

# Appendix A

## Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 (as amended 2018)

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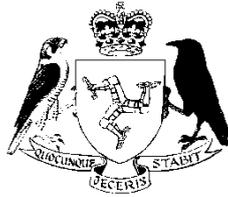
## ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM CODE 2015 (as amended 2018)

### Index

Paragraph	Page
<b>PART 1 – INTRODUCTORY</b>	<b>3</b>
1 Title .....	3
2 Commencement .....	3
3 Interpretation.....	3
<b>PART 2 – GENERAL REQUIREMENTS</b>	<b>14</b>
4 General requirements .....	14
5 Specified non-profit organisations .....	15
<b>PART 3 – RISK ASSESSMENT AND ONGOING MONITORING</b>	<b>15</b>
6 Business risk assessment .....	15
7 Customer risk assessment .....	16
8 Technological developments risk assessment .....	17
9 Ongoing monitoring .....	17
<b>PART 4 – CUSTOMER DUE DILIGENCE</b>	<b>18</b>
10 New business relationships .....	18
10A Introduced business .....	19
11 Continuing business relationships .....	20

12	Occasional transactions .....	21
13	Beneficial ownership and control .....	22
14	Politically exposed persons .....	24
15	Enhanced customer due diligence .....	24
<b>PART 5 – SPECIFIED NON-PROFIT ORGANISATIONS</b>		<b>26</b>
16	Application .....	26
17	New business relationships of specified non-profit organisations .....	26
18	Continuing business relationships of specified non-profit organisations .....	27
19	Occasional transactions of specified non-profit organisations .....	28
<b>PART 6 – SIMPLIFIED CUSTOMER DUE DILIGENCE</b>		<b>28</b>
20	Acceptable applicants .....	28
21	Persons in a regulated sector acting on behalf of a third party .....	29
22	Generic designated business .....	32
23	Eligible introducers .....	33
24	Miscellaneous .....	36
<b>PART 7 – REPORTING AND DISCLOSURES</b>		<b>39</b>
25	Money Laundering Reporting Officer .....	39
26	Reporting procedures .....	39
27	Internal disclosures .....	40
28	External disclosures .....	41
<b>PART 8 – COMPLIANCE</b>		<b>41</b>
29	Monitoring and testing compliance .....	41
30	New staff appointments .....	41
31	Staff training .....	41
32	Record keeping .....	42
33	Record retention .....	42
34	Record format and retrieval .....	43
35	Registers of internal and external disclosures .....	44
36	Register of money laundering and financing of terrorism enquiries .....	44
<b>PART 9 – MISCELLANEOUS</b>		<b>45</b>
37	Foreign branches and subsidiaries .....	45
38	Shell banks .....	45
39	Correspondent services .....	45
40	Fictitious, anonymous and numbers accounts .....	46
<b>PART 10 – OFFENCES AND REVOCATIONS</b>		<b>47</b>
41	Offences .....	47
42	Revocations .....	48

Statutory Document No. 2015/0102



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

## **ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM CODE 2015 (as amended 2018)**

*Laid before Tynwald: 17 March 2015  
Coming into Operation: 1 April 2015: SD 2015/0102  
(amendments in operation 14 September 2018: SD 2018/0242 )*

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The Department of Home Affairs makes the following Code under section 157 of the Proceeds of Crime Act 2008<sup>1</sup> and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014<sup>2</sup> after consulting such persons and bodies that appeared to it to be appropriate<sup>3</sup>.

### **PART 1 – INTRODUCTORY**

#### **1 Title**

This Code is the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015.

#### **2 Commencement**

This Code comes into operation on 1 April 2015.

#### **3 Interpretation**

(1) In this Code —

**“acceptable applicant”** means a customer that satisfies the conditions of paragraph 20;

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<sup>1</sup> AT 13 of 2008

<sup>2</sup> AT 13 of 2014

<sup>3</sup> As required by section 157(4) of the *Proceeds of Crime Act 2008* and section 68(4) of the *Terrorism and Other Crime (Financial Restrictions) Act 2014*

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

**“AML/CFT requirements”** means the requirements of the following enactments —

- (a) section 9 of the *Prevention of Terrorism Act 1990*<sup>4</sup>;
- (b) sections 7 to 11 and section 14 of the *Anti-Terrorism and Crime Act 2003*<sup>5</sup>;
- (c) part 3 of the *Proceeds of Crime Act 2008*;
- (d) parts 2, 3 and 4 of the *Terrorism and Other Crime (Financial Restrictions) Act 2014*;
- (e) this Code,

and includes, in the case of anything done otherwise than in the Island, anything that would constitute a requirement under the enactments specified in (a) to (d) if done in the Island;

**“beneficial owner”** means the natural person who ultimately owns or controls the customer or on whose behalf a transaction or activity is being conducted and includes but is not restricted to —

- (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 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 over the legal arrangement; and
- (d) in the case of a foundation, a natural person who otherwise exercises ultimate effective control over the foundation;

**“business in the regulated sector”** has the meaning assigned by paragraph 1 of Schedule 4 to the *Proceeds of Crime Act 2008*, except that paragraph 1(o) (online gambling) of that Schedule is excluded;

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<sup>4</sup> Although this Act has been repealed it is possible for proceedings to be taken in respect of acts that took place when it was in force

<sup>5</sup> AT 6 of 2003

**“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;
- (b) the purpose of the arrangement is to facilitate the carrying on of business in the regulated sector between the persons concerned on a frequent, habitual or regular basis; and
- (c) the total amount of any payments to be made by any person to any other person in the course of that arrangement may neither be known nor be capable of being ascertained at the time the arrangement is made;

**“collective investment scheme”** has the meaning given in section 1 of the *Collective Investment Schemes Act 2008*<sup>6</sup> ;

**“competent authority”** means all Isle of Man administrative and law enforcement authorities concerned with AML/CFT, including in particular the Isle of Man Financial Services Authority, the Isle of Man Gambling Supervision Commission, the Department of Home Affairs, the Economic Crime Unit of the Isle of Man Constabulary, the Financial Intelligence Unit, the Office of Fair Trading, the Attorney General, and the Customs and Excise and Income Tax Divisions of the Treasury;

**“correspondent services”** means banking, money or value transfer services and other similar relationships provided by a financial institution in one jurisdiction (**“the correspondent institution”**) to a financial institution in another jurisdiction (**“the respondent institution”**);

**“currency”** for the purposes of this Code includes virtual currencies;

**“customer”** —

- (a) of a relevant person other than a relevant person that is a specified non-profit organisation, means a person —
  - (i) seeking to form a business relationship or 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 and includes a person introduced to the relevant person within the meaning of paragraph 23; and
- (b) of a specified non-profit organisation, means the persons, or groups of persons, who receive benefit (either directly or indirectly) for

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<sup>6</sup> AT 7 of 2008

charitable, religious, cultural, educational, political, social or fraternal purposes. For the purposes of paragraphs 17 and 18, a customer is considered to be establishing a business relationship;

**“customer due diligence”** (except in the expression **“enhanced customer due diligence”**) means the measures specified in paragraphs 9 to 14, 17 to 24, 37 and 39 of this Code;

**“designated non-financial businesses and professions”** or **“designated businesses”** means relevant persons that are subject to oversight for compliance with the AML/CFT requirements by the Isle of Man Gambling Supervision Commission, or the Isle of Man Financial Services Authority<sup>7</sup> or one of its delegates, apart from regulated persons;

**“director”** and **“officer”** include —

- (a) for a limited liability company constituted under the *Limited Liability Companies Act 1996*<sup>8</sup>, a member, manager or registered agent of such a company;
- (b) for a limited partnership with legal personality in accordance with sections 48B to 48D of the *Partnership Act 1909*<sup>9</sup> —
  - (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; and
- (c) for a foundation, a member of the council (or equivalent) of the foundation;

**“document”** includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to produce a copy of the information in legible form;

**“donor”** in respect of a specified non-profit organisation means any person who provides funds to that specified non-profit organisation. For the purposes of paragraph 19, a donor is considered to be undertaking an occasional transaction;

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<sup>7</sup> The references to “the Insurance and Pensions Authority” and “the Financial Supervision Commission” should be read as reference to “the Isle of Man Financial Services Authority” pursuant to section 67(2) of the *Legislation Act 2015* and the Code will be expressly updated in this respect in due course.

