



**Isle of Man
Government**

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DEPARTMENT OF HOME AFFAIRS

CONSULTATION

Draft Proceeds of Crime (Business in the Regulated Sector) Order 2014

Draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2014

Simplified Due Diligence; Intermediary Pooled Accounts

CONTENTS

Section	Page no.
Consultation summary	
Glossary	3
Introduction	4
Section 1 – Draft Proceeds of Crime (Business in the Regulated Sector) Order 2014 Proposals	7
Section 2 – Draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2014	
Proposals	9
Summary of Key Changes	9
Table of Clauses	10
Section 3 – Simplified Due Diligence; Intermediary Pooled Accounts	
Rationale	21
Proposals	22
Questions	24
Impact	25
Feedback to consultation	26
Appendix A	Consultation draft of the Proceeds of Crime (Business in the Regulated Sector) Order 2014
Appendix B	Consultation draft of the Anti-Money Laundering and Countering the Financing of Terrorism Code 2014
Appendix C (1)	FATF Recommendation 10; Customer Due Diligence
Appendix C (2)	FATF Recommendation 17; Reliance on third parties
Appendix C (3)	Intermediary Pooled Accounts – simplified due diligence
Appendix C (4)	Intermediary Pooled Accounts – allowed intermediaries & activities
Appendix D	The six consultation criteria
Appendix E	List of persons or bodies consulted regarding these proposals

GLOSSARY

2013 Code the Money Laundering and Terrorist Financing Code 2013

AML/CFT anti-money laundering and combating terrorist financing

AML/CFT legislation the Island's anti-money laundering and countering of terrorism financing legislation which includes:

- (a) the *Anti-Terrorism and Crime Act 2003*;
- (b) Part 3 of the *Proceeds of Crime Act 2008*;
- (c) the *Terrorism (Finance) Act 2009*;
- (d) the *Terrorist Asset-Freezing etc. Act 2010* (of Parliament) as applied to the Island;
- (e) any statutory document currently in operation under any of those enactments for example the *Money Laundering and Terrorist Financing Code 2013*

CDD Customer Due Diligence

The Department the Department of Home Affairs

The draft Code the draft Anti-Money Laundering and Counter Terrorist Financing Code 2014

The draft Order the Proceeds of Crime (Business in the Regulated Sector) Order 2014

EI Eligible Introducer

FATF Financial Action Task Force

IMF International Monetary Fund

MLRO Money Laundering Reporting Officer

NPO's Non-Profit Organisations

PEP Politically Exposed Person

POCA the *Proceeds of Crime Act 2008*

SNPO's Specified Non-Profit Organisations

INTRODUCTION

This consultation covers three linked matters:

- changes to Schedule 4 of the Proceeds of Crime Act 2008 ("POCA"), being made by the draft Proceeds of Crime (Business in the Regulated Sector) Order 2014 ("the draft Order");
- replacement of the Money Laundering and Terrorist Financing Code 2013 with the draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2014 ("the draft Code"); and
- proposals for potential simplification of certain requirements.

Each matter is dealt with in individual Sections of this consultation document.

Background

The Financial Action Task Force ("FATF") is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering and combating terrorist financing ("AML/CFT") standard.

In June 2012 the Council of Ministers issued a strong commitment to following international standards in [combatting money laundering and the financing of terrorism and proliferation](#)

A link to the FATF 40 recommendations, can be found [here](#)

In October 2012, the Island joined MONEYVAL, the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism. The aim of MONEYVAL is to ensure that its members have in place effective systems to counter money laundering and terrorist financing and comply with the relevant international standards in these fields.

MONEYVAL assesses its members' compliance with all relevant international standards, especially the FATF 40 recommendations, in the legal, financial and law enforcement sectors through a peer review process of mutual evaluations. MONEYVAL's reports provide highly detailed feedback on ways to improve the effectiveness of domestic regimes to combat money laundering and terrorist financing; as well as recommendations for strengthening states capacities to co-operate internationally in these areas. The MONEYVAL assessments will in future take the place of International Monetary Fund ("IMF") assessments in relation to AML/CFT matters.

A team from MONEYVAL will be visiting the Isle of Man in the first half of 2016 to assess the Island's measures in respect of AML/CFT. This on-site evaluation will focus on effectiveness of the Island's AML/CFT measures and will be preceded by a detailed questionnaire dealing with the Island's technical compliance with the FATF 40 Recommendations. That questionnaire will have to be completed in the third quarter of 2015.

The previous assessment of the Island's AML/CFT measures by the IMF published in 2009 was generally positive, but it is extremely important that MONEYVAL's forthcoming report does not judge the Island to have failed to act on the IMF's recommendations or to have fallen behind in its compliance with evolving international standards.

A positive outcome from MONEYVAL's assessment is critical for the Island's international reputation, and for its continued economic prosperity. This is particularly true at a time when

international finance centres are subject to increased scrutiny by the media, international bodies and governments.

Following a review of the Island's AML and CFT legislation, it was considered to be particularly important to take timely action to redraft elements of the legislation due to the impending addition of business sectors which have not, to date, been subject to AML and CFT oversight. This redrafting also provides the Department with an opportunity to make the legislation clearer and therefore more user friendly.

Part 1 of this consultation concerns changes required to Schedule 4 to POCA. Changes to this Schedule can be made by Order. The changes are required to address areas which are more vulnerable to money laundering and to bring the Island in line with the FATF requirements.

The Money Laundering and Terrorist Financing Code 2013 ("the 2013 Code") came into force in July 2013. As noted at the time, the purpose of the 2013 Code was not to fully take account of the revised FATF Recommendations. A full audit of the 2013 Code against the revised Recommendations was planned to be carried out after the FATF has published its Methodology. The draft Code – details of which are covered in Part 2 - has been prepared as a result of this full audit.

