necessary have policies in place or take such measures as are needed, to prevent the misuse of technological developments for the purposes of money laundering or the financing of terrorism.

Offences

38. A person who contravenes a provision of these Regulations without lawful authority commits an offence.

Revocation

39. Paragraph 6 of Part II of Schedule 6 to the Insurance Regulations 1986³ (certification of compliance with requirements of the Common Trading Practices for Isle of Man Insurers) is revoked.

Made 20th June 2008

Chairman,
Insurance and Pensions Authority

³ G.C. 319/86

EXPLANATORY NOTE

(This note is not part of the regulations)

These Regulations supplement the Criminal Justice (Money Laundering) Code 2007, and impose additional requirements on persons regulated under the Insurance Act 1986, for the prevention of money laundering and countering the financing of terrorism.