<sup>8</sup> AT 19 of 1996

<sup>9</sup> AT 3 of 1909

**“eligible introducer”** means an introducer that satisfies the conditions of paragraph 23;

**“employee”** and **“worker”** of a relevant person have the same meanings as in section 173 of the *Employment Act 2006*<sup>10</sup> and include an individual who —

- (a) works under a contract of employment or any other contract of service for the relevant person;
- (b) practises alone or with others under the terms of a partnership agreement for the 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 the relevant person or through another entity forming part of the group of entities of which the relevant person is a part, and the relevant person is not by virtue of the contract a customer of the individual; or
- (d) is a director or officer of the relevant person;

**“enhanced customer due diligence”** means steps, additional to the measures specified in paragraphs 9 to 14, 17 to 24, 37 and 39, for the purpose of identifying customers and other persons, namely —

- (a) considering whether additional identification information needs to be obtained;
- (b) considering whether additional aspects of the identity of the customer need to be verified;
- (c) the taking of reasonable measures to establish the source of the wealth of the customer and any beneficial owner; and
- (d) considering what on-going monitoring should be carried on in accordance with paragraph 9;

**“evidence of identity”** means evidence of a person’s identity obtained in accordance with the procedures specified in paragraphs 10(1), 12(1), 17(1) or 19(1) (as applicable);

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

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<sup>10</sup> AT 21 of 2006

- (a) €3,000 in the case of a transaction entered into in the course of business referred to in paragraph 1(l) (casinos) or 1(n) (bookmakers) of Schedule 4 to the *Proceeds of Crime Act 2008*; or
- (b) €5,000 in the case of a transaction entered into in the course of business referred to in paragraph 1(x) (*bureau de change*) or 1(z) (cheque encashment only) of Schedule 4 to the *Proceeds of Crime Act 2008*; or
- (c) €1,000 in the case of a transaction entered into in the course of business referred to in paragraph 1(z) (money transmission services apart from cheque encashment) or 1(mm) (virtual currency) of Schedule 4 to the *Proceeds of Crime Act 2008*; or
- (d) €15,000 in any other case;

**“external disclosure”** means a report made under paragraphs 26(1)(f) and 28;

**“external regulated business”** means business outside the Island that is regulated or supervised 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;

**“FATF Recommendations”** means the 40 Recommendations set out in the Financial Action Task Force (“**FATF**”) document ‘International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation’, adopted by the FATF in February 2012;

**“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*<sup>11</sup> or a foundation or similar entity established under the law of another jurisdiction;

**“information”** includes data;

**“insurer”** means a person authorised to carry on insurance business under section 8 of the *Insurance Act 2008*<sup>12</sup> or to whom a permit is issued under section 22 of that Act;

**“internal disclosure”** means a report made under paragraphs 26(1)(c) and 27;

**“introducer”** has the meaning given in paragraph 10A(1);

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<sup>11</sup> AT 17 of 2011

<sup>12</sup> AT 16 of 2008

**“legal arrangement”** means —

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

**“legal person”** includes any body corporate or unincorporate capable of establishing a customer relationship with a financial institution or of owning property;

**“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 on-going 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 or those 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 operate laws equivalent to those of the Isle of Man;

**“ML/FT”** means money laundering and financing of terrorism, or both, and includes attempted transactions in relation to ML/FT;

**“Money Laundering Reporting Officer”** or **“MLRO”** means an individual appointed under paragraph 25 and includes a deputy MLRO appointed under paragraph 25(3);

**“money laundering”** means an act that falls within section 158(11) of the *Proceeds of Crime Act 2008*;

**“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>13</sup> or similar legislation in a jurisdiction in List C;

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<sup>13</sup> SD 0885/11 as amended by SD 0374/13

**“occasional transaction”** means any transaction (whether a single transaction or series of linked transactions) other than a transaction carried out in the 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 obtained, or is required to obtain, under procedures established, maintained and operated in accordance with this Code, satisfactory evidence of identity of the person who, in relation to the formation of that business relationship, was the customer;

**“payable-through account”** means an account maintained by a correspondent institution that may be operated directly by a customer of the respondent institution;

**“person”** includes any body of persons, corporate or unincorporate;

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

- (a) a natural person who is or has been entrusted with prominent public functions, 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;
  - (xi) a senior member of management of, or a member of, the governing body of an international entity or organisation; or
  - (xii) an honorary consul;
- (b) any of the following family members of a natural person in (a) —
  - (i) a spouse;
  - (ii) a partner considered by national law as equivalent to a spouse;
  - (iii) a child or the spouse or partner of a child;
  - (iv) a brother or sister (including a half-brother or half-sister);
  - (v) a parent;
  - (vi) a parent-in-law;
  - (vii) a grandparent; or
  - (viii) a grandchild;

- (c) any close associate of a natural person in (a), including —
- (i) any natural person known to be a joint beneficial owner of a legal entity or legal arrangement, or any other close business relationship, with such a person;
  - (ii) any natural person who is the sole beneficial owner of a legal entity or legal arrangement known to have been set up for the benefit of such a person;
  - (iii) any natural person known to be beneficiary of a legal arrangement of which such a person is a beneficial owner or beneficiary; or
  - (iv) any natural person known to be in a position to conduct substantial financial transactions on behalf of such a person;

and for the purposes of this definition —

**“domestic PEP”** means a natural person in (a) who is or has been entrusted with prominent public functions in the Isle of Man and any family members or close associates of that person in (b) or (c), regardless of the location of those family members or close associates; and

**“foreign PEP”** means a natural person in (a) who is or has been entrusted with prominent public functions outside the Isle of Man and any family members or close associates of that person in (b) or (c), regardless of the location of those family members or close associates;

**“regulated person”** means —

- (a) any person holding a financial services licence issued under section 7 of the *Financial Services Act 2008*<sup>14</sup>;
- (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*<sup>15</sup>; or
- (e) a person holding an online gambling licence issued under section 4 of the *Online Gambling Regulation Act 2001*<sup>16</sup>;

**“relevant person”** means a person carrying on a business in the regulated sector;

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<sup>14</sup> AT 8 of 2008

<sup>15</sup> AT 14 of 2000

<sup>16</sup> AT 10 of 2001

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

**“senior management”** means the directors or key 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 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, regulated activities under the *Financial Services Act 2008*; 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;

**“specified non-profit organisation”** means a relevant person carrying on the business of a specified non-profit organisation within the meaning assigned by paragraph 1(6) of Schedule 4 to the *Proceeds of Crime Act 2008*;

