



# MONEY LAUNDERING AND TERRORIST FINANCING CODE 2013

## Index

Paragraph	Page
<b>PART 1 – INTRODUCTORY</b>	
1 Title .....	3
2 Commencement .....	3
3 Interpretation.....	3
4 Risk assessment.....	10
5 General requirements.....	10
<b>PART 2 – DUE DILIGENCE</b>	
6 Beneficial ownership and control.....	11
7 New business relationships.....	12
8 Continuing business relationships .....	14
9 One-off transactions .....	15
10 Introduced business .....	16
11 Enhanced customer due diligence.....	18
12 Politically Exposed Persons.....	19
13 Exceptions from certain customer due diligence procedures .....	20
14 Correspondent banking services .....	21
15 Foreign branches and subsidiaries .....	22
16 Ongoing monitoring.....	23
<b>PART 3 – RECORD KEEPING</b>	
17 Records.....	23
18 Retention of records .....	24
19 Format and retrieval of records .....	24
20 Register of money laundering and financing of terrorism enquiries .....	25
21 Money Laundering Reporting Officer and disclosures.....	25
<b>PART 4 – STAFFING, TRAINING AND MONITORING</b>	
22 New appointments .....	26
23 Staff training .....	27
24 Technological developments.....	27
25 Monitoring and testing compliance .....	27

<b>PART 5 – MISCELLANEOUS</b>	<b>28</b>
26 Anonymous and fictitious name accounts .....	28
27 Shell banks.....	28
<b>PART 6 – OFFENCES AND REVOCATIONS</b>	<b>28</b>
28 Offences .....	28
29 Revocations .....	29
<b>SCHEDULE</b>	<b>31</b>
LIST OF COUNTRIES	31

Statutory Document No. 0095/13

*Proceeds of Crime Act 2008**Terrorism (Finance) Act 2009*

## MONEY LAUNDERING AND TERRORIST FINANCING CODE 2013

*Approved by Tynwald:* 16 April 2013  
*Coming into Operation:* 1 May 2013

The Department of Home Affairs makes this Code under section 157(1) of the Proceeds of Crime Act 2008 and section 27A(1) of the Terrorism (Finance) Act 2009, after consulting such persons and bodies that appeared to it to be appropriate<sup>1</sup>.

### PART 1 – INTRODUCTORY

#### 1 Title

This Code is the Money Laundering and Terrorist Financing Code 2013.

#### 2 Commencement

If approved by Tynwald<sup>2</sup>, this Code comes into operation on 1 May 2013.

#### 3 Interpretation

(1) In this Code –

“**applicant for business**” means a person seeking to form a business relationship or carry out a one-off transaction with a relevant person who is carrying on business in the regulated sector in or from the Island;

“**beneficial owner**” means the natural person who ultimately owns or controls the applicant for business or on whose behalf a transaction or activity is being conducted; and includes (but is not restricted to) –

<sup>1</sup> As required by section 157(4) of the Proceeds of Crime Act 2008 and section 27A(4) of the Terrorism (Finance) Act 2009

<sup>2</sup> As required by section 223(3) of the Proceeds of Crime Act 2009 and section 27A(5) of the Terrorism (Finance) Act 2009

- (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; or
- (b) in the case of any legal person, a natural person who otherwise exercises control over the management of the legal person;
- (c) in the case of a legal arrangement, the trustees or other persons controlling the applicant;

**“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;

*Note:*

*The Money Laundering and Terrorist Financing (Online Gambling) Code 2013 (SD 0096/13) has effect in respect of online gambling instead of this Code.*

**“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 out of transactions 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 is not known or capable of being ascertained at the time the arrangement is made;

**“competent authority”** means all Isle of Man administrative and law enforcement authorities concerned with combating money laundering and terrorist financing, including in particular the Financial Supervision Commission, the Insurance and Pensions Authority, the Isle of Man Gambling Supervision Commission, the Department of Home Affairs, the Financial Crime Unit of the Isle of Man Constabulary, the Office of Fair Trading and the Customs and Excise Division of the Treasury;

**“constable”** includes any officer appointed under section 1(2) of the Customs and Excise Management Act 1986;

**“country”** includes territory;

**“customer due diligence”** (except in the expression “enhanced customer due diligence”) means the measures specified in paragraphs 6 to 10 and 12 to 16 of this Code;

**“director”** and **“officer”** of a body corporate include —

- (a) if it is a limited liability company constituted under the Limited Liability Companies Act 1996, a member, manager or registered agent of such a company; and
- (b) if it is a limited partnership with legal personality in accordance with sections 48B to 48D of the Partnership Act 1909—
  - (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;

“**document**” and “**documents**” include information and data recorded in any form and, in relation to information or data recorded otherwise than in legible form, references include a copy of that information or data produced in legible form;

