Private Pensions

Sector Specific AML/CFT Guidance Notes

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1. Foreword

For the purposes of this sector specific guidance, private pension schemes are retirement benefits schemes operated in or from the Island which are required to be registered as authorised schemes under section 3 of the Retirement Benefit Schemes Act 2000 ("the Act").

2. Introduction

The purpose of this document is to provide some guidance specifically for the private pensions sector in relation to anti-money laundering and countering the financing of terrorism ("AML/CFT"). This document should be read in conjunction both with the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019 (as amended November 2019) ("the Code") and the main body of the AML/CFT Handbook ("the Handbook"). It should be noted that although guidance is not law, it is persuasive. Where a person follows guidance this would tend to indicate compliance with the legislative provisions, and vice versa.

This document covers some of the unique money laundering and financing of terrorism ("ML/FT") risks that may be faced by the sector and provides further guidance in respect of approaches to customer due diligence where it may vary between sectors.

2.1. National Risk Assessment

The Island's National Risk Assessment ("NRA") was published in 2015 and has recently been updated. The pensions sector must ensure their business risk assessment (and customer risk assessments where necessary) take into account any relevant findings of the NRA.

The main ML vulnerabilities of private IoM pension products tend to arise from personal schemes settled by international members with complex underlying investment structures or taxation arrangements; these may be vulnerable to the disguise of the proceeds of fraud and/or tax evasion. TF vulnerabilities tend to originate within large occupational schemes whose participating employers and employees/members are located around the world. The NRA sets out the main risks and vulnerabilities in detail.

Overall, after applying consideration of the product types and the controls and other preventative measures in place, the pensions sector is assessed as having a medium low level of vulnerability for both ML and TF.

3. Private pension schemes

There are several types of pension schemes operated in or from the Island to which the Code applies:

- Domestic pension schemes, which are available to habitual Isle of Man residents; and
- International pension schemes, which are only available to persons habitually resident and employed outside of the Isle of Man.

Each type is further sub-categorised as either:

- Personal Scheme, for the provision of benefit to an individual or individuals; or

- Occupational scheme, for the provision of benefit to the employees of an employer.

Each of these pension schemes must have an appointed administrator ("Administrator") in the Island who is responsible for the management of the scheme and who must be registered by the Authority under section 36 of the Act.

Additionally, as the assets of these pension schemes must be held under irrevocable trust, the schemes must have appointed one or more trustees, who may be natural or legal persons and who may or may not be located on the Island. Where trustees carry out their duties by way of business, they are subject to the Code requirements (see Schedule 4 to POCA 2008), but are not currently registered by the Authority under the Act.

4. Risk guidance

Part 3 of the Code places requirements on a "relevant person" (as defined in paragraph 3 of the Code) to undertake:

- a business risk assessment in accordance with paragraph 5 of the Code;
- a customer risk assessment in accordance with paragraph 6 of the Code; and
- a technology risk assessment in accordance with paragraph 7 of the Code.

It is important for the relevant person to clearly differentiate between 'business risk' and 'customer risk' when undertaking the risk assessments:

- The business risk assessment is an assessment of the money laundering and terrorist financing risks posed to the business by its customers and the particular type of business model it operates;
- The customer risk assessment is an assessment of the money laundering and terrorist financing risks posed by an individual customer.

Further guidance regarding the risk requirements can be found in the Handbook.

4.1. Business risk assessment

The guidance provided in the main body of the Handbook should be considered and wherever possible and appropriate followed when conducting business risk assessments in this sector. Particular risk factors which should be considered may include the following risk indicators posed by the different categories of pension scheme:

4.1.1. International schemes

- Personal schemes. These may have some higher risk indicators including, but not necessarily limited to:
    - sales channels and non-face-to-face business;
    - jurisdictional risks including corruption and tax evasion;

  - inappropriate use of pension schemes to access benefits prior to normal retirement (such as taking loans from the pension scheme); and
  - self-invested personal pensions (where the members have powers to instruct in relation to the scheme investments).
- Occupational schemes:
  - sales channels; and
  - financing of terrorism and proliferation risks.

4.1.2. Domestic schemes

- Personal schemes: These may have some of the higher risk indicators found in international personal schemes, as noted above, but to a lesser extent.
- Occupational schemes: Where the employer also acts as a trustee for the scheme, these risks are usually lower than those facing personal schemes.

4.2. Customer risk assessment

As in other sectors, the guidance provided in the main body of the Handbook must be considered and wherever possible and appropriate followed when conducting customer risk assessments. The business risk assessment already undertaken by the relevant person should indicate risks that particular products and schemes may pose and will help determine the level of detail required in individual customer risk assessments and the extent of the customer due diligence required in each case. The relevant person should therefore design a customer risk assessment which will take all of these matters into account.