**“suspicious activity”** means any activity or information received in the course of a business relationship, occasional transaction or attempted transaction that causes the relevant person to —

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

that the activity or information is related to money laundering or the financing of terrorism;

**“trusted person”** means —

- (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 requirements;
- (c) an advocate within the meaning of the *Advocates Act 1976*<sup>17</sup>, a registered legal practitioner within the meaning of the *Legal Practitioners Registration Act 1986*<sup>18</sup> or an accountant carrying on business in or from the Isle of Man, if the relevant person is satisfied that the rules of the professional body of the advocate, legal practitioner or accountant embody requirements and procedures that are at least equivalent to this Code;
- (d) a person who acts in the course of external regulated business and is regulated under the law of a jurisdiction in List C, unless the relevant person has reason to believe that the jurisdiction in question does not apply, or insufficiently applies, the FATF Recommendations in respect of the business of that person; or
- (e) a nominee company of a person who acts in the course of external regulated business and is regulated under the law of a jurisdiction included in List C where the person is responsible for the nominee company's compliance with the AML/CFT requirements, unless the relevant person has reason to believe that the jurisdiction in question does not apply, or insufficiently applies, the FATF Recommendations in respect of the business of that person;

**“unusual activity”** means any activity or information received in the course of a business relationship, occasional transaction or attempted transaction where —

- (a) there are transactions that have no apparent economic or lawful purpose, examples of which include transactions that are —
  - (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 under this Code;
- (c) the relevant person becomes aware of anything that causes the relevant person to doubt the good faith of a customer, beneficial owner, beneficiary or introducer.

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<sup>17</sup> AT 27 of 1976

<sup>18</sup> AT 15 of 1986

**“virtual currency”** means convertible virtual currencies such as cryptocurrencies or similar concepts where the concept is accepted by persons as a means of payment for goods or services, a unit of account, a store of value or a commodity;

**“virtual currency business”** means the business of issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating virtual currencies.

- (2) In this Code, a reference to an amount of currency expressed in Euros is to be construed as also meaning that amount converted into, and expressed as, an amount of any other currency.
- (3) In this Code, in any case where a financial product (such as a life assurance policy) has been transferred by its holder (the assignor) to another person (the assignee), references in any provision to requirements in relation to a customer should be construed as including a reference to an assignee.

## PART 2 – GENERAL REQUIREMENTS

### 4 General requirements

- (1) In conducting business in the regulated sector a relevant person must not enter into or carry on a business relationship or carry out an occasional transaction with or for another person unless the relevant person —
  - (a) establishes, maintains and operates —
    - (i) risk assessment and ongoing monitoring procedures in accordance with Part 3;
    - (ii) customer due diligence procedures in accordance with parts 4, 5 and 6 and paragraphs 37 and 39;
    - (iii) reporting and disclosure procedures in accordance with Part 7;
    - (iv) compliance procedures in accordance with Part 8;
    - (v) procedures in accordance with Part 9;
    - (vi) procedures to determine whether a customer is listed on the sanctions list; and
    - (vii) internal controls and communication procedures that are appropriate for the purposes of forestalling and preventing ML/FT;
  - (b) takes appropriate measures for the purpose of making employees and workers aware of —
    - (i) the AML/CFT requirements; and
    - (ii) the procedures established, maintained and operated under (a);

- (c) monitors and tests compliance in accordance with paragraph 29;
  - (d) provides education and training in accordance with paragraph 31; and
  - (e) complies with paragraphs 38 and 40.
- (2) The procedures and controls referred to in sub-paragraph (1) must be approved by the senior management of the relevant person.
- (3) The customer due diligence procedures referred to in sub-paragraph (1)(a)(ii) must enable the relevant person to manage and mitigate the risks of ML/FT that have been identified by the risk assessments and ongoing monitoring carried out in accordance with Part 3.
- (4) A relevant person must carry out customer due diligence in accordance with parts 4 to 6 —
- (a) on the basis of materiality and risk of ML/FT;
  - (b) in accordance with the risk assessments and ongoing monitoring carried out under Part 3; and
  - (c) having particular regard to whether a customer poses a higher risk of ML/FT.
- (5) The ultimate responsibility for ensuring that customer due diligence complies with this Code is that of the relevant person, regardless of any outsourcing or reliance on third parties during the process.

## 5 Specified non-profit organisations

Despite paragraph 4, paragraphs 10 to 12 and 13(5) do not apply to specified non-profit organisations.

# PART 3 – RISK ASSESSMENT AND ONGOING MONITORING

## 6 Business risk assessment

- (1) A relevant person must carry out an assessment (a “**business risk assessment**”) that estimates the risk of ML/FT on the part of 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) regularly reviewed and, if appropriate, amended so as to keep it up-to-date; and
  - (c) documented in order to be able to demonstrate its basis.
- (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) the products and services provided by the relevant person;
  - (c) the persons to whom and the manner in which the products and services are provided including whether the relevant person meets its customers;
  - (d) reliance on third parties for elements of the customer due diligence process; and
  - (e) technological developments.

## 7 Customer risk assessment

- (1) A relevant person must carry out an assessment (a “**customer risk assessment**”) that estimates the risk of ML/FT posed by a customer.
- (2) The 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) regularly reviewed and, if appropriate, amended so as to keep it up-to-date; and
  - (c) documented in order to be able to demonstrate its basis.
- (3) The customer risk assessment must have regard to all relevant risk factors, including —
- (a) the business risk assessment carried out under paragraph 6;
  - (b) the nature, scale, complexity and location of the customer's activities;
  - (c) the persons to whom and the manner in which the products and services are provided;
  - (d) reliance on third parties for elements of the customer due diligence process; and

- (e) whether the relevant person and the customer have met during the business relationship or its formation or in the course of an occasional transaction.

## 8 Technological developments risk assessment

- (1) A relevant person must carry out an assessment (a “**technological developments risk assessment**”) that estimates the risk of ML/FT posed by any technological developments to the relevant person’s business.
- (2) The technological developments risk assessment must be —
  - (a) undertaken prior to the launch or implementation of new products, new business practices and delivery methods including new delivery systems;
  - (b) undertaken prior to the use of developing technologies for both new and pre-existing products; and
  - (c) documented in order to be able to demonstrate its basis.
- (3) The technological developments risk assessment must have regard to all relevant factors including —
  - (a) the business risk assessment carried out under paragraph 6;
  - (b) digital information and document storage;
  - (c) electronic verification of documents; and
  - (d) data and transaction screening systems.

## 9 Ongoing monitoring

- (1) A relevant person must perform ongoing and effective monitoring of any business relationship, including —
  - (a) review of information held for the purpose of customer due diligence to ensure that it is up-to-date and appropriate (in particular where the relationship poses a higher risk of ML/FT);
  - (b) appropriate scrutiny of transactions and other activities, paying particular attention to suspicious and unusual activity;
  - (c) appropriate scrutiny of transactions to ensure that they are consistent with —
    - (i) the relevant person’s knowledge of the customer, the relevant person’s business and risk profile and, if necessary, the source of funds for the transaction;

- (ii) the business risk assessment carried out under paragraph 6;
    - (iii) the customer risk assessment carried out under paragraph 7; and
    - (iv) any relevant technological developments risk assessment carried out under paragraph 8; and
  - (d) appropriate scrutiny to determine whether the customer is listed on the sanctions list.
- (2) 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 this Part; and
  - (c) having particular regard to whether a customer poses a higher risk of ML/FT.