The draft Code sets out the requirement, amongst others, for relevant persons to conduct due diligence on customers. The customer due diligence ("CDD") requirements are set out in Part 4 of the draft Code under the following paragraphs:

- [10] New business relationships
- [11] Continuing business relationships
- [12] One-off transactions
- [13] Beneficial ownership and control
- [14] Politically exposed persons
- [15] Enhanced customer due diligence

The draft Code allows for simplified due diligence measures in relation to paragraphs [10-15] to be carried out in certain circumstances. These circumstances, which are set out in Part 6 of the draft Code are summarised below:

[20] Acceptable applicants

The simplified due diligence measures remove the requirement to verify the identity of the customer if that customer is a company listed on a recognised stock exchange, a nominee of such a company or a trusted person (as defined in Paragraph 3 of the draft Code, Interpretation). The simplified measures would also remove the requirement to verify the identity of a customer for a one-off transaction if the customer is a trusted person or the transaction is an exempted one-off transaction (as defined in Paragraph 3 of the draft Code, Interpretation).

[21] Eligible introducers

The introducer may provide the relevant person with documentation to verify the identity of the customer provided certain criteria are met. As a result of the simplification, if the introducer is a trusted person, the requirement for the relevant person to verify the identity of the customer is removed.

[22] Miscellaneous

Under the simplification, Paragraphs [10 to 15] are disapplied for certain activities such as certain contracts of insurance, collective investment schemes [and postal orders under the value of £50]

[22(9)] Isle of Man Post Office

TBC – The simplified measures would disapply Paragraphs [10 to 15] when the IOMPO issues or administers funds on behalf of the government or other statutory boards or accepts payments for services on behalf of the government, other statutory boards or utilities and telecoms service providers, Isle of Man charities or other third parties where the transaction is under £650 cash or £5,000 by any other means of payment.

Section 3 of this consultation relates to further possible simplified due diligence measures in relation to intermediary pooled accounts used by certain intermediary businesses, and is to be read in conjunction with the consultation on the draft Code in Section 2. The simplifications, if so determined, could be enacted as part of the draft Code.

SECTION 1 – DRAFT PROCEEDS OF CRIME (BUSINESS IN THE REGULATED SECTOR) ORDER 2014

PROPOSALS

The draft Order, set out in Appendix A, would amend Schedule 4 to POCA, in the following areas, thus extending the list of relevant businesses for the purpose of that Act:

Consideration may be given to adding these businesses into the schedule to the Designated Businesses (Registration and Oversight) Bill 2014 in due course. This would be subject to a separate consultation by the relevant authorities.

Non-profit organisations

The FATF and MONEYVAL are placing increasing scrutiny on non-profit organisations (“NPO’s”) and their vulnerability toward the financing of terrorism. Although charities are perhaps the most obvious type of NPO, the FATF’s definition is much broader, including anybody that raises and distributes funds for charitable, religious, cultural, educational, social or fraternal purposes or for carrying out other types of “good works”. Certain types of NPO, for example a body that distributes funding outside of the jurisdiction in which it is based, are viewed by the FATF and MONEYVAL as being generally higher risk.

Whilst the Isle of Man Government is not aware of any charities or other NPOs in the Island being used for the financing of terrorism, it cannot afford to be complacent. Without appropriate measures in place to reduce the risk of terrorist financing to a minimum, the Island is highly likely to be judged by MONEYVAL as failing to meet international standards.

The Isle of Man Government wishes to comply with international standards and best practices in this area and although it considers some changes are required, it has no wish to damage the voluntary/charitable sector in the Island.

Previous consultation feedback on this area has broadly agreed with previous proposals to register and oversee NPOs adherence to the AML/CFT requirements but only where such oversight is targeted at those NPOs which present a risk to the Island. To this end, the draft Order proposes to only bring into Schedule 4 to POCA those NPOs which have an annual (or anticipated annual) turnover of over £5,000, and are based or registered on the Island and that remit over 30% of their turnover to higher risk countries. These NPOs are referred to as Specified Non-Profit Organisations “SNPOs”.

In addition, the Financial Supervision Commission will be providing outreach and guidance on this subject to the charities sector later this year.

Tax advisors

The proposals add tax advisors to the list of relevant businesses in Schedule 4 to POCA to bring the position in line with the UK, Jersey and Guernsey.

Payroll services

It is understood by the Department that payroll services present an increased risk of money laundering, therefore the proposals add this industry to the list of relevant businesses.

Controlled machines

In anticipation of further changes which are anticipated to broaden the variety and scope of controlled machines that can be operated in the Island, the proposals bring controlled machines under the same AML/CFT regime that already applies to the Island's domestic gambling arrangements in casinos and licensed betting offices.

Virtual currencies

Due to the recent development and increasing profile of businesses dealing in convertible virtual currencies, in order to minimise the potential AML/CFT risks, the Department proposes to make these businesses relevant businesses for the purposes of POCA. The activities carried on by these businesses include the issuing, transmitting, transferring, providing safe custody or storage of, administering, managing, lending, buying, selling, exchanging or otherwise trading or intermediating convertible virtual currencies, including crypto-currencies 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.