“**employee**” and “**worker**” have the same meanings as in section 173 of the Employment Act 2006;

“**evidence of identity**” means the procedures specified in paragraphs 7(4) or 9(3), as applicable;

“**exempted one-off transaction**” means a one-off 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 —

- (a) €3,000 in the case of a transaction or series of linked transactions 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) €1,000 in the case of a transaction entered into in the course of business referred to in paragraph 1(x) (*bureaux de change*) or 1(z) (money transmission services and cheque encashment) of Schedule 4 to the Proceeds of Crime Act 2008; or
- (c) €15,000 in any other case;

“**external disclosure**” means a report under paragraph 21(3)(f);

“**external regulated business**” means business outside the Island regulated or supervised for the prevention of money laundering and the financing of terrorism by an authority (whether a governmental or professional body and whether in the Island or in a country outside the Island) empowered (whether by law or by the rules of the body) to regulate or supervise such business;

“**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;

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

“**internal disclosure**” means a report under paragraph 21(3)(c);

“**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 permanent customer relationship with a financial institution or of owning property;

“**Money Laundering Reporting Officer**” (“**MLRO**”) means an individual appointed under paragraph 21 and, except in relation to paragraph 21(6), includes an individual appointed in the same way to act as a deputy to the principal MLRO;

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

“**money laundering and terrorist financing requirements**” means the requirements of the following enactments—

- (a) section 9 of the Prevention of Terrorism Act 1990<sup>3</sup>;
- (b) sections 7 to 11 and section 14 of the Anti-Terrorism and Crime Act 2003;
- (c) Part 3 of the Proceeds of Crime 2008;
- (d) Part 2 of the Terrorism (Finance) Act 2009;
- (e) Part 1 of the Terrorist Asset-Freezing Etc Act 2010 (an Act of Parliament (c.38)) as it has effect in the Island<sup>4</sup>; and
- (f) this Code,

and includes, in the case of anything done otherwise than in the Island, anything that would constitute an offence under the provisions specified in paragraphs (a) to (e) if done in the Island;

“**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 or equivalent regulations in a jurisdiction listed in the Schedule to this Code;

“**one-off transaction**” means any transaction 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

---

<sup>3</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>4</sup> This Act of Parliament was extended to the Island, with modifications, by UK S.I. 749/2011

relationship is an established business relationship if it is formed by a relevant person where that person has obtained 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 applicant for business;

“**politically exposed person**” means any of the following resident in a country outside the Island —

- (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 official of an international entity or organisation; and
  - (xii) an honorary consul;
- (b) any of the following family members of a person mentioned in sub-paragraph (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; and
  - (viii) a grandchild;
- (c) any close associate of a person mentioned in sub-paragraph (a), including —

- (i) any natural person known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with such a person;
- (ii) any natural person who has sole beneficial ownership 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;
- (iv) any natural person known to be in a position to conduct substantial financial transactions on behalf of such a person;

**“regulated person”** means —

- (a) any person holding a financial services licence issued under section 7 of the Financial Services Act 2008;
- (b) any person authorised under section 8 the Insurance Act 2008;
- (c) any person registered under section 25 of the Insurance Act 2008;  
or
- (d) a retirement benefits schemes administrator who is registered under section 36 of the Retirement Benefits Schemes Act 2000;

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

**“risk”** means a risk of money laundering or a risk of the financing of terrorism, or both;

**“suspicious transaction trigger event”** means the occurrence of any one of the following—

- (a) the relevant person knowing or suspecting that the transaction is or may be related to money laundering or the financing of terrorism;
- (b) a suspicious pattern of behaviour causing the relevant person to know or suspect that the behaviour is or may be related to money laundering or the financing of terrorism;
- (c) the relevant person becoming aware of anything that causes the relevant person to doubt the identity of the applicant for business or the introducer (in the case of paragraph 10) or beneficial owner;  
or
- (d) the relevant person becoming aware of anything that causes the relevant person to doubt the *bona fides* of the applicant for business or the introducer (in the case of paragraph 10) or beneficial owner;



“**terrorist financing**” has the same meaning as in section 3 of the Terrorism (Finance) Act 2009 (and “**financing of terrorism**” is to be construed accordingly);