## **PART 4 – CUSTOMER DUE DILIGENCE**

### **10 New business relationships**

- (1) A relevant person must, in relation to each new business relationship, establish, maintain and operate the procedures specified in sub-paragraph (3), which procedures must comply with the requirements of this paragraph.
- (2) The procedures must be undertaken —
- (a) before a business relationship is entered into; or
  - (b) during the formation of that relationship.
- (3) The procedures referred to in sub-paragraph (1) are —
- (a) the identification of the customer;
  - (b) the verification of the identity of the customer using reliable, independent source documents;
  - (c) the verification of the legal status of the customer using relevant information obtained from a reliable, independent source;
  - (d) the obtaining of information on the nature and intended purpose of the business relationship; and
  - (e) the taking of reasonable measures to establish the source of funds.

- (4) In exceptional circumstances the verification of the identity of the customer in accordance with sub-paragraph (3)(b) may be undertaken following the establishment of the business relationship if —
  - (a) it occurs as soon as reasonably practicable;
  - (b) it is essential not to interrupt the normal course of business;
  - (c) the customer has not been identified as posing a higher risk of ML/FT and the risks of ML/FT are effectively managed;
  - (d) the relevant person has not identified any suspicious activity;
  - (e) the relevant person's senior management has approved the establishment of the business relationship and any subsequent activity until sub-paragraph (3)(b) has been complied with; and
  - (f) 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, procedures comply with this paragraph if they require, when satisfactory evidence of identity in accordance with sub-paragraph (1) is not obtained or produced —
  - (a) the business relationship to proceed no further; and
  - (b) the relevant person to terminate the business relationship and consider making an internal disclosure in accordance with paragraphs 26 and 27.

### 10A Introduced business

- (1) If a customer is introduced to a relevant person by a third party (the “**introducer**”), and the introducer provides elements of the customer due diligence, the relevant person must comply with —
  - (a) this paragraph; and
  - (b) such of paragraphs 10, 12, 17 or 19 as are applicable.
- (2) The relevant person must undertake a customer risk assessment in accordance with paragraph 7 and which also satisfies sub-paragraph (3).
- (3) The risk assessment referred to in sub-paragraph (2) must—
  - (a) include a risk assessment of the introducer;
  - (b) indicate whether the introducer has met the customer, and if not identify any third party that has met the customer;

- (c) indicate whether third parties were involved in the process and if so—
  - (i) how many third parties were involved;
  - (ii) who those third parties were;
  - (iii) whether any third party was not a trusted person; and
  - (iv) whether any third party is in a jurisdiction which is for the time being included in List A or List B.
- (4) 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, but not limited to, reasonable measures to establish the source of wealth of the customer and any beneficial owner.
- (5) The relevant person must be satisfied that—
  - (a) the customer due diligence information and any evidence produced in respect of the identity of the customer conforms to the requirements of the Code; and
  - (b) there is no reason to doubt the veracity of the documents produced to evidence the customer's identity.
- (6) If the relevant person is unable to satisfy himself of the customer's identity in accordance with the relevant provisions of the 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, in relation to that business relationship or occasional transaction, in accordance with paragraphs 26 and 27.

## 11 Continuing business relationships

- (1) A relevant person must, in relation to each continuing business relationship, establish, maintain and operate the procedures specified in sub-paragraph (3), which procedures must comply with the requirements of this paragraph.
- (2) The procedures must be undertaken during a business relationship as soon as reasonably practicable.
- (3) The procedures referred to in sub-paragraph (1) are —
  - (a) an examination of the background and purpose of the business relationship;

- (b) if no evidence of identity was produced after the business relationship was established, the taking of such measures as will require the production of such information in accordance with paragraph 10(1);
  - (c) if evidence of identity was produced in accordance with paragraph 10(1), the taking of such measures as will determine whether the evidence of identity produced under that paragraph is satisfactory; and
  - (d) if evidence of identity produced in accordance with paragraph 10(1) is not for any reason satisfactory, the taking of such measures as will require the production by the customer of evidence of identity or the taking of such measures as will produce evidence of identity in accordance with paragraph 10(1).
- (4) The relevant person —
- (a) must keep written records of any examination, steps, measures or determination made or taken under sub-paragraph (1) (which records shall be records to which paragraph 32 applies); and
  - (b) must, on request, make such findings available to the competent authorities and auditors (if any).
- (5) Except as provided in Part 6, procedures comply with this paragraph if they require, when satisfactory evidence of identity, in accordance with paragraph 10(1), is not obtained or produced —
- (a) the business relationship to proceed no further; and
  - (b) the relevant person to consider terminating the business relationship and consider making an internal disclosure in accordance with paragraphs 26 and 27.

## 12 Occasional transactions

- (1) A relevant person must, in relation to an occasional transaction, establish, maintain and operate the procedures specified in sub-paragraph (3), which procedures must comply with the requirements of this paragraph.
- (2) The procedures must be undertaken before the occasional transaction is entered into.
- (3) The procedures referred to in sub-paragraph (1) are —
  - (a) the identification of the customer;
  - (b) the verification of the identity of the customer using reliable, independent source documents;

- (c) the verification of the legal status of the customer using relevant information obtained from a reliable, independent source;
  - (d) the obtaining of information on the nature and intended purpose of the occasional transaction; and
  - (e) the taking of reasonable measures to establish the source of funds.
- (4) Except as provided in paragraph 12(5) and Part 6, procedures comply with this paragraph if they require, when satisfactory evidence of identity in accordance with sub-paragraph (1) is not obtained or produced —
- (a) the occasional transaction not to be carried out; and
  - (b) the relevant person to consider making an internal disclosure in accordance with paragraphs 26 and 27.
- (5) Sub-paragraph (1) does not require verification of identity in accordance with paragraph 12(3)(b) to be produced if the transaction is an exempted occasional transaction.

### **13 Beneficial ownership and control**

- (1) This paragraph applies when a relevant person is operating the procedures required by paragraph 9 and parts 4, 5 and 6 (as applicable).
- (2) A relevant person must, in the case of any customer —
- (a) where that customer is not a natural person, identify who is the beneficial owner of the customer;
  - (b) take reasonable measures to verify the identity of any beneficial owner of the customer, using relevant information obtained from a reliable, independent source; and
  - (c) subject to paragraphs 21 and 24, determine whether the customer is acting on behalf of another person and, if so, identify that other person, and take reasonable measures to verify that other person's identity using relevant information obtained from a reliable, independent source.
- (3) Without limiting sub-paragraph (2), the relevant person must, in the case of a customer that is a legal person or legal arrangement —
- (a) verify that any person purporting to act on behalf of the customer is authorised to do so;
  - (b) identify that person and take reasonable measures to verify the identity of that person using reliable, independent source documents;

- (c) in the case of a legal arrangement, identify —
    - (i) the trustees or any other controlling party;
    - (ii) any known beneficiaries; and
    - (iii) the settlor or other person by whom the legal arrangement is made or on whose instructions the legal arrangement is formed;
  - (d) in the case of a foundation, identify —
    - (i) the council members (or equivalent);
    - (ii) any known beneficiaries; and
    - (iii) the founder and any other dedicator;
  - (e) obtain information concerning the names and addresses of any other natural persons having power to direct the customer's activities and take reasonable measures to verify that information;
  - (f) obtain information concerning the person by whom, and the method by which, binding obligations may be imposed on the customer; and
  - (g) obtain information to understand the ownership and control structure of the customer.
- (4) Without limiting sub-paragraph (2), in the case of a customer for a life assurance policy, an insurer must —
- (a) identify the beneficiaries of the life assurance policy; and
  - (b) immediately prior to the making of any payment or loan to a beneficiary of the life assurance policy, verify the identity of each such beneficiary using relevant information obtained from a reliable, independent source; and
  - (c) subject to paragraph 24(7), determine whether the customer is acting on behalf of another person and, if so, identify that other person, and take reasonable measures to verify that other person's identity using relevant information obtained from a reliable, independent source.
- (5) Subject to paragraph 24(7) and without limiting sub-paragraphs (2) and (3), the relevant person must not, in the case of a customer that is a legal person or legal arrangement, make any payment or loan to a beneficial owner of that person or beneficiary of that arrangement unless it has —
- (a) identified the recipient of the payment or loan; and
  - (b) on the basis of materiality and risk of ML/FT, verified the identity of the recipient using relevant information or data obtained from a reliable, independent source.