PART 2 – DRAFT ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM CODE 2014

PROPOSALS

When the Department undertook a review of the AML/CFT legislation, it was conscious that several amendments had been made to the 2013 Code and its predecessors over the years and it therefore took the opportunity to reconsider the 2013 Code's general structure in order to assist users in understanding and following its various requirements. As such, the Department proposes to restructure the 2013 Code into new parts and revise the order of several provisions. Whilst such a change is not required from a strictly legal perspective, the Department considers that the proposed revisions to the 2013 Code's structure as set out in the draft Code which would repeal and replace the 2013 Code will improve the overall flow and accessibility of the legislation and therefore be of significant benefit to users.

The proposed changes to the structure as laid out in the draft Code are as follows:

- (a) a new **"general requirements"** part has been added to draw attention to the main purpose of the draft Code and distinguish the application of certain provisions to specified non-profit organisations;
- (b) a new **"risk assessment and ongoing monitoring"** part has been added to unite the revised risk assessment and ongoing monitoring requirements;
- (c) a new **"specified non-profit organisations"** part has been added to contain the customer due diligence requirements proposed for such organisations;
- (d) a new **"simplified customer due diligence"** part has been added to consolidate all of the main concessionary provisions such as those relating to acceptable applicants and eligible introducers;
- (e) a new **"reporting, disclosures and offences"** part has been added to combine the revised reporting and disclosure provisions with the offences; and
- (f) a new **"compliance"** part has been added to merge the main compliance and record keeping requirements.

The Department has sought to retain the wording used in the 2013 Code where possible, however the implementation of the specific changes highlighted below necessitated a full review of the language and terminology used throughout the draft Code in order to improve consistency, minimise duplication and avoid the paraphrasing of similar requirements that may confuse users.

Summary of key changes

The list below provides a high-level summary of the key changes between the 2013 Code and the draft Code included at Appendix B. Please refer to the table or provisions for additional detail on the changes made.

1. **Amendments to Schedule 4 to POCA** – The proposed amendments to Schedule 4 discussed in Section 1 would expand the definition of "business in the regulated sector" and thereby broaden the application of the draft Code to business sectors which have not, to date, been subject to AML/CFT controls.
2. **Definitions** – Changes have been made to the definitions and terminology used throughout the draft Code in order to address the issues detailed in the table of provisions.
3. **Risk assessment** – The risk assessment provisions in the 2013 Code are contained within a single paragraph. The Department felt that the existing provision failed to distinguish between the requirement on relevant persons to conduct both an assessment of relevant business risks and an assessment of the risk posed by each customer. The draft Code

includes separate risk assessment provisions for business, customer and technological developments in order to clarify the requirements.

4. **Customer due diligence** – Now simplified and split out into standard due diligence enhanced.
5. **Simplified Due Diligence** – The exceptions, acceptable applicants and eligible introducers are now located in a separate section.
6. **Disclosures** – No material changes.
7. **Compliance** – No material changes.
8. **Specified non-profit organisations** – Schedule 4 to POCA is proposed to be extended to cover those NPOs which are perceived to be more vulnerable to abuse for terrorist financing. The draft Code addresses SNPOs by applying more appropriate safeguards to the NPO sector.
9. **Miscellaneous** – There are no material changes but the following minor amendments have been made -
 - (a) Ensures all references to a “reliable source” included an “independent source”.
 - (b) Uses “appropriate procedures and controls” for consistency.
 - (c) Uses “prevention of money laundering and countering the financing of terrorism” where possible for consistency, e.g. instead of “combatting”, “terrorist financing” etc...
 - (d) Replaces “anti-money laundering and countering the financing of terrorism requirements” with “AML/CFT”, where possible.
 - (e) “ML/TF” has now been defined, therefore negating the need to repeat the phrase in certain circumstances.
 - (f) Definition of “risk” has been replaced with “risk of ML/TF”. References to “risk” throughout the draft Code have been clarified.
 - (g) Phrases using the term “beneficial ownership” have been amended to use “beneficial owner” for clarity.

A new piece of legislation, the Terrorism and Other Crimes (Financial Restrictions) Bill 2014, is awaiting Royal Assent which is anticipated at the October 2014 sitting of Tynwald. This Act will change the Tynwald procedure for the draft Code from “Approval” to “Lay Before”, repeal the Terrorism (Finance) Act 2009, place the applied UK Terrorist Asset-Freezing Etc. Act 2010 provisions in a Manx Act of Tynwald and change the period of custody for non-compliance with the draft Code so that it is the same for all cases whether terrorism related or not.

Table of provisions

This table is set out in the order of the paragraphs in the draft Code and the brief note is intended to compare each paragraph in the draft Code to the equivalent in the 2013 Code currently in force.

<i>Para</i>	<i>Title</i>	<i>Brief note of intended effect</i>
PART 1 – INTRODUCTORY		
1	Title	Provides the short title of the draft Code only.
2	Commencement	Introductory paragraph to state commencement date.