“**trusted person**” means —

- (a) a regulated person or a nominee company of that regulated person;
  - (b) an advocate within the meaning of the Advocates Act 1976, a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986 or an accountant carrying out business in or from the Isle of Man, if the relevant person is satisfied that the rules of the professional body of the applicant for business embody requirements and procedures that are at least equivalent to this Code;
  - (c) a person who acts in the course of external regulated business and is regulated under the law and regulations of a country included in the list in the Schedule, or a nominee company of that external regulated business, unless the relevant person has reason to believe that the country does not apply, or insufficiently applies, the FATF Recommendations in respect of the business of that person;
- (2) In this Code, “**shell bank**” means a bank that is —
- (a) incorporated in a country in which it has no physical presence; and
  - (b) not affiliated with a financial services group that is subject to effective consolidated supervision;
- (3) For sub-paragraph (2) —
- “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; and
- “physical presence” means the presence of staff and management based in the country who operate at a level at which they are able to make meaningful decisions in respect of the functions and activities of the bank.
- (4) 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 pounds sterling or any other currency.
  - (5) In this Code, in any case where a financial product (such as a life insurance policy) has been transferred by its holder (the assignor) to another person (the assignee) references in any provision to

requirements in relation to an applicant for business should be construed as including a reference to an assignee.

#### 4 Risk assessment

- (1) For the purpose of determining the measures to be taken when carrying out customer due diligence, a relevant person must carry out an assessment (a “risk assessment”) that estimates the risk of money laundering and the financing of terrorism on the part of the relevant person’s customers, having regard to all relevant risk factors, including—
  - (a) the nature, scale and complexity of its activities;
  - (b) the products and services provided;
  - (c) the persons to whom, and the manner in which the products and services are provided; and
  - (d) reliance on third parties for elements of the customer due diligence process.
- (2) The 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) When carrying out customer due diligence, whether in relation to an applicant for business, an existing business relationship or a one-off transaction, a relevant person must do so —
  - (a) on the basis of materiality and risk;
  - (b) in accordance with its current risk assessment; and
  - (c) having regard to whether the applicant for business, an existing business relationship or a one-off transaction poses a higher risk.

#### 5 General requirements

- (1) In conducting business in the regulated sector a relevant person must not form a business relationship or carry out a one-off transaction with or for another person, nor continue a business relationship, unless the relevant person —
  - (a) establishes, maintains and operates —
    - (i) risk assessment procedures in accordance with paragraph 4;
    - (ii) identification procedures in accordance with paragraphs 6 to 16;

- (iii) record keeping procedures in accordance with paragraphs 17 to 20;
  - (iv) internal reporting procedures in accordance with paragraph 21;
  - (v) internal staff screening procedures in accordance with paragraph 22;
  - (vi) internal controls and communication procedures that are appropriate for the purposes of forestalling and preventing money laundering and the financing of terrorism; and
  - (vii) procedures and controls in accordance with paragraph 24;
- (b) takes appropriate measures for the purpose of making employees and workers aware of –
- (i) the procedures established, maintained and operated under head (a); and
  - (ii) the money laundering and terrorist financing requirements;
- (c) provides education and training in accordance with paragraph 23;
- (d) monitors and tests compliance in accordance with paragraph 25; and
- (e) complies with paragraphs 26 and 27.
- (2) The procedures and controls referred to in sub-paragraph (1) must be approved by the senior management of the relevant person.

## PART 2 – DUE DILIGENCE

### 6 Beneficial ownership and control

- (1) This paragraph applies when a relevant person is operating the procedures required by paragraphs 7 to 12 and 16 of the Code.
- (2) The relevant person must, in the case of any applicant for business –
- (a) identify who is the beneficial owner of the applicant;
  - (b) take reasonable measures to verify the identity of those persons, using relevant information or data obtained from a reliable source; and
  - (c) determine whether the applicant is acting on behalf of another person and, if so, identify that other person, and take reasonable measures to verify his or her identity using relevant information or data obtained from a reliable source.
- (3) Without limiting sub-paragraph (2), the relevant person must, in the case of an applicant for business that is a legal person or legal arrangement –

- (a) verify that any person purporting to act on behalf of the applicant is authorised to do so;
  - (b) identify that person and take reasonable measures to verify the identity of that person using reliable and independent source documents;
  - (c) in the case of a legal arrangement, identify any known beneficiaries and the settlor or other person by whom the legal arrangement is made;
  - (d) verify the legal status of the applicant using relevant information or data obtained from a reliable source;
  - (e) obtain information concerning the names and addresses of the applicant and any natural persons having power to direct its activities;
  - (f) obtain information concerning the person by whom, and the method by which, binding obligations may be imposed on the applicant; and
  - (g) obtain information to understand the ownership and control structure of the applicant.
- (4) Without limiting sub-paragraphs (2) and (3), the relevant person must not, in the case of an applicant for business that is a legal person or legal arrangement, make any payment or loan to a beneficiary of the arrangement unless it has —
- (a) identified the beneficiary of the payment or loan; and
  - (b) verified the identity of the beneficiary using relevant information and data obtained from a reliable source.
- (5) If the relevant person deals with an applicant for business otherwise than face-to-face, it must, in taking any measures under this paragraph, take adequate steps to compensate for any risk arising as a result.
- (6) In this paragraph “applicant for business”, in relation to a continuing business relationship, means the person who, in relation to the formation of the business relationship, was the applicant for business.