## 14 Politically exposed persons

- (1) A relevant person must maintain appropriate procedures and controls for the purpose of determining whether any of the following is a PEP —
  - (a) any customer;
  - (b) any natural person having power to direct the activities of a customer;
  - (c) any beneficial owner or known beneficiaries.
- (2) A relevant person must maintain appropriate procedures and controls for requiring the approval of its senior management —
  - (a) before any business relationship is established with;
  - (b) before any occasional transaction is carried out with; or
  - (c) before 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 domestic PEP who has been identified as posing a higher risk of ML/FT, or any foreign PEP.
- (4) A relevant person must perform ongoing and effective enhanced monitoring of any business relationship with a domestic PEP who has been identified as posing a higher risk of ML/FT, or any foreign PEP.
- (5) For the avoidance of doubt, this paragraph does not remove the requirement to conduct enhanced customer due diligence where a PEP has been identified as posing a higher risk of ML/FT.

## 15 Enhanced customer due diligence

- (1) A relevant person must obtain enhanced customer due diligence —
  - (a) where a customer poses a higher risk of ML/FT as assessed by the customer risk assessment carried out in accordance with paragraph 7; or
  - (b) in the event of any unusual activity.
- (2) A relevant person must consider whether to obtain enhanced customer due diligence in the event of any suspicious activity.

- (3) For the avoidance of doubt, if higher risk of ML/FT within the meaning of sub-paragraph (1)(a) is assessed then paragraphs 10(4), 20, 21, 22, 23(5), 24(2), (5) and (7) to (9) do not apply.
- (4) Matters that pose a higher risk of ML/FT include but are not restricted to —
  - (a) a business relationship or occasional transaction with a customer 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.
- (5) Matters that may pose a higher risk include but are not restricted to —
  - (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 a significant 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;
  - (j) persons performing prominent functions for international organisations; and
  - (k) circumstances in which the relevant person and the customer have not met —
    - (i) during the business relationship or during its formation; or
    - (ii) in the course of an occasional transaction.
- (6) Except as provided in Part 6, when enhanced due diligence is not obtained or produced either where it is required under sub-paragraph (1) or considered appropriate under sub-paragraph (2) —
  - (a) the business relationship or occasional transaction must proceed no further; and

- (b) the relevant person must consider terminating that relationship and consider making an internal disclosure in accordance with paragraphs 26 and 27.

## **PART 5 – SPECIFIED NON-PROFIT ORGANISATIONS**

### **16 Application**

This Part only applies to specified non-profit organisations.

### **17 New business relationships of specified non-profit organisations**

- (1) A specified non-profit organisation must, in relation to each new business relationship, establish, maintain and operate the procedures specified in sub-paragraph (3), which procedures must comply with the other requirements of this paragraph.
- (2) The procedures must be undertaken —
  - (a) before a business relationship is entered into; or
  - (b) during the formation of that relationship.
- (3) The procedures referred to in sub-paragraph (1) are —
  - (a) the identification of the customer;
  - (b) the taking of reasonable measures to verify the identity of the customer using reliable, independent sources; and
  - (c) the obtaining of information on the nature and intended purpose of the business relationship.
- (4) A specified non-profit organisation must, in the case of any correspondent non-profit organisation receiving funds on behalf of a customer, identify that correspondent non-profit organisation, and take reasonable measures to verify that correspondent non-profit organisation's identity using relevant information obtained from reliable, independent sources.
- (5) Except as provided in Part 6, procedures comply with this paragraph if they require, when satisfactory evidence of identity in accordance with sub-paragraph (1) is not obtained or produced —
  - (a) the business relationship to proceed no further; and

- (b) the specified non-profit organisation to terminate the business relationship and consider making an internal disclosure in accordance with paragraphs 26 and 27.
- (6) **“Correspondent non-profit organisation”** for the purposes of sub-paragraph (4) means a non-profit organisation that acts as an intermediary between a specified non-profit organisation and its customers.

## 18 Continuing business relationships of specified non-profit organisations

- (1) A specified non-profit organisation must, in relation to each continuing business relationship, establish, maintain and operate the procedures specified in sub-paragraph (3), which procedures must comply with the requirements of this paragraph.
- (2) The procedures must be undertaken during a business relationship as soon as reasonably practicable.
- (3) The procedures referred to in sub-paragraph (1) are —
  - (a) an examination of the background and purpose of the business relationship;
  - (b) if no evidence of identity was obtained after the business relationship was established, the taking of such measures as will require the production of such information in accordance with paragraph 17(1);
  - (c) if evidence of identity was obtained under paragraph 17(1), the taking of such measures as will determine whether the evidence of identity obtained under that paragraph is satisfactory; and
  - (d) if evidence of identity obtained under paragraph 17(1) is not for any reason satisfactory, the taking of such measures as will require the identification of the beneficiaries or the taking of such measures as will produce evidence of identity in accordance with paragraph 17(1).
- (4) A specified non-profit organisation —
  - (a) must keep written records of any examination, steps, measures or determination made or taken under sub-paragraph (1) (which records shall be records to which paragraph 32 applies); and
  - (b) must, on request, make such findings available to the competent authorities and auditors (if any).
- (5) Except as provided in Part 6, procedures comply with this paragraph if they require, when evidence of identity in accordance with paragraph 17(1) is not obtained or produced —
  - (a) the business relationship to proceed no further; and

- (b) the specified non-profit organisation to consider terminating that business relationship and consider making an internal disclosure in accordance with paragraphs 26 and 27.

## **19 Occasional transactions of specified non-profit organisations**

- (1) A specified non-profit organisation must, in relation to an occasional transaction, establish, maintain and operate the procedures specified in sub-paragraph (3), which procedures must comply with the requirements of this paragraph.
- (2) The procedures specified in sub-paragraph (1) must be undertaken before the occasional transaction is accepted.
- (3) The procedures specified in sub-paragraph (1) are —
  - (a) the identification of the donor of the funds for the transaction; and
  - (b) the verification of the identity of the donor using reliable, independent sources.
- (4) Except as provided in Part 6, procedures comply with this paragraph if they require, when satisfactory evidence of identity in accordance with sub-paragraph (1) is not obtained or produced —
  - (a) the occasional transaction not to be carried out; and
  - (b) the specified non-profit organisation to consider making an internal disclosure in accordance with paragraphs 26 and 27.
- (5) Sub-paragraph (1) does not require evidence of identity in accordance with paragraph 19(3) to be obtained if the transaction is an exempted occasional transaction.