<i>Para</i>	<i>Title</i>	<i>Brief note of intended effect</i>
3	Interpretation	<p>Interpretation of terms used in the draft Code.</p> <ol style="list-style-type: none"> 1. The concept of an "applicant for business" has been replaced with "customer". This is intended to make the application of the draft Code much clearer, particularly in respect of certain products where the product ownership may change over time. Subsequent amendments have been made to update references throughout the draft Code. The definition of customer for Specified NPOs matches the FATF term of "beneficiary" in accordance with FATF Recommendation 8. 2. Definition of "beneficial owner" has been amended to incorporate the phrase "ultimate effective control" to match the FATF terminology. 3. The term "one-off transaction" has been replaced with "occasional transaction" to match the FATF terminology. 4. The definition of "exempted one-off transaction" (now "exempted occasional transaction") has been amended to harmonise the transaction thresholds i.e.: <ol style="list-style-type: none"> a. Bureau de change and cheque encashment – Increase from €1,000 to €5,000 in line with the UK and industry feedback; b. Money transmission services (apart from cheque encashment) – Remain at €1,000; and c. Virtual currency services – €1,000. 5. Added a new definition for "foundation" to cover foundations established under the Foundations Act 2011 and similar entities formed under enactments in other jurisdictions. 6. The definition of "correspondent banking services" has been amended to "correspondent services" to include banking <u>and</u> "money or value transfer services and other similar relationships". References to "correspondent / respondent banks" throughout the draft Code have subsequently been amended to "correspondent / respondent institution" 7. References to "relationship" in the "correspondent banking services" paragraph now refer to "business relationship" in the new "correspondent services" paragraph. 8. The definitions of "employee" and "worker" have been amended to include – <ol style="list-style-type: none"> a. "contract of employment"; b. "contract of service"; c. "employee"; and d. "partnership agreement". 9. The definition of "money laundering and terrorist financing requirements" has been amended to "<u>anti</u>-money laundering and <u>prevention of</u> terrorist financing requirements" to emphasise the purpose of those

Para	Title	Brief note of intended effect
		<p>requirements.</p> <p>10. The definition of "politically exposed person" has been amended to remove the phrase "resident in a country outside the Island" so that the definition will include domestic politically exposed persons ("PEPs") in line with FATF Recommendation 12:</p> <p><i>"...Financial institutions should be required to take reasonable measures to determine whether a customer or beneficial owner is a domestic PEP or a person who has been entrusted with a prominent function by an international organisation..."</i></p> <p>Sub-paragraph (a)(ix) has been amended as follows to match the FATF wording –</p> <p><i>"...a senior member of management of, or a member of, the governing body of an international entity or organisation;"</i></p> <p>11. New definitions have been added for "domestic / foreign politically exposed persons" to distinguish between Isle of Man-resident and non-resident PEPs. Only domestic PEPs considered to be higher risk need to be subject to additional scrutiny.</p> <p>12. The concept of a "suspicious transaction trigger event" has been replaced with separate definitions for "suspicious activity" and "unusual activity" in order to move away from prescriptive terminology and encourage relevant persons to consider customer activity on a case-by-case basis.</p> <p>13. The new definition of "suspicious activity" clarifies that a relevant person must make an internal disclosure to the Money Laundering Reporting Officer ("MLRO") where there is knowledge or suspicion (or reasonable grounds to know or suspect) money laundering or terrorist financing. The new definition ties in more closely with sections 142-144 of POCA.</p> <p>14. The new definition of "unusual activity" specifies some situations where a relevant person should perform appropriate scrutiny in order to consider whether to make an internal disclosure to the MLRO and consider enhanced due diligence, e.g. where there are transactions that have no apparent economic or lawful purpose.</p> <p>15. Updated the definition of "director" and "officer" to include council members of foundations.</p> <p>16. The definition of "senior management" has been moved from the "new business relationships" paragraph and the phrase "Isle of Man resident" has now been removed.</p> <p>17. The definition of "evidence of identity" has been amended to "evidence of a person's identity obtained in accordance with the procedures specified in paragraphs...".</p> <p>18. The definition of "enhanced customer due diligence" has been moved into the "interpretation" paragraph for clarity.</p> <p>19. The definition of "trusted person" has been amended to clarify that nominee companies of relevant persons (or external regulated businesses) may be regarded as "trusted</p>

Para	Title	Brief note of intended effect
		<p>persons” where the relevant persons (or external regulated businesses) are responsible for the nominee company’s compliance with the AML/CFT requirements.</p> <p>20. Reference to a “life insurance policy” has been corrected to “life assurance policy” in paragraph 3(3).</p> <p>21. The definition of “country” has been removed from the draft Code. All references to “country” or “territory” in the draft Code have been replaced with “jurisdiction” in order to match FATF terminology.</p> <p>22. Added definition of “List A” – countries required to be treated as higher risk.</p> <p>23. Added definition of “List B” – higher risk jurisdictions for AML and CFT purposes.</p> <p>24. Added definition of “List C” – equivalent jurisdictions to replace the Schedule.</p>
PART 2 – GENERAL REQUIREMENTS		
4	General requirements	<p>No significant changes from the 2013 Code.</p> <p>The requirement for the relevant person to:</p> <p><i>“...establish, maintain and operate procedures and controls to enable the relevant person to manage and mitigate the risks that have been identified from the assessment carried out...”</i></p> <p>has been moved to this paragraph in order to avoid duplication in the new risk assessment provisions. The requirement is in line with FATF Recommendation 1 which states:</p> <p><i>“Countries should require financial institutions and designated businesses and professions (DNFBPs) to identify, assess and take effective action to mitigate their money laundering and terrorist financing risks”.</i></p> <p>This requires relevant persons to take a risk-based approach and base their identification procedures on the results of the risk assessments carried out under part 3.</p> <p>Following the separation of various requirements from the “money laundering reporting officer” paragraph, the requirement to establish, maintain and operate appointment procedures has been clarified.</p> <p>The requirement to take a risk-based approach when carrying out customer due diligence has been moved from the “risk assessment” paragraph in the 2013 Code to this paragraph in order to highlight the importance of this provision and avoid duplication in new the risk assessment paragraphs.</p>
5	Specified non-profit organisations (SNPOs)	<p>This applies only to “specified non-profit organisations” as defined in Schedule 4 to POCA.</p> <p>A “SNPO” is an NPO which has an annual (or anticipated) income of over £5,000 and remits more than 30% of its income to higher risk jurisdictions.</p> <p>The new paragraph would disapply the general customer due diligence paragraphs (10-12), as the new part 5 would apply to</p>