## **7 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 (4), which procedures must comply with the other requirements of this paragraph.
- (2) Those procedures must be undertaken —
  - (a) before a business relationship is entered into; or
  - (b) during the formation of that relationship.

- (3) However, in exceptional circumstances, the verification of the identity of the applicant for business, in accordance with sub-paragraph (4)(b), may be permitted 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 money laundering and the financing of terrorism risks are effectively managed;
  - (d) the relevant person's senior management has approved the establishment of the business relationship and any subsequent activity until sub-paragraph (4)(b) have been complied with;
  - (e) the relevant person ensures that the amount, type and number of transactions is limited and monitored.
- (4) The procedures referred to in sub-paragraph (1) are —
- (a) the identification of the applicant for business;
  - (b) the verification of the identity of the applicant for business using reliable, independent source documents;
  - (c) the obtaining of information on the purpose and intended nature of the business relationship; and
  - (d) the taking of reasonable measures to establish the source of funds.
- (5) Sub-paragraph (1) does not require verification of identity to be produced if —
- (a) the identity of the applicant for business is known to the relevant person;
  - (b) the relevant person knows the nature and intended purpose of the relationship; and
  - (c) the relevant person has satisfied itself that the applicant for business is —
    - (i) a trusted person; or
    - (ii) 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).
- (6) If there is a suspicious transaction trigger event, paragraph 11 applies instead of sub-paragraphs (3) and (5) of this paragraph and the relevant person must consider whether an internal disclosure should be made.

- (7) Except as provided in sub-paragraph (5), procedures comply with this sub-paragraph if they require, when evidence of identity in accordance with paragraph 7(4) is not obtained or produced –
- (a) the business relationship and transactions to proceed no further; and
  - (b) the relevant person to terminate that relationship and consider whether an internal disclosure should be made.
- (8) In this paragraph, “senior management” means Isle of Man resident directors or key persons who are nominated to ensure the relevant person is effectively controlled on a day-to-day basis and who have responsibility for overseeing the relevant person’s proper conduct.

## 8 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) Those 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 transactions or circumstances;
  - (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 7(4);
  - (c) if evidence of identity was produced under paragraph 7(4), the taking of such measures as will determine whether the evidence of identity produced under that paragraph is satisfactory; or
  - (d) if evidence of identity produced under paragraph 7(4) is not for any reason satisfactory, the taking of such measures as will require the production by the applicant for business of evidence of identity or the taking of such measures as will produce evidence of identity in accordance with paragraph 7(4).
- (4) The relevant person –
- (a) must keep written records of any examination, steps, measures or determination made or taken or under sub-paragraph (3) (which records shall be records to which paragraph 17 applies); and
  - (b) must, on request, make such findings available to the competent authorities and auditors (if any).
- (5) If –

- (a) if there is a suspicious transaction trigger event; or
  - (b) there are transactions that are—
    - (i) complex;
    - (ii) both large and unusual; or
    - (iii) of an unusual pattern,that have no apparent economic or visible lawful purpose,
- paragraph 11 applies and the relevant person must consider whether an internal disclosure should be made.
- (6) Procedures comply with this sub-paragraph if they require, when evidence of identity, in accordance with paragraph 7(4), is not obtained or produced—
    - (a) the business relationship and transactions to proceed no further;
    - (b) the relevant person to consider terminating that relationship; and
    - (c) the relevant person to consider whether an internal disclosure should be made.

## 9 One-off transactions

- (1) A relevant person must, in relation to a one-off transaction, establish, maintain and operate the procedures specified in sub-paragraph (3), which procedures must comply with the requirements of this paragraph.
- (2) Those procedures must be undertaken before the one-off transaction is entered into.
- (3) The procedures referred to in sub-paragraph (1) are —
  - (a) the identification of the applicant for business;
  - (b) the verification of the identity of the applicant for business using reliable, independent source documents;
  - (c) the obtaining of information on the purpose and intended nature of the one-off transaction; and
  - (d) taking reasonable measures to establish the source of funds.
- (4) Sub-paragraph (1) does not require verification of identity to be produced if —
  - (a) the identity of the applicant for business is known to the relevant person;
  - (b) the relevant person knows the nature and intended purpose of the relationship; and
  - (c) the relevant person has satisfied itself that —
    - (i) the applicant for business is a trusted person; or
    - (ii) the transaction is an exempted one-off transaction.
- (5) If —

- (a) there is a suspicious transaction trigger event, or
- (b) there are transactions that are—
  - (i) complex; or
  - (ii) both large and unusual,that have no apparent economic or visible lawful purpose,

paragraph 11 applies instead of sub-paragraph (4) of this paragraph and the relevant person must consider whether an internal disclosure should be made.