## **PART 6 – SIMPLIFIED CUSTOMER DUE DILIGENCE**

### **20. Acceptable applicants**

- (1) Verification of the identity of a customer for —
  - (a) a new business relationship in accordance with paragraph 10(1); or
  - (b) an occasional transaction in accordance with paragraph 12(1) or 19(1),is not required to be produced if the conditions in sub-paragraph (2) are met.

- (2) The conditions referred to in sub-paragraph (1) are that —
- (a) the identity of the customer is known to the relevant person;
  - (b) the relevant person knows the nature and intended purpose of the business relationship or occasional transaction;
  - (c) the relevant person has not identified any suspicious activity; and
  - (d) the relevant person has satisfied itself that —
    - (i) the customer is a trusted person; or
    - (ii) the customer 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 (which persons are treated as beneficial owners for the purposes of this Code); and
    - (iii) the customer does not pose a higher risk of ML/FT.

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

- (1) This paragraph applies only to a regulated person holding a licence issued under section 7 of the *Financial Services Act 2008* 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 2011<sup>19</sup>.
- (2) Where the regulated person determines that a customer is acting on behalf of another person who is an underlying client of the customer, the regulated person need not comply with paragraph 13(2)(c) if the following conditions are met —
- (a) the regulated person has satisfied itself 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

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<sup>19</sup> SD 2011/884, amended by SD 2013/0373, 2016/0099 and 0188 and 2017/0344.

- compliance with, customer due diligence and record keeping requirements in line with FATF Recommendations 10 and 11;
- (c) the customer has identified and verified the identity of the underlying client in accordance with paragraphs 10 to 13 or to AML/CFT requirements at least equivalent to those in this Code and has no reason to doubt those identities;
  - (d) the customer has risk assessed the underlying client in accordance with paragraph 7 or to AML/CFT requirements at least equivalent to those in this Code and has confirmed to the regulated person there are no higher risk underlying clients in the arrangement;
  - (e) the regulated person and the customer know the nature and intended purpose of the business relationship;
  - (f) the customer has identified the source of funds of the underlying clients;
  - (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 required to be in place in accordance with sub-paragraph (2)(h) must in all cases require the customer to —
- (a) supply to the regulated person information concerning the identity of the underlying clients —
    - (i) in relation to persons to whom any of heads (a) to (d) of subparagraph (6) applies, on request; and
    - (ii) in relation to persons to whom head (e) or (f) of that subparagraph applies, immediately;
  - (b) supply to the regulated person immediately on request, copies of the evidence verifying the identity of the underlying clients 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 there are no underlying clients in the arrangement who have 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 such 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 under sub-paragraph (2), the regulated person must take reasonable measures to ensure that —
- (a) the evidence produced or to be produced is satisfactory; and
  - (b) the customer due diligence procedures 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 no less than once every 12 months; and
  - (b) the written terms of business confer the necessary rights 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 requirements;
  - (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, or 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 (e);
  - (d) a designated business;
  - (e) a person who acts in the course of external regulated business and who is —
    - (i) regulated under the law of a jurisdiction in List C; and

- (ii) subject to AML/CFT requirements and procedures that are at least equivalent to the Code,  
  
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 2011; and
  - (f) a nominee company of a person specified in head (e) where that person is responsible for the nominee company's compliance with the equivalent AML/CFT requirements.
- (7) If suspicious activity is identified this paragraph ceases to apply and an internal disclosure must be made in accordance with paragraphs 26 and 27.
- (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 of Code.
- (9) In this paragraph "**underlying client**" includes a beneficial owner of that underlying client.

## 22 Generic designated business

- (1) Subject to sub-paragraph (2), verification of the identity of a customer for a new business relationship in accordance with paragraph 10(1) is not required to be produced if the relevant person is conducting generic designated business.
- (2) This paragraph applies if the relevant person —
- (a) has identified the customer and the beneficial owners (if any) 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 not identified any suspicious activity; and
  - (e) has identified the source of funds.
- (3) "**Generic designated business**" for the purposes of this paragraph means designated business carried on by a relevant person that does not involve participation in any financial transactions on behalf of the customer. The provision of professional advice or audit services may be examples of generic designated business.

## 23 Eligible introducers

- (1) If a customer is introduced to a relevant person by a third party (the “**eligible introducer**”), the relevant person may, if it thinks fit, comply with this paragraph, instead of paragraphs 10, 12, 17 or 19 (as applicable).
- (2) The relevant person must establish, maintain and operate a customer risk assessment procedure in accordance with paragraph 7.
- (3) The procedures must be undertaken before a business relationship or occasional transaction is entered into.
- (5) Sub-paragraph (2) does not require verification of identity to be produced if the relevant person —
  - (a) has identified the customer and the beneficial owner (if any) and has no reason to doubt those identities;
  - (b) knows the nature and intended purpose of the business relationship;
  - (ba) has taken reasonable steps to identify the source of funds;
  - (c) has not identified any suspicious activity;
  - (d) has satisfied itself 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;
    - (ii) sub-paragraph (5A) applies; or
    - (iii) the transaction is an exempted occasional transaction; and
  - (e) has conducted a risk assessment of the eligible introducer and has satisfied itself that the eligible introducer does not pose a higher risk of ML/FT.
- (5A) This subparagraph applies if, but only if, the following four conditions are met—
  - (a) the relevant person and the customer are bodies corporate in the same group;
  - (b) the group operates AML/CFT programmes and procedures which conform to Part 4 and paragraphs 32 to 34 of this Code;
  - (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 and, despite sub-paragraphs (4) and (5), those terms of business require in all cases the eligible introducer to —
- (a) verify the identity of all customers introduced to the relevant person sufficiently to comply with the AML/CFT requirements;
  - (b) take reasonable measures to verify the identity of the beneficial owner (if any);
  - (c) establish and maintain a record of the evidence of identity for at least 5 years calculated in accordance with paragraph 33(1);
  - (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 33(1);
  - (e) supply to the relevant person immediately on request, copies of the evidence verifying the identity of the customer and the beneficial owner (if any) and all other customer due diligence information held by the eligible introducer in any particular case;
  - (f) supply to the relevant person immediately copies of the evidence verifying the identity of the customer and the beneficial owner (if any) and all other customer due diligence information, in accordance with paragraphs 10(1), 12(1), 17(1) or 19(1) (as applicable), 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 entered into under this paragraph; or
    - (iv) the eligible introducer informs the relevant person that it no longer intends to comply with the terms of business under 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 the beneficial owner (if any): 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, in accordance with paragraphs 26 and 27;
  - (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 sub-paragraph (8).
- (7) A relevant person must ensure that the procedures under sub-paragraph (2) are fit for the purpose of ensuring that the evidence produced or to be produced is satisfactory and that the procedures of the eligible introducer are likewise fit for that purpose.
- (8) 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 no less than 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.
- (9) In order to rely upon an eligible introducer a relevant person must —
- (a) take measures to satisfy itself that the eligible introducer is not itself reliant upon a third party for the evidence of identity of the customer in accordance with paragraphs 10(1), 12(1), 17(1) or 19(1) (as applicable); 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.
- (10) Except as provided in sub-paragraph (5), procedures comply with this paragraph if they require, when evidence of identity in accordance with paragraphs 10(1), 12(1), 17(1) or 19(1) (as applicable) is not obtained or produced —
- (a) the business relationship or occasional transaction to proceed no further; and

- (b) the relevant person to consider terminating that business relationship and consider making an internal disclosure in accordance with paragraphs 26 and 27.
- (11) The ultimate responsibility for ensuring that customer due diligence procedures comply with the terms of this Code remains with the relevant person and not with the eligible introducer.
- (12) In sub-paragraph (5)(d)(ii), “**group**”, in relation to a body corporate, means that body corporate, any other body corporate that is its holding company or subsidiary and any other body corporate that is a subsidiary of that holding company, and “**subsidiary**” and “**holding company**” shall be construed in accordance with section 1 of the *Companies Act 1974*<sup>20</sup> or section 220 of the *Companies Act 2006*<sup>21</sup> (as applicable).