Para	Title	Brief note of intended effect
		<p>SNPOs instead.</p> <p>This paragraph is in place because the requirements to identify and verify the identification of every donor and recipient of charitable income would be wholly inappropriate. The AML provisions require relevant businesses to identify where the money is coming from, terrorist financing countermeasures require a relevant business to identify where the money is going. The primary aim of addressing SNPOs in the draft Code is to reduce the risk of inadvertent terrorist financing, as such the draft Code will require SNPOs to take reasonable measures to verify that money is reaching its intended destination and is not being diverted to terrorist organisations.</p> <p>It is understood that this will only apply to a very small number of NPOs on the Island. Furthermore, it is believed that the requirements under the draft Code would not be overly burdensome to those SNPOs affected and will mirror basic good governance checks being undertaken in the course of the NPOs activities.</p> <p>Definitions of "business relationship" and "one-off transaction" have been retained for SNPOs, as these terms are used throughout the draft Code.</p>
PART 3 – RISK ASSESSMENT AND ONGOING MONITORING		
6	Business risk assessment	Business and customer risk assessments have been separated out in the draft Code for clarity. Some of the requirements have been moved from the "risk assessment" paragraph in the 2013 Code to the revised "general requirements" paragraph. There are no practical changes from the 2013 Code.
7	Customer risk assessment	<p>Relevant provisions from the "risk assessment" provision in the 2013 Code have been moved into the new paragraph 7 to distinguish between business and customer risk assessments. This provision clarifies that customer risk assessments must take into account the relevant risk factors identified by the business risk assessment.</p> <p>Sub-paragraph (2)(b)(iii) of the 2013 Code, which read "the products and services provided by the relevant person to the customer", has been replaced with "the persons to whom, and the manner in which the products and services are provided" to achieve consistency with similar provisions throughout the draft Code.</p> <p>Specific provision added to have regard to the location of the customer's activities.</p>
8	Technological developments risk assessment	The "technological developments" paragraph in the 2013 Code has been enhanced and moved to the new "risk assessment and ongoing monitoring" part. The revised paragraph details the requirement for relevant persons to undertake a technological developments risk assessment. This provides further clarity on the events which would require a risk assessment in line with FATF Recommendation 15:

Para	Title	Brief note of intended effect
		<p><i>"Countries and financial institutions should identify and assess the money laundering or terrorist financing risks that may arise in relation to</i></p> <p><i>(a) the development of new products and new business practices, including new delivery mechanisms, and</i></p> <p><i>(b) the use of new or developing technologies for both new and pre-existing products. In the case of financial institutions, such a risk assessment should take place prior to the launch of the new products, business practices or the use of new or developing technologies. They should take appropriate measures to manage and mitigate those risks."</i></p>
9	Ongoing monitoring	<p>There are no practical changes from the 2013 Code.</p> <p>This provision has been moved from the "client due diligence" part in the 2013 Code into the new "risk assessment and ongoing monitoring" part.</p> <p>The requirement has been amended to reflect the new definitions of "suspicious activity" and "unusual activity".</p> <p>Sub-paragraph (1)(a) has been amended to specify "all information" rather than simply 'information', to emphasise that relevant persons should review all client due diligence information held to ensure it is up-to-date and appropriate.</p> <p>Sub-paragraph (c) (which specifically referred to the risk of non-face-to-face business) has been removed, as the business and customer risk assessments already require relevant persons to have regard to the manner in which products and services are provided.</p>
PART 4 – CUSTOMER DUE DILIGENCE		
10	New business relationships	<p>The definition of "senior management" in the 2013 Code only applied to this paragraph but has now been revised and moved to paragraph 3 (interpretation).</p> <p>Sub-paragraph 4(d) has been added to disapply the short-term concession for verifying where the relevant person has identified any suspicious activity.</p> <p>Sub-paragraph (4)(f) (sub-paragraph (3)(e) in the 2013 Code) has been amended so that transactions must be "appropriately" limited and monitored.</p>
11	Continuing business relationships	<p>There are no material changes from the 2013 Code.</p> <p>The term "circumstances" has been replaced with "activity" in sub-paragraph (3)(a) to be consistent with the rest of the draft Code.</p>
12	Occasional transactions	<p>The term "one-off transactions" has been replaced with "occasional transactions" to match the FATF terminology.</p> <p>The "exempted occasional transactions" threshold has been increased from €1,000 to €5,000 for bureaux de change in line with the UK and with feedback from industry.</p> <p>The "exempted occasional transactions" definition has been amended to include paragraph 1(II) (virtual currency) of Schedule</p>