- (6) Except as provided in sub-paragraph (4), procedures comply with this sub-paragraph if they require, when evidence of identity in accordance with sub-paragraph (3) is not obtained or produced—
  - (a) the one-off transaction not to be carried out; and
  - (b) the relevant person to consider whether an internal disclosure should be made.

## 10 Introduced business

- (1) If an applicant for business is introduced to a relevant person by a third party (“the introducer”), the relevant person may, if it thinks fit, comply with this paragraph, instead of paragraphs 7 or 9.
- (2) The relevant person must establish, maintain and operate the procedures specified in sub-paragraph (4).
- (3) Those procedures must be undertaken before a business relationship is entered into.
- (4) The procedures referred to in sub-paragraph (2) are —
  - (a) the production by the introducer of evidence of identity of the applicant for business in accordance with paragraph 7(4); or
  - (b) the taking of such other measures as will produce evidence of identity in accordance with paragraph 7(4).
- (5) Sub-paragraph (2) does not require verification of identity to be produced if the relevant person —
  - (a) has identified the applicant for business and the beneficial owner;
  - (b) knows the nature and intended purpose of the relationship; and
  - (c) has satisfied itself that —
    - (i) the introducer is a trusted person;
    - (ii) the relevant person and the applicant for business are bodies corporate in the same group; or
    - (iii) the transaction is an exempted one-off transaction.
- (6) The relevant person must not enter into a business relationship with a person that is introduced by an introducer unless written terms of



business are in place between the relevant person and the introducer, and despite sub-paragraphs (3) and (4), those terms of business, require in all cases the introducer to —

- (a) verify the identity of all applicants for business introduced to the relevant person sufficiently to comply with the money laundering and prevention of terrorist financing requirements;
- (b) verify the identity of the beneficial owner;
- (c) establish and maintain a record of the evidence of identity for at least 5 years calculated in accordance with paragraph 18(1);
- (d) establish and maintain records of all transactions between —
  - (i) the introducer and the applicant for business;
  - (ii) the relevant person and the applicant for business if the introducer has received copies of records relating to those transactions,

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 18(1);

- (e) supply to the relevant person immediately on request, copies of the evidence verifying the identity of the applicant for business and the beneficial owner and all other customer due diligence data held by the introducer in any particular case;
- (f) supply to the relevant person immediately copies of the evidence verifying the identity of the applicant for business and the beneficial owner and all other customer due diligence data, in accordance with paragraph 7(4), held by the introducer in any particular case if —
  - (i) the introducer is to cease trading;
  - (ii) the introducer is to cease doing business with the applicant for business;
  - (iii) the relevant person informs the introducer that it no longer intends to rely on the terms of business entered into under this paragraph;
- (g) inform the relevant person specifically of each case where the introducer is not required or has been unable to verify the identity of the applicant for business or the beneficial owner;
- (h) inform the relevant person if the 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 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 (9).

- (7) A relevant person must ensure that the procedures under sub-paragraph (4) are fit for the purpose of ensuring that the evidence produced or to be produced is satisfactory and that the procedures of the introducer are likewise fit for that purpose.
- (8) A relevant person must take measures to satisfy itself that the procedures for implementing this paragraph are effective by testing them on a random and periodic basis and the written terms of business must confer the necessary rights on the relevant person.
- (9) A relevant person must take measures to satisfy itself that the introducer is a person as described in sub-paragraph (5)(c) and take such measures as necessary to ensure it becomes aware of any material change to the introducer's status or the status of the jurisdiction in which the introducer is regulated.
- (10) If there is a suspicious transaction trigger event, paragraph 11 applies instead of sub-paragraph (5) of this paragraph and the relevant person must consider whether an internal disclosure should be made.
- (11) Except as provided in sub-paragraph (5), procedures comply with this sub-paragraph if they require, when evidence of identity in accordance with paragraph 7(4) is not obtained or produced —
  - (a) the business relationship and transactions to proceed no further; and
  - (b) the relevant person to terminate that relationship and consider whether an internal disclosure should be made.
- (12) 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 introducer.
- (13) In sub-paragraph (5)(c)(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.