## 24 Miscellaneous

- (1) Sub-paragraphs (2) to (6) apply to—
- (a) an insurer effecting or carrying out a contract of insurance; and
  - (b) an insurance intermediary who, in the course of business carried on in or from the Island, acts as an insurance intermediary in respect of the effecting or carrying out of a contract of insurance.
- (2) An insurer or insurance intermediary, as the case may be, need not comply with Part 4 and paragraph 23 if the contract of insurance referred to in sub-paragraph (1) is a contract where —
- (a) the annual premium is less than €1,000, or a 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).
- (3) In respect of a contract of insurance satisfying sub-paragraph (2) an insurer may, having paid due regard to the risk of ML/FT, consider it appropriate to comply with Part 4 and paragraph 23 but to defer such compliance unless a claim is made or the policy is cancelled.
- (4) If a claim is made under a contract of insurance referred to in sub-paragraph (1) that has neither a surrender value nor a maturity value (for example on the occurrence of an insured event), and the amount of the settlement is greater than €2,500 the insurer must satisfy itself as to the identity of the policyholder or claimant (if different to the policyholder).

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<sup>20</sup> AT 30 of 1974

<sup>21</sup> AT 13 of 2006

- (5) An insurer or insurance intermediary, as the case may be, need not comply with sub-paragraph (4) if 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 where invoices for services or goods have been provided to the insurer,
- and the insurer believes the services or goods to have been supplied in respect of the insured event.
- (6) If a contract of insurance referred to in sub-paragraph (1) is cancelled resulting in the repayment of premiums and the amount of the settlement is greater than €2,500, the insurer or insurance intermediary, as the case may be, must comply with Part 4 and paragraph 23.
- (7) 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 13(2)(c).
- (8) A relevant person need not comply with paragraph 13(2)(c) in respect of a customer that is —
- (a) a collective investment scheme (except for a scheme within the meaning of Schedule 3 (exempt schemes) to the *Collective Investment Schemes Act 2008*), or an equivalent arrangement in a jurisdiction in List C; and
  - (b) if the manager or administrator of such a scheme or equivalent arrangement is a regulated person or a person who acts in the course of external regulated business carrying on equivalent regulated activities in a jurisdiction in List C.
- (9) The Isle of Man Post Office need not comply with Part 4, if it sees fit, when it —
- (a) issues or redeems a postal order up to the value of £50;
  - (b) issues or administers funds on behalf of other Government departments or statutory boards;

- (c) accepts payment for Government utilities or statutory boards up to the value of £650 in cash or £5,000 by other means of payment;
  - (d) accepts payments on behalf of utilities and telecom service providers up to the value of £650 in cash or £5,000 by other means of payment;
  - (e) accepts payments on behalf of a third party from customers of that party in respect of provision by that third party of goods or services, provided that the third party has been assessed as posing a low risk of ML/FT, up to the value of £650 in cash or £5,000 by other means of payment; and
  - (f) accepts donations on behalf of a charity, provided that the charity is registered in the Isle of Man and has been assessed as posing a low risk of ML/FT, up to the value of £650 in cash or £5,000 by other means of payment.
- (10) If there is any suspicious activity, sub-paragraphs (2), (5), (7), (8) and (9) cease to apply and the relevant person must make an internal disclosure in accordance with paragraphs 26 and 27.
- (11) Subject to sub-paragraph (12), where the relevant person (the “**purchaser**”) is acquiring a customer or group of customers from another relevant person (the “**vendor**”), the acquired customer or group of customers will be a new business relationship for the purchaser. In this case, customer due diligence and enhanced customer due diligence of that customer or that group of customers may be provided to the purchaser by the vendor.
- (12) Sub-paragraph (11) applies where —
- (a) the vendor is —
    - (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-paragraph (12)(a)(iv);
    - (iii) a designated business;
    - (iv) a person who acts in the course of external regulated business and who is —
      - (A) regulated under the law of a jurisdiction in List C; and
      - (B) subject to AML/CFT requirements and procedures that are at least equivalent to the Code,

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 2011;

- (b) the purchaser —
  - (i) has identified the customer and the beneficial owner (if any) and has no reason to doubt those identities;
  - (ii) 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 identified the source of funds;
  - (v) has not identified any suspicious activity; and
  - (vi) has put in place appropriate measures to remediate, in a timely manner, any deficiencies in the customer due diligence of the acquired customer or group of customers.

## PART 7 – REPORTING AND DISCLOSURES

### 25 Money Laundering Reporting Officer

- (1) A relevant person must appoint a Money Laundering Reporting Officer (“**MLRO**”) to exercise the functions conferred by paragraphs 26 and 28.
- (2) The 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 directors or the managing board (as the case may be) of the relevant person; and
  - (c) have sufficient time and resources to properly discharge the responsibilities of the position,to be effective in the exercise of its functions.
- (3) A relevant person may appoint a Deputy Money Laundering Reporting Officer (“**Deputy MLRO**”) in order to exercise the functions specified in paragraphs 26 and 28 in the MLRO’s absence.

### 26 Reporting procedures

A relevant person must establish, document, maintain and operate reporting procedures that, in relation to its business in the regulated sector, will —

- (a) enable all its directors or, as the case may be, partners, all other persons involved in its management, and all appropriate employees and workers to know to whom they should report any knowledge or suspicion of ML/FT activity;
- (b) ensure that there is a clear reporting chain under which that knowledge or suspicion will be passed to the MLRO;
- (c) require reports to be made to the MLRO (“**internal disclosures**”) of any information or other matters that come to the attention of the person handling that business and which in that person’s opinion gives rise to any knowledge or suspicion that another person is engaged in ML/FT activity;
- (d) require the MLRO to consider any report in the light of all other relevant information available to the MLRO for the purpose of determining whether or not it gives rise to any knowledge or suspicion of ML/FT activity;
- (e) ensure that the MLRO has full access to any other information that may be of assistance and that is available to the relevant person; and
- (f) enable the information or other matters contained in a report (“**external disclosure**”) to be provided as soon as is practicable to the Financial Intelligence Unit if the MLRO knows or suspects that another is engaged in ML/FT activity.

## 27 Internal disclosures

- (1) Where a relevant person identifies any suspicious activity in the course of a business relationship or occasional transaction the relevant person must —
  - (a) consider obtaining enhanced customer due diligence in accordance with paragraph 15; and
  - (b) make an internal disclosure in accordance with the procedures established under paragraph 26.
- (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) obtain enhanced customer due diligence in accordance with paragraph 15; and
  - (c) consider whether to make an internal disclosure in accordance with the reporting procedures established under paragraph 26.

## **28 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 related to ML/FT.
- (2) The MLRO must make an external disclosure in accordance with the reporting procedures established under paragraph 26 as soon as is practicable to the Financial Intelligence Unit if the MLRO —
  - (a) knows or suspects; or
  - (b) has reasonable grounds for knowing or suspecting, that another is engaged in ML/FT.