Para	Title	Brief note of intended effect
		4 to POCA alongside money transmission services (apart from cheque encashment). The threshold is €1,000.
13	Beneficial ownership and control	<p>Note that the term "applicant for business" has been replaced with "customer" throughout the draft Code to clarify the intended application and avoid confusion. This change also clarifies the position in respect of some fiduciary and insurance products where the "applicant for business" is no longer involved in the business relationship. Use of the term "customer" is in line with the FATF Recommendations.</p> <p>This paragraph clarifies that the recipient or ultimate beneficiary of a payment or loan must be identified prior to the transaction being undertaken.</p> <p>Sub-paragraph (c) in the 2013 Code (which specifically referred to the risk of non-face-to-face business) has been removed, as the business and customer risk assessments already require relevant persons to have regard to the manner in which products and services are provided.</p> <p>Added "the trustees or any other controlling party" into sub-paragraph (3)(c) which deals with the identification of parties in the case of a legal arrangement.</p> <p>Added "the founder and any other dedicator" into sub-paragraph (3)(d) which deals with the identification of parties in the case of a foundation.</p> <p>Added a new sub-paragraph to cover customers of a life assurance policy.</p>
14	Politically exposed persons	<p>Domestic PEPs are now included in the definition in line with FATF Recommendation 12.</p> <p>The wording in the paragraph has been amended to ensure that relevant persons determine whether "any" customer, beneficial owner etc... is a PEP, rather than just "a".</p> <p>Added "for specified non-profit organisations, any beneficiary of charitable funds" and "for legal arrangements, any known beneficiary" in sub-paragraph (1).</p>
15	Enhanced customer due diligence	<p>No material changes from the 2013 Code aside from definitional changes for "customer" and "beneficial owner" ("beneficiary" for specified NPOs) etc...</p> <p>Higher risk factors now split between those that MUST pose a higher risk and those that MAY pose a higher risk for money laundering.</p> <p>Factors that MUST be considered higher risk requires that enhanced due diligence is undertaken and certain concessions must not be granted. This includes persons subject to public warnings made by a competent authority in any jurisdiction in relation to AML/CFT matters.</p> <p>Created new sub-paragraph (4) stating some that pose a higher risk, i.e. –</p> <p style="padding-left: 40px;">Business relationship / one-off transaction with a person located in a country the relevant person has reason to</p>

Para	Title	Brief note of intended effect
		<p>believe does not apply, or insufficiently applies, the FATF Recommendations; and</p> <p>Customer subject to a warning in relation to AML/CFT matters issued by a competent authority (or equivalent).</p> <p>Moved other examples to a sub-paragraph detailing matters that may pose a higher risk, e.g.:</p> <p>Added 'activity in a jurisdiction the relevant person deems to be higher risk of ML/FT'.</p> <p>Added "activity in a jurisdiction included in List A or B."</p> <p>Replaced "the provision of banking services for higher-risk accounts or high net-worth individuals" has been amended to two separate provisions –</p> <ul style="list-style-type: none"> • the provision of higher risk products; • the provision of services to high-net worth individuals; <p>Added persons performing prominent functions for international organisations.</p> <p>Added 'significant' to "a situation that by its nature presents a <u>significant</u> risk of money laundering or the financing of terrorism."</p> <p>Factors that MAY be considered higher risk are broader, but there may be other factors which mitigate those risks.</p>
PART 5 – SPECIFIED NON-PROFIT ORGANISATIONS		
16	Application	States that this part only applies to SNPOs.
17	New business relationships for specified non-profit organisations	Tailored for SNPOs and to mitigate the risk of terrorist financing as discussed above.
18	Continuing business relationships for specified non-profit organisations	Tailored for SNPOs and to mitigate the risk of terrorist financing as discussed above.
19	Occasional transactions for specified non-profit organisations	Tailored for SNPOs and to mitigate the risk of terrorist financing as discussed above.
PART 6 – SIMPLIFIED CUSTOMER DUE DILIGENCE		
20	Acceptable applicants	<p>Renamed from "Trusted Person" to mirror industry phraseology. These requirements have been consolidated into one provision from "new business" and "one-off transactions" for clarity.</p> <p>No other material changes from the 2013 Code.</p> <p>Consolidated 'acceptable applicant' provisions into a separate concession.</p>

Para	Title	Brief note of intended effect
21	Eligible introducers ("EI")	Renamed from "introduced business" to mirror industry phraseology. Now allows nominee companies of trusted persons to be an EI subject to certain AML/CFT controls being in place. No other material changes from the 2013 Code. Added "and has no reason to believe that" in sub-paragraph (5)(a) to cover FATF Recommendation 10. Revised provision to prohibit chains of EIs. Added "or one-off transaction" in sub-paragraph (3). Removed requirement (in introduced business concession) for the introducer to keep copies of all correspondence between the relevant person and customer.
22	Miscellaneous	Renamed from "exceptions" due to inclusion in new Part 6, however no material changes from the 2013 Code.
PART 7 – REPORTING AND DISCLOSURES		
23	Money Laundering Reporting Officer	This paragraph previously contained reporting procedure provisions, however these have now been moved into a separate paragraph for clarity. Minor changes to MLRO – places a requirement on businesses to ensure that an MLRO is properly resourced. A Deputy MLRO may be appointed and MLRO powers would then also vest in the Deputy.
24	Reporting procedures	This paragraph now includes the specific requirement to report "attempted transactions" related to money laundering or terrorist financing.
25	Internal disclosures	Consolidated requirements to make (or consider making) an internal disclosure into the 'Reporting, Disclosures and Offences' part. New paragraph to clarify that a relevant person must obtain enhanced due diligence and make an internal disclosure if suspicious transactions are identified (which now includes attempted transactions, per paragraph 23). Clarification on the difference between how unusual transactions and suspicious transactions are treated, i.e. for "unusual transactions" a relevant person must perform appropriate scrutiny of the transaction and <u>consider</u> whether enhanced due diligence is required or if an internal disclosure should be made.
26	External disclosures	New paragraph to clarify that MLRO must make an external disclosure where the MLRO has reasonable grounds to know or suspect money laundering or terrorist financing.
PART 8 – COMPLIANCE		
27	Monitoring and testing compliance	Places a requirement on a relevant business to ensure that the AML/CFT systems are sufficient and procedures are both adequate and being used correctly.

