



## **Financial Services Act 2008**

### **Financial Services Rule Book 2016 – Rules relating to record keeping**

*Summary only – this document is not intended to be used without reference to the Financial Services Rule Book, nor can the Isle of Man Financial Services Authority accept responsibility for its accuracy. It remains the user’s responsibility to review the source legislation and ensure compliance with the Rule Book requirements.*

The Isle of Man Financial Services Authority (“the Authority”) has issued this guidance to assist licenceholders<sup>1</sup> to identify rules relating to the maintenance of records. The tables below provide an overview of the different rules that should be addressed by a licenceholder in determining what records to keep and for how long.

In addition to the Authority’s Rule Book, a variety of other sources, including company law, tax law, and proceeds of crime (“AML/CFT”) legislation all give rise to requirements to retain records. In addition, the IoM’s Information Commissioner ([www.inforights.im](http://www.inforights.im)) publishes [information about the new General Data Protection Regulation](#), which includes records held.

The Authority does not give legal advice and cannot give guidance on the requirements in all the relevant legislation, so the tables relate only to the requirements of the Authority’s Rule Book.

Licenceholders could consider publications from other sources – albeit these tend to be based on UK law. Corporate Service Providers might refer to the ICSA Guide to Document Retention published by The Institute of Chartered Secretaries and Administrators. In addition, brief guides to record retention are available free on the internet.

The Rule Book is technologically neutral as far as the retention of records is concerned. However, even where a firm scans all documents, the Authority would advise against the destruction of originals of key documents such as the trust deeds of trusts that are still extant – the risks attached to such a practice would seem to greatly outweigh any benefit.

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<sup>1</sup> The Rule Book applies to every licenceholder except those licensed to carry on regulated activities of Class 1(3) or Class 6. In addition, this piece of guidance does not apply to Professional Officers.

In respect of AML/CFT, a licenceholder should consider the [Anti-Money Laundering and Countering the Financing of Terrorism Code 2015](#) ('Code') (or its successor legislation) and the [Anti-Money Laundering & Countering the Financing of Terrorism Handbook](#) to ensure the requirements concerning records can be met. For example, an audit trail of transactions should be able to be established from the records held and this would have to be provided to competent authorities on request. The Code in paragraph 34(1)(c) refers to records being kept on a computer system and states that they should be readily accessible in or from the Island and they should be capable of retrieval without undue delay.

The [Electronic Transactions Act 2000](#) ("the Act") allows the Isle of Man Courts to treat digital records with the same credence as paper records. However, the Act only covers the legal system in the Isle of Man, and there is always the risk that if the documents are needed under any other legal system, that system might not have a similar view.

"Transactions" is not a defined term in the Rule Book because the ordinary meaning of the word covers an extensive range of business activity, including but not limited to transfers of money and investments, contracts and other agreements<sup>2</sup>.

In respect of clients' records, rule 8.28 extends beyond records of the transactions themselves to records which **explain** transactions.

**Table A – Rules which set out requirements with wide applicability**

Rule	Summary of cover	Applies to
2.12 Accounting records	The financial position of the licenceholder's business	All Classes incorporated in the Island
2.15 Accounting records	The financial position of the licenceholder's operations in or from the Island	All Classes incorporated outside the Island
8.5(3) Continuing professional development ("CPD")	To evidence CPD compliance of relevant individuals	All Classes except Class 8(1), 8(2)(b) or 8(3)
8.10 Conflicts of Interest Register	Full record of each conflict of interest	All Classes except Class 8(1), 8(2)(b) or 8(3)
8.16(3) Delegation of function including outsourcing	Records relating to all delegated or outsourced functions (whether or not material).	All Classes except Class

<sup>2</sup> The Electronic Transactions Act further extends this by statute to "a transaction of a non-commercial nature".

		8(1), 8(2)(b) or 8(3)
8.27 Systems and controls for record keeping	Having procedures, systems and controls to keep suitable records. Refers in particular to business transactions, financial position, internal organisation and risk management systems.	All Classes
8.28 Clients' records	Transactions effected by the licenceholder on behalf of its clients, including recordings of telephone conversations or electronic communications, even if they do not result in the conclusion of such transactions.	All Classes
8.29 Records kept by third parties	Must be capable of being provided in a timely manner.	All Classes

**Table B – Rules which set out more specific requirements**

Rule	Summary of cover	Applies to
3.10 Records to be kept by licenceholder	Client money received, paid or held by it. Must be sufficient to facilitate a full audit trail.	All Class 2, 3, 4 or 5
3.12(2)(e)	The reconciliation of client money	All Class 2, 3, 4 or 5
3.34(2)(d)	The reconciliation of trust money	All Class 5
3.37(5) Segregation of relevant funds	Record of all relevant funds held.	All Class 8(2)(a) or 8(4)
3.40(3) Reconciliation	The reconciliation of segregated accounts.	All Class 8(2)(a) or 8(4)
4.3 Records of transactions	Transactions in investments on behalf of a client	All Class 2 or Class 3(1), (2), (3), (4), (5), (11) or (12)
4.4 Records of safe-custody investments	Investments held in safe custody	All Class 2 Class 3(1), (2), (3), (4), (5), (11) or (12)
4.10(2) Loans of investments	Where a licenceholder lends an investment or document to any person.	All Class 2 Class 3(1), (2), (3), (4), (5), (11) or (12)

4.12(1) Safe-keeping of clients' title documents	The location of documents held in safe keeping	All Class 2 Class 3(1), (2), (3), (4), (5), (11) or (12)
6.26(2) Prompt and timely execution	The date and time of instructions to deal	All Class 2
6.29(2) Knowledge of client	All communication with client about his financial advice	All Class 2 other than Class 2(3) and/or (7) except for those acting on an execution only basis
6.30(4) Knowledge of client – financial advisers	All communication with client about his financial advice	Class 2(3) and/or 2(6) and/or 2(7) except for those acting on an execution only basis
6.33(3) Life policies	The date and time of instructions to deal	All Class 2
6.34(3) Collective Investment Schemes	The date and time of instructions to deal	All Class 2
6.51(4) Liability in respect of margins	Loans to clients to make up shortfalls	All Class 2
6.65(b) Nominee shareholders or members	Copy of nominee agreement or such other trust instrument	All Class 4
6.66 Resignation of licenceholder	Records of client company	All Class 4
8.5(5) Continuing professional development	Retain the Isle of Man Statement of Professional standing, for financial advisers providing investment advice to retail clients, with relevant individual's training record.	Class 2
8.58 Retention of client records	Client statements and working papers for financial returns	All Class 2