## **11 Enhanced customer due diligence**

- (1) Enhanced customer due diligence is required if —
  - (a) an applicant for business, a new business relationship or a continuing business relationship poses a higher risk as assessed by the risk assessment carried out in accordance with paragraph 4; or
  - (b) the circumstances set out in any of paragraphs 7(6), 8(5), 9(5), 10(11) and 13(10) apply.
- (2) Matters that may pose a higher risk include but are not restricted to —

- (a) a business relationship or one-off transaction with —
    - (i) a politically exposed person; or
    - (ii) a person or legal arrangement resident or located in a country that the relevant person has reason to believe does not apply, or insufficiently applies, the FATF Recommendations in respect of the business or transaction in question;
  - (b) a person that is the subject of a warning issued by a competent authority;
  - (c) a company that has nominee shareholders or shares in bearer form;
  - (d) the provision of banking services for higher-risk accounts or high net-worth individuals;
  - (e) a legal arrangement;
  - (f) a situation that by its nature presents a risk of money laundering or the financing of terrorism.
- (3) In this paragraph “enhanced customer due diligence” means steps, additional to the measures specified in paragraphs 6 to 8 and 10 to 16, for the purpose of identifying applicants for business and other persons, namely —
- (a) considering whether additional identification data needs to be obtained;
  - (b) considering whether additional aspects of the identity of the applicant for business need to be verified;
  - (c) the taking of reasonable measures to establish the source of the wealth of the applicant for business and any beneficial owner; and
  - (d) considering what on-going monitoring should be carried on in accordance with paragraph 16.

## 12 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 politically exposed person —
- (a) an applicant for business;
  - (b) a customer;
  - (c) any natural person having power to direct the activities of a person mentioned in head (a) or (b);
  - (d) the beneficial owner of a person mentioned in head (a) or (b);
  - (e) a known beneficiary of a legal arrangement mentioned in head (a) or (b).

- (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 a politically exposed person; or
  - (b) before any one-off transaction is carried out with a politically exposed person; or
  - (c) if it is discovered that an existing business relationship is with a politically exposed person, to the continuance of that relationship.

### 13 Exceptions from certain customer due diligence procedures

- (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 paragraphs 6 to 12 if the contract of insurance referred to in sub-paragraph (a) 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)(a) or (b) an insurer may, having paid due regard to the risk of money laundering or the financing of terrorism, consider it appropriate to comply with paragraphs 6 to 12 but to defer such compliance until a claim is made or the policy is cancelled.
- (4) If a claim is made on the 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 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).
- (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(s) where invoices for services or goods have been provided to the insurer,and the insurer believes the services or goods to have been supplied.

- (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 paragraphs 6 to 12.
- (7) In respect of a pension, superannuation or similar scheme that provides retirement benefits to employees or workers, 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 applicant for business; and
  - (b) need not comply with paragraph 6(2)(c).
- (8) The relevant person need not comply with paragraph 6(2)(c) if the applicant for business is –
  - (a) a collective investment scheme, as defined in section 1 of the Collective Investment Schemes Act 2008 or equivalent in a jurisdiction listed in the Schedule; and
  - (b) if the manager or administrator of such a scheme is a regulated person or an external regulated business carrying out equivalent regulated activities in a jurisdiction listed in the Schedule.
- (9) The Isle of Man Post Office may not comply with paragraphs 6 to 12 when it issues or redeems a postal order up to the value of £50.
- (10) If there is a suspicious transaction trigger event, paragraph 11 applies instead of sub-paragraphs (5), (7), (8) and (9) and the relevant person must consider whether an internal disclosure should be made.

#### **14 Correspondent banking services**

- (1) This paragraph applies to a business relationship or one-off transaction, as the case may be, which involves correspondent banking services or similar arrangements.
- (2) A relevant person must not enter into or continue a relationship to which this paragraph applies –
  - (a) with a shell bank; or
  - (b) with a financial institution in a country outside the Island unless it is satisfied that the respondent bank does not permit its accounts to be used by shell banks.
- (3) Before entering into a relationship or transaction to which this paragraph applies, a relevant person must –
  - (a) obtain sufficient information about the respondent bank to understand fully the nature of its business;

- (b) determine from publicly available information –
    - (i) the reputation of the respondent bank;
    - (ii) the quality of the supervision to which it is subject; and
    - (iii) whether it has been subject to investigation or regulatory action with respect to money laundering or the financing of terrorism;
  - (c) assess the procedures and controls maintained by the respondent bank for preventing money laundering or the financing of terrorism, and ascertain that they are adequate and effective;
  - (d) ensure that the approval of the relevant person’s senior management is obtained; and
  - (e) document the respective responsibilities of the relevant person and the respondent bank with respect to measures to prevent money laundering and the financing of terrorism.
- (4) If a relationship or transaction to which this paragraph applies involves a payable-through account, a relevant person must be satisfied that the respondent bank –
- (a) has taken measures complying with the requirements of Recommendations 10 and 11 (customer due diligence and record keeping) of the FATF Recommendations 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.
- (5) In this paragraph –
- “correspondent banking services” means banking services provided by a financial institution in one country (“the correspondent bank”) to a financial institution in another country (“the respondent bank”);
- “payable-through account” means an account maintained by a correspondent bank that may be operated directly by a customer of the respondent bank.