Para	Title	Brief note of intended effect
		Enhanced 'monitoring and testing compliance' paragraph. Linked sub-paragraph (a) to the business risk assessment undertaken in accordance with paragraph 6.
28	New staff appointments	No changes from the 2013 Code.
29	Staff training	No changes from the 2013 Code. Replaced 'cause to be provided' with 'arrange' in 'Staff training'. Added "including the offence of tipping off" to sub-paragraph (g).
30	Record keeping	Included "and the results of any analysis undertaken" in sub-paragraph (b).
31	Record retention	No changes from the 2013 Code.
32	Record format and retrieval	No material changes from the 2013 Code. Reworded sub-paragraph 2(b) of "Format and retrieval" to clarify that if the third party is no longer able to produce copies of the records on request, then the business may not rely on it.
33	Registers of internal and external disclosures	Requirement to maintain these registers has been moved from the MLRO provision into its own paragraph for clarity. Separated out requirement to maintain registers of internal and external disclosures from the 'MLRO and disclosures' paragraph to a separate paragraph in the 'Compliance' part.
34	Register of money laundering and financing of terrorism enquiries	No material changes from the 2013 Code. Changed 'inquiring officer' to 'enquiring officer' in 'Register of money laundering and financing of terrorism enquiries' paragraph.
PART 9 – MISCELLANEOUS		
35	Foreign branches and subsidiaries	No material changes from the 2013 Code.
36	Shell banks	No material changes from the 2013 Code. Replaced 'a bank that permits' with 'a respondent institution that permits' in paragraph on shell banks.
37	Correspondent services	Expanded to include correspondent money and value transmission services. Renamed from "correspondent banking" to "correspondent services". Replaced "document" with "clearly understand" in sub-paragraph (3)(e) in accordance with FATF terminology. Wording revised to apply to include "business relationship" and "occasional transaction". Reference to "shell banks" removed, as paragraph 36 already prohibits relationships with them. Paragraph 8 (shell banks) negates the need to refer to shell

Para	Title	Brief note of intended effect
		banks in paragraph 9 (correspondent banking). Reordered.
38	Fictitious, anonymous and numbered accounts	Clarifies the prohibition around fictitious, anonymous and numbered accounts to existing customers as well as new ones. Amended paragraph on anonymous accounts to clarify that they may not be set up or maintained by a relevant person – added exception regarding certain legacy insurance business per IPA.
PART 10 – OFFENCES AND REVOCATIONS		
39	Offences	Added “or foundation” into sub-paragraph (4) to ensure foundations are covered. Added “also” into sub-paragraph (6) to emphasise that this definition is in addition to the definition of “director” and “officer” in paragraph 3.
40	Revocations	2013 Code and (Amendment) Code currently in force will be revoked.
Schedule	List of countries	The Schedule has been removed. References now refer to “List C”, which will be maintained on the Financial Supervision Commission’s website and will therefore be easier to maintain.

PART 3 – SIMPLIFIED DUE DILIGENCE; INTERMEDIARY POOLED ACCOUNTS

RATIONALE

Currently, there is no provision in law in respect of simplified due diligence measures for intermediary businesses' pooled clients' bank accounts, except where a fund is investing in another fund. In some cases it may be considered overly burdensome for a business to undertake full due diligence on its customers' underlying customers, particularly when that customer is a regulated, and therefore a seemingly trustworthy, business that should have already undertaken due diligence on its customers.

The Department recognises that in today's economic climate, there is an understandable desire for the Isle of Man Government to reduce any unnecessary compliance requirements and provide local businesses with a framework that allows a commercially competitive approach.

This paper proposes that there may be sufficient justification for introducing to the draft Code additional simplified due diligence provisions for certain businesses and activities provided that the requirements under the FATF Recommendations are met including those outlined below:

Recommendation 10 : Customer due diligence

Includes the requirement for financial institutions to:

- a) Identify and verify the customer.
- b) Identify and take reasonable measures to verify the beneficial owner*.
- c) Understand the purpose and intended nature of the business relationship.
- d) Conduct ongoing due diligence on the business relationship and scrutinise transactions.

*According to the FATF, beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.

Recommendation 17 : Reliance on third parties

Allows financial institutions to rely on third parties to perform elements (a) to (c) above provided that the following conditions are met:

- a) Information* regarding (a) to (c) above are obtained immediately from the third party.
- b) The financial institute must be sure that they are able to obtain other information and documentation from the third party on request without delay.
- c) The third party must be regulated, supervised or monitored for compliance with CDD requirements in line with the FATF Recommendations.
- d) Consideration must be given to the risk profile of the country of the third party.

* According to the FSC's AML/CFT Handbook 2013, 'identification information' must include:

- Legal name, any former names (e.g. maiden name) and any other names used.
- Permanent residential address including post code if applicable.
- Date of birth
- Place of birth
- Nationality
- Gender

PROPOSALS

In drafting the proposed simplified due diligence measures for intermediary pooled client accounts, careful consideration has been given to the revised FATF Recommendations on customer due diligence requirements, the requirement to adopt a risk based approach to AML/CFT and the practical implications this has for industry. Subject to consultation comments, the Department proposes to include simplified measures in relation to intermediary pooled accounts in the draft Code.

It would be expected that relevant persons will be required to bring existing intermediary relationships in line with the new requirements once the draft Code is in force within a reasonable timeframe.

Where the relevant person provides a pooled account to an intermediary, the relevant person may rely on an intermediary to conduct due diligence on its underlying customers, provided that certain criteria are met and the intermediary provides identification information on the underlying customers from the outset.

For higher risk underlying customers, there would need to be a separate higher risk pooled account and the relevant person must conduct and document its own enhanced due diligence but may obtain the required information and documentation from the intermediary.

General requirements:

In order for the simplified measures to be used, the following criteria would need to be met.