In particular, due consideration should be given to the following factors which may be relevant in certain scenarios and which may indicate higher risk:

- customer location;
- trustee location;
- PEP status;
- source of funds and/or source of wealth;
- sales channels (in particular unregulated advice);
- investment profile mismatch;
- unregulated or unrecognisable investments and loans from the scheme;
- connected parties – their funding responsibilities and status;
- multi-jurisdictional arrangements and regulatory arbitrage;
- third party payments;
- rapid turnaround/divestment;
- activity on underlying assets – where a scheme member or beneficiary has direct access to or control over any scheme assets without adequate trustee oversight;

- weak administrative controls;
- conflicted trustees and/or directors of an administrator;
- scheme type such as international end of service gratuity or statutorily prescribed savings plans; and
- reliance on a previous pension scheme administrator or trustee for source of funds and/or source of wealth information (where a transfer from another pension is used to fund the member's benefits in the scheme).

4.2.1. Higher risk and suspicion indicators

As with the basic elements of a risk assessment discussed under Part 3 of the AML/CFT Handbook, the following activities may increase the risk of the relationship. Just because an activity/scenario is listed below however it does not automatically make the relationship higher risk; the customer's nature and the rationale or purpose of the business relationship should be considered in all cases.

If a relevant person is unable to obtain a satisfactory explanation from a customer in the event of the following situations, features, or activities, or any other features which cause concern, it should be determined whether this is suspicious or unusual activity. As stated in paragraph 13 (Ongoing monitoring) of the Code:

In the event of unusual activity, the relevant person must:

- perform appropriate scrutiny of the activity;
- conduct enhanced customer due diligence ("ECDD") in accordance with paragraph 15 of the Code; and
- consider whether to make a disclosure, and in the event of a suspicion of ML/FT an internal disclosure must be made.

If a scenario is identified as suspicious, appropriate steps must be taken as set out in paragraph 15 of the Code, which states the relevant person must:

- conduct ECDD, unless the relevant person believes conducting ECDD will tip off the customer; and
- make an internal disclosure.

Please refer to Part 7 of the AML/CFT Handbook for further detail of the Island's suspicious reporting regime.

The following list of higher risk indicators is by no means exhaustive, and relevant persons should be vigilant for any transactions where suspicion may be aroused and take appropriate measures.

- large cash sums deposited into a scheme by a member, particularly when followed by substantial withdrawal of funds;

- deposit of securities or other assets, whose ownership is unclear, in a scheme;
- deposit of cash, the origin of which is unclear, in a scheme;
- transfer of assets from an unrelated third party into a scheme;
- insistence on transferring securities or other assets into a scheme which would not normally be allowed under the scheme rules;
- an unrelated third party making cash contributions into a scheme; and
- unemployed persons paying contributions into a scheme.

This list must be read in conjunction with the risk factors listed in paragraph 15 (Enhanced customer due diligence) of the Code.

4.3. Technology risk assessment

The guidance provided in the main body of the Handbook should be considered and wherever possible and appropriate followed when conducting technology risk assessments.

5. Customer due diligence and ongoing monitoring

Part 4 of the Code places requirements on relevant persons to undertake customer due diligence and ongoing monitoring.

5.1. Identifying customer due diligence and ongoing monitoring requirements

The guidance in the stand-alone Customer Due Diligence document should be considered and wherever possible and appropriate followed when conducting customer due diligence and ongoing monitoring. Additionally, in order to determine the customer due diligence and ongoing monitoring requirements of a scheme during its lifetime, the relevant person will, as a minimum, need to consider the following sector-specific matters:

- the nature or type of scheme (International, Domestic, Personal, Occupational);
- the source of any funds being transferred/paid into a scheme;
- any significant events taking place during the lifetime of a scheme and any conditions attaching to benefits due;
- who is establishing the scheme and whether any other persons, natural or legal, may settle funds into or have significant control over the assets of the scheme; and
- whether payments from a scheme are due to any other person(s).

5.2. Identifying the customer

The Code requires the Administrator of a pension scheme to identify and verify the customer's identity before the business relationship is entered into, or during the formation of that relationship or, when unavoidable, following the formation of that relationship. When conducting the customer risk assessment of the parties to the pension scheme this assessment must also take into account any risks posed by the members, or proposed members, of that scheme.

In the simplest terms, the customer is the person, legal or natural, who transfers/settles funds into the pension scheme, as well as any person receiving the benefits of the scheme where this person is not the customer/settlor. Schemes can have more than one customer/settlor and more than one beneficiary, and these parties may change over time or upon significant events, such as the addition or death of a settlor or member, a change of employer or, in certain circumstances, an alteration to the deed or rules of the scheme.