## 15 Foreign branches and subsidiaries

- (1) A relevant person must ensure that any branch or subsidiary in a country outside the Island takes measures consistent with this Code, and guidance issued by a competent authority for preventing money laundering and the financing of terrorism, to the extent permitted by the laws and regulations of that country.
- (2) If the minimum measures for preventing money laundering and the financing of terrorism in such a country differ from those required by the law of the Island, the relevant person must ensure that any branch or

subsidiary in that country applies the higher standard, to the extent permitted by the laws and regulations of that country.

- (3) The relevant person must inform the competent authority when a branch or subsidiary is unable to take any of the measures referred to in subparagraph (1) or (2) because it is prohibited by the laws and regulations of the country 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.

## **16 Ongoing monitoring**

- (1) A relevant person must perform ongoing and effective monitoring of any existing 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);
  - (b) appropriate scrutiny of transactions and other activities, paying particular attention to transactions that are —
    - (i) complex;
    - (ii) both large and unusual; or
    - (iii) of an unusual pattern,and have no apparent economic or lawful purpose; and
  - (c) appropriate scrutiny of transactions to ensure that they are consistent with the relevant person’s knowledge of the customer, its business and risk profile and, if necessary, the source of funds.
- (2) The extent and frequency of any monitoring under this paragraph must be determined in accordance with paragraph 4(3).
- (3) If the relevant person deals with a customer otherwise than face-to-face, it must, in carrying out any monitoring under this paragraph, take adequate measures to compensate for any risk arising as a result.

## **PART 3 — RECORD KEEPING**

### **17 Records**

A relevant person must keep —

- (a) a copy of the documents obtained or produced under paragraph 4 and paragraphs 6 to 15 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 data, account files and business correspondence records; and
- (c) such other records as are sufficient to permit reconstruction of individual transactions and compliance with this Code.

## 18 Retention of records

- (1) A relevant person must keep the records required by this Code for at least 5 years from –
  - (a) in the case of records required by paragraph 17(b), the date of the completion of the transaction;
  - (b) in other cases, from the date when –
    - (i) all activities relating to a one-off 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 subparagraph (1), if –
  - (a) a report has been made to a constable under paragraph 21(3)(f);
  - (b) the relevant person knows or believes that a matter is under investigation; 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 constable or competent authority as the case may be.

## 19 Format and retrieval of records

- (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;
  - (b) notify the relevant person if no longer able to comply with head (a).

## **20 Register of money laundering and financing of terrorism enquiries**

- (1) A relevant person must establish and maintain a register of all money laundering and financing of terrorism enquiries made of it by law enforcement or other competent authorities.
- (2) The register must be kept separate from other records and include the date and nature of the enquiry, the name and agency of the inquiring officer, the powers being exercised, and details of the accounts or transactions involved.

## **21 Money Laundering Reporting Officer and disclosures**

- (1) A relevant person must appoint a Money Laundering Reporting Officer (MLRO) to exercise the functions conferred by this paragraph.
- (2) The MLRO must –
  - (a) be sufficiently senior in the organisation of the relevant person or have sufficient experience and authority; and
  - (b) have a right of direct access to the directors or the managing board (as the case may be) of the relevant person,to be effective in the exercise of his or her functions.
- (3) A relevant person must establish, maintain and operate written internal reporting procedures that, in relation to its relevant business, 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 suspicions of money laundering or the financing of terrorism activity or suspicions of attempted money laundering or the attempted financing of terrorism activity;
  - (b) ensure that there is a clear reporting chain under which those suspicions will be passed to the MLRO;
  - (c) require reports to be made to the MLRO (“internal disclosures”) of any information or other matter that comes to the attention of the person handling that business and that in that person’s opinion gives rise to a knowledge or suspicion that another

- person is engaged in money laundering or the financing of terrorism or attempted money laundering or the attempted financing of terrorism;
- (d) require the MLRO to consider any report in the light of all other relevant information available to him or her for the purpose of determining whether or not it gives rise to a knowledge or suspicion of money laundering or the financing of terrorism or attempted money laundering or the attempted financing of terrorism;
  - (e) ensure that the MLRO has full access to any other information that may be of assistance to him or her and that is available to the relevant person; and
  - (f) enable the information or other matter contained in a report (“external disclosure”) to be provided as soon as is practicable to a constable who is for the time being serving with the organisation known as the Financial Crime Unit if the MLRO knows or suspects that another is engaged in money laundering or the financing of terrorism or attempted money laundering or the attempted financing of terrorism.
- (4) A relevant person must establish and maintain separate registers of –
- (a) all internal disclosures; and
  - (b) all external disclosures.
- (5) However, 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 subparagraph (6) can be presented separately for internal disclosures and external disclosures upon request by a competent authority.
- (6) The registers must include details of –
- (a) the date on which the report is made;
  - (b) the person who makes the report;
  - (c) whether it is made to the MLRO or deputy MLRO or, for external disclosures, the constable’s name; and
  - (d) information sufficient to identify the relevant papers.