## **PART 8 – COMPLIANCE**

### **29 Monitoring and testing compliance**

A relevant person must maintain appropriate procedures for monitoring and testing compliance with the AML/CFT requirements, having regard to ensuring that —

- (a) the relevant person has robust and documented arrangements for managing the risks identified by the business risk assessment conducted in accordance with paragraph 6 for compliance with those requirements;
- (b) the operational performance of those arrangements is suitably monitored; and
- (c) prompt action is taken to remedy any deficiencies in arrangements.

### **30 New staff appointments**

A relevant person must establish, maintain and operate appropriate procedures to enable the relevant person to satisfy itself of the integrity of new directors, officers or partners (as the case may be) of the relevant person and of all new appropriate employees and workers.

### **31 Staff training**

A relevant person must provide or arrange education and training, including refresher training, at least annually, for all directors, officers or, as the case may be, partners, all other persons involved in its management, all key staff and appropriate employees and workers to ensure that they are aware of —

- (a) the provisions of the AML/CFT requirements;
- (b) their personal obligations in relation to the AML/CFT requirements;
- (c) the reporting procedures established under paragraph 26;
- (d) the relevant person's policies and procedures for AML/CFT;
- (e) the relevant person's customer due diligence, record-keeping and other procedures;
- (f) the recognition and handling of transactions and attempted transactions that may give rise to an internal disclosure;
- (g) their personal liability for failure to report information or suspicions in accordance with internal procedures, including the offence of tipping off; and
- (h) new developments, including information on current techniques, methods and trends in ML/FT.

### **32 Record keeping**

A relevant person must keep —

- (a) a copy of the documents obtained or produced under parts 3 to 6, and paragraphs 37 and 39 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; and
- (c) such other records as are sufficient to permit reconstruction of individual transactions and compliance with this Code.

### **33 Record retention**

- (1) A relevant person must keep the records required by this Code for at least 5 years—
  - (a) in the case of records required by paragraph 32(b), from the date of the completion of the transaction; and
  - (b) in other cases, from the date when —
    - (i) all activities relating to an occasional transaction or a series of linked transactions were completed; or

- (ii) in respect of other activities —
  - (A) the business relationship was formally ended; or
  - (B) if the business relationship was not formally ended, when all activities relating to the transaction were completed.
- (2) Without limiting sub-paragraph (1), if —
  - (a) a report has been made to the Financial Intelligence Unit under paragraphs 26(1)(f) and 28;
  - (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 as the case may be.

### **34 Record format and retrieval**

- (1) 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.
- (2) 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.

**35 Registers of internal and external disclosures**

- (1) A relevant person must establish and maintain separate registers of —
  - (a) all internal disclosures; and
  - (b) all external disclosures.
- (2) The registers of internal disclosures and external disclosures may be contained in a single document if the details required to be included in those registers under sub-paragraph (3) can be presented separately for internal disclosures and external disclosures upon request by a competent authority.
- (3) The registers must include details of —
  - (a) the date on which the report is made;
  - (b) the person who makes the report;
  - (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 the relevant papers.

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

- (1) A relevant person must establish and maintain a register of all ML/FT enquiries made of it by law enforcement or other 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 accounts or transactions involved.

## PART 9 – MISCELLANEOUS

### 37 Foreign branches and subsidiaries

- (1) A relevant person must ensure that any branch or subsidiary in a jurisdiction outside the Island takes measures consistent with this Code and guidance issued by a competent authority for AML/CFT, to the extent permitted by that jurisdiction's laws.
- (2) If the minimum measures for AML/CFT in such a jurisdiction differ from those required by the law of the Island, the relevant person must ensure that any branch or subsidiary in that jurisdiction applies the higher standard, to the extent permitted by that jurisdiction's laws.
- (3) The relevant person must inform the relevant competent authority when a branch or subsidiary is unable to take any of the measures referred to in sub-paragraphs (1) or (2) because it is prohibited by the laws of the jurisdiction concerned.
- (4) In this paragraph "**subsidiary**", in relation to a relevant person, means a legal person more than half of whose equity share capital is owned by the relevant person.

### 38 Shell banks

- (1) A relevant person must not enter into or continue a business relationship or occasional transaction with a shell bank.
- (2) A relevant person must take adequate measures to ensure that it does not enter into or continue a business relationship or 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 occasional transaction, as the case may be, which involves correspondent services or similar arrangements.
- (2) A relevant person must not enter into or continue a business relationship or occasional transaction to which this paragraph applies with a financial institution or designated business in another jurisdiction unless it is satisfied that the respondent institution or designated business does not permit its accounts to be used by shell banks.
- (3) Before entering into a business relationship or occasional transaction to which this paragraph applies, a relevant person must —
  - (a) obtain sufficient information about the respondent institution or designated business to understand fully the nature of its business;

- (b) determine from publicly available information —
    - (i) the reputation of the respondent institution or designated business;
    - (ii) the quality of the supervision to which it is subject; and
    - (iii) whether it has been subject to investigation or regulatory action in respect of ML/FT;
  - (c) assess the AML/CFT procedures and controls maintained by the respondent institution or designated business, 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 the respective responsibilities of the relevant person and the respondent institution or designated business 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 or designated business —
- (a) has taken measures that comply with the requirements of the FATF Recommendations 10 and 11 (customer due diligence and record keeping) with respect to every customer having direct access to the account; and
  - (b) will provide the relevant person on request with relevant evidence of identity of the customer.

#### **40 Fictitious, anonymous and numbered accounts**

- (1) Subject to sub-paragraph (2), a relevant person must not set up or maintain an anonymous account or an account in a name that it knows, or has reasonable cause to suspect, to be fictitious for any new or existing customer.
- (2) Sub-paragraph (1) does not apply for an account already maintained where the account is included in the list kept by the Isle of Man Financial Services Authority<sup>22</sup> specifically for this purpose.

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<sup>22</sup> The reference to "the Insurance and Pensions Authority" should be read as reference to "the Isle of Man Financial Services Authority" pursuant to section 67(2) of the *Legislation Act 2015* and the Code will be expressly updated in this respect in due course.

## PART 10 – OFFENCES AND REVOCATIONS

### 41 Offences

- (1) A person who contravenes 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 £5,000, or to both;
  - (b) on conviction on information, to custody not exceeding 2 years or to a fine, or to both.
- (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 (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 (as the case may be) a person concerned in the management or control of the association, the partner or (as the case may be) the person concerned, as well as the partnership or association, is guilty of the offence and liable to the penalty provided for it.

- (6) In this paragraph “officer” also includes —
- (a) a director, manager or secretary;
  - (b) a person purporting to act as a director, manager or secretary; and
  - (c) a member, if the affairs of the body are managed by its members.

## **42 Revocations**

The following are revoked —

- (a) Money Laundering and Terrorist Financing Code 2013 ; and
- (b) Money Laundering and Terrorist Financing (Amendment) Code 2013

**MADE 26 FEBRUARY 2015**

**J P WATTERSON**

*Minister for Home Affairs*

## EXPLANATORY NOTE

*(This note is not part of the Code)*

This Code revokes and replaces the Money Laundering and Terrorist Financing Code 2013. This Code is made jointly under section 157 of the Proceeds of Crime Act 2008 and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014. It contains provisions in line with the Financial Action Task Force's Recommendations on preventing money laundering and the financing of terrorism. Failure to comply with the requirements of this Code is an offence