For the purpose of this guidance it is also important to note the concession provided by paragraph 21(1) of the Code:

21 Miscellaneous

(1) In respect of a pension, superannuation or similar scheme that provides retirement benefits to employees, if contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme, the relevant person —

(a) may treat the employer, trustee or any other person who has control over the business relationship, including the administrator or the scheme manager, as the customer; and

(b) need not comply with paragraph 12(2)(b).

Where the requirements of this paragraph are met **and the relevant person is the Administrator of the pension scheme**:

- The Administrator may treat the employer, trustee or person who has control over the scheme as the customer for the purposes of customer risk assessment, customer due diligence and ongoing monitoring whilst the pension benefit are being accrued. However the Administrator must perform a customer risk assessment and undertake appropriate customer due diligence on the recipient of any payment made out of the scheme where that recipient is not the employer or trustee of the scheme. Where this person is assessed as higher risk, enhanced customer due diligence must be conducted, as required by paragraph 15 of the Code.

Please note that where the requirements of this paragraph are met and **the relevant person is not the Administrator** and is a person undertaking business in the regulated sector who enters into a business relationship with or undertakes an occasional transaction with the pension scheme:

- the relevant person may treat the person who has control over the scheme, which may be the Administrator or trustees of the scheme, as the customer for the purposes of customer risk assessment and customer due diligence.

5.3. Source of funds and the lifecycle of a pension scheme

There are a variety of different pension scheme types based on their funding arrangements. Funding arrangements for a scheme may change throughout the life of the scheme and accordingly Administrators are required to ensure that they carry out appropriate due diligence on all funds being paid into a scheme as well as ensuring that they can identify the relevant parties to the scheme at all times during the life of the scheme.

The following table lists the scheme types by funding model and sets out what customer due diligence should be obtained, and applies equally to both Domestic and International pension schemes:

Scheme category	Scheme type for SoF purposes	Description for SoF purposes	CDD required	Additional CDD required
Personal	Self-invested ("SIP")	Self-invested contributions; no employer involvement	Settlor	Any 3rd party contributor or assignee
	SIP with Employer Contributions ("SIP+EC")	Where a personal scheme, set up by individual(s) permits payment directly into the scheme by their employer(s)	Settlor and employer	Any 3rd party contributor or assignee
	Group Personal Pension ("GPP")	Set up by an employer with contributions paid in for the benefit of its employees; no additional payments to the scheme permitted	Employer	Member upon departure; any 3rd party assignee
	GPP with Salary Sacrifice ("GPP+SS")	Set up by an employer with contributions paid in for the benefit of its employees and allows for employees to sacrifice some of their salary to increase their contribution amount; no additional payments to the scheme permitted	Employer	Member upon departure; any 3rd party assignee
	GPP with Additional Voluntary Contributions ("GPP+SS+AVC")	Set up by an employer with contributions paid in for the benefit of its employees and allows for employees to pay additional money into the scheme, including that which did not originate from their employment	Employer	Member, if contributions do not originate from employment income, **OR** upon departure; any 3rd party contributor or assignee
Occupational	Defined Benefit ("DB")	Set up by an employer to provide a specific benefit with no AVCs permitted	Employer	Member upon departure; any 3rd party assignee

	DB+SS	Set up by an employer to provide a benefit and allows for employees to sacrifice some of their salary to increase their contribution amount; no additional payments to the scheme permitted	Employer	Member upon departure; any 3rd party assignee
	DB+SS+AVC	Set up by an employer to provide a benefit with SS and AVCs permitted which did not originate from their employment with the employer	Employer	Member, if contributions do not originate from employment income, **OR** upon departure; any 3rd party contributor or assignee
	Defined Contribution ("DC")	Set up by an employer with contributions paid in by the employer for the benefit of its employees; no additional payments to the scheme permitted	Employer	Member upon departure; any 3rd party assignee
	DC+SS	Set up by an employer with contributions paid in for the benefit of its employees and allows for employees to sacrifice some of their salary to increase their contribution amount; no additional payments to the scheme permitted	Employer	Member upon departure; any 3rd party assignee
	DC+SS+AVC	Set up by an employer with contributions paid in for the benefit of its employees and which allows for employees to pay contributions into the scheme which did not originate from their employment with the employer	Employer	Member, if contributions do not originate from employment income, **OR** upon departure; any 3rd party contributor or assignee

5.4. Ongoing monitoring

The guidance provided in the main body of the Handbook should be considered and, wherever possible and appropriate, followed when conducting ongoing monitoring in this sector. As noted above, there are a number of changes which may occur during the lifecycle of a pension scheme in respect of customer(s) and source of funds. These must be monitored and reviewed, the review must be documented, and where appropriate, the customer risk assessment amended, with documentation produced and retained in accordance with the Code.