## **PART 4 – STAFFING, TRAINING AND MONITORING**

### **22 New 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 or partners (as the case may be) of the relevant person and of all new appropriate employees and workers.

**23 Staff training**

A relevant person must provide or cause to be provided education and training, including refresher training, (not less than annually) for all directors 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 prevention of money laundering and terrorist financing requirements;
- (b) their personal obligations in relation to the money laundering and prevention of terrorist financing requirements;
- (c) the internal reporting procedures established under paragraph 21;
- (d) the relevant person's policies and procedures to prevent money laundering and the financing of terrorism;
- (e) the relevant person's customer identification, 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; and
- (h) new developments, including information on current techniques, methods and trends in money laundering and the financing of terrorism.

**24 Technological developments**

A relevant person must maintain appropriate procedures and controls for preventing the misuse of technological developments for the purpose of money laundering or the financing of terrorism.

**25 Monitoring and testing compliance**

A relevant person must maintain appropriate procedures for monitoring and testing compliance with the money laundering and prevention of terrorist financing requirements, having regard to —

- (a) the risk of money laundering and the financing of terrorism; and
- (b) the nature and size of the organisation of the relevant person.

## PART 5 – MISCELLANEOUS

### 26 Anonymous and fictitious name accounts

A relevant person must not set up 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.

### 27 Shell banks

- (1) A relevant person must not enter into or continue a relationship with a shell bank.
- (2) A relevant person must take adequate measures to ensure that he or she does not enter into or continue a relationship with a bank that permits its accounts to be used by a shell bank.

## PART 6 – OFFENCES AND REVOCATIONS

### 28 Offences

- (1) A person who contravenes requirements of this Code is guilty of an offence and liable –
  - (a) on summary conviction—
    - (i) in a case relating to the financing of terrorism, to custody for a term not exceeding 12 months or to a fine not exceeding £5,000, or to both; or
    - (ii) in any other case, to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both;
  - (b) on conviction on indictment, 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 head (a) applies, any other relevant guidance issued by a body that regulates, or is representative of, any trade, business, profession or employment carried on by that person.
- (3) In proceedings against a person for an offence under this paragraph, it is a defence for the person to show that he or she took all reasonable measures to avoid committing the offence.
- (4) If an offence under this paragraph is committed by a 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, 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 liable to the penalty provided for it.
- (6) In this paragraph “officer” includes —
- (a) a director, manager or secretary;
  - (b) a person purporting to act as a director, manager or secretary;
  - (c) a member, if the affairs of the body are managed by its members.

## 29 Revocations

The following are revoked —

- (a) Proceeds of Crime (Money Laundering) Code 2010<sup>5</sup>;
- (b) Proceeds of Crime (Money Laundering) (Amendment) Code 2010<sup>6</sup>; and
- (c) Prevention of Terrorist Financing Code 2011<sup>7</sup>.

**MADE 13<sup>TH</sup> MARCH 2013**

**J P WATTERSON**  
*Minister for Home Affairs*

---

<sup>5</sup> SD 508/10

<sup>6</sup> SD 1034/10

<sup>7</sup> SD 503/11



**SCHEDULE**

[Paragraphs 3 and 13]

**LIST OF COUNTRIES**

Australia	Japan
Austria	Jersey
Belgium	Liechtenstein
Bermuda	Luxembourg
British Virgin Islands	Malta
Brazil	Mauritius
Canada	Monaco
Cayman Islands	Netherlands
Cyprus	New Zealand
Denmark	Norway
Finland	Portugal
France	Singapore
Germany	South Africa
Gibraltar	Spain
Guernsey	Sweden
Hong Kong	Switzerland
Iceland	Taiwan
Ireland	United Kingdom
Italy	United States of America





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

This Code replaces and consolidates, with some minor updates and drafting amendments, the Proceeds of Crime (Money Laundering) Code 2010 and the Prevention of Terrorist Financing Code 2011, which are revoked. This Code is made jointly under section 157 of the Proceeds of Crime Act 2008 and section 27A of the Terrorism (Finance) Act 2009. The Code contains provisions in line with the Financial Action Task Force's Recommendations on combating money laundering and financing of terrorism & proliferation. Failure to comply with the requirements of this Code is an offence.