The relevant person must:

- Be satisfied that the third party is as described in Appendix C part 1 and the product or service is as described in Appendix C part 2.
- Use these measures only where at least 2 underlying customers utilise a pooled account (although it is understood that the customers may not have money in the pooled account at all times).
- Obtain identification information on the underlying customers from the outset (and EDD for higher risk customers).
- Carry out testing to ensure that information and documentation can be obtained from the third party.
- Ensure that it becomes aware of any material changes to the intermediary's status or the status of their jurisdiction.
- In the event of a 'suspicious activity', these measures would be disapplied.
- Take ultimate responsibility for customer due diligence.
- Must put in place written terms of business before establishing the business relationship confirming that the intermediary will:
 - have full effective control over the account(s);
 - verify the identity of all underlying customers and their beneficial owners;
 - maintain records of customer due diligence and transactions in line with the draft Code requirements;
 - supply customer due diligence information and documentation to the relevant person on request without delay;
 - advise the relevant person of any change in circumstance such as customers being added or removed from the pool or a change in their risk rating;
 - advise the relevant person if they are to cease trading or no longer rely upon the terms of business;
 - advise the relevant person of instances where the verification of identity of an underlying customer has not been completed;

- assist the relevant person with their obligation regarding testing their ability to obtain information and documentation from the intermediary.

Requirements for higher risk underlying customers:

- Higher risk underlying customers' funds must be separated from the main pooled account and placed in a higher risk pooled account
- No funds belonging to a higher risk underlying customer may be passed through the standard risk pooled account
- The relevant person must carry out and document customer due diligence on higher risk underlying customers
- Any documentation provided to the relevant person must be in date and certified by a suitable certifier.

QUESTIONS

QUESTION 1:

Is the list of intermediaries and activities permitted to use the proposed simplified measures in Appendix C(4) appropriate?

If your response includes any suggestion for amendment, please also include the rationale for making your suggestion.

QUESTION 2:

Are the conditions attached to the proposed simplified measures appropriate and can they reasonably be met?

If your response includes any suggestion for amendment, please also include the rationale for making your suggestion.

QUESTION 3:

Do you agree that the proposed simplified measures provide an appropriate and sufficient reduction in the compliance burden?

If your response includes any suggestion for amendment, please also include the rationale for making your suggestion.

QUESTION 4:

Should consideration be given to adding any further scenarios in which simplified due diligence measures could be used?

If yes, please provide details of your suggested simplified due diligence measures, who may use them and under what circumstances they may be used and the conditions which must be met for them to be used.

IMPACT

Draft Proceeds of Crime (Business in the Regulated Sector) Order 2014 and Draft Anti-Money Laundering and Countering the Financing of Terrorism Code 2014

Every type of business added to Schedule 4 of POCA by virtue of the draft Order will then be subject to the 2013 Code and ultimately the draft Code, hence the impact assessment below considers both draft items jointly.

Tax advisors are currently bound by the AML/CFT obligations of their professional bodies. Those requirements are similar to the Island's requirements as both are based on the FATF standards. As such, this sector should see no material difference as a result of the draft Order.

The draft Code has been adapted for the use of those SNPOs to require only that the class of beneficiaries should be identified, rather than identifying each individual beneficiary which would otherwise be required, therefore in practice this means that the SNPO should take reasonable measures to ensure that the money being paid by the organisation is reaching its intended destination and not being diverted and used for illicit purposes. It is considered likely that the SNPOs' current governance and risk arrangements may already cover such matters.

While the impact of the changes on machine suppliers are anticipated to be minimal, suppliers who undertake collection duties from machines will be required to report suspicious events should they occur.

Virtual currency providers will need to apply procedures and controls to combat money laundering and terrorist financing if their business fits into the definition in the schedule: this will include exchanges, vending machines and some transmission providers. There will be an obligation on the providers to ensure that they have processes and procedures in place to ensure that their business is not abused by money launderers or used to finance terrorist activities.

As the fundamental and practical requirements of the draft Code remain unchanged from the 2013 Code, the impact on industry is likely to be minimal.

A number of concessions are included in the draft Code including allowing nominees of trusted persons to be treated as an eligible introducer and the broadening of the exempted one off transaction threshold for bureaux de change businesses.

Cumulatively, the draft Code should be easier to apply and follow, while easing the compliance burden in areas deemed to be at a lower risk for money laundering and terrorist financing. For example, the use of simplified due diligence measures under the 2013 Code is allowed only when the business or customer has been assessed as lower risk. This proposed concession may also be used where the underlying customer being assessed as higher risk provided that certain conditions are met. It is hoped that this will be of significant benefit to industry as this removes the requirement for separate designated accounts to be opened for each higher risk underlying customer.

Finally, the planned removal of the requirement for the relevant person to conduct full customer due diligence on the underlying customer, regardless of whether the intermediary business has already conducted its own due diligence, will improve client experience, minimise costs and further establish the Isle of Man as an attractive place to conduct legitimate business.

FEEDBACK TO THE CONSULTATION

The draft Order and Code have been prepared for the purposes of consultation, and are not yet in final form as further refinement to their layout and content will be undertaken in the light of the responses to this consultation.

If you have any views or observations, or there is some point of clarification you would like to receive, you are invited to respond either by writing to —

Tom Bateman, Legislation Manager
Department of Home Affairs
"Homefield", 88 Woodbourne Road
Douglas, IM2 3AP

or by emailing dhaconsultation@gov.im

The closing date for the receipt of comments is the **10th October 2014**.

Unless specifically requested otherwise, any responses received may be published either in part or in their entirety, together with the name of the person or body which submitted the response. If you are responding on behalf of a group it would be helpful if you could make your position within that group clear. To ensure that the process is open and honest responses can only be accepted if you provide your name with your response.

It may be useful, when giving your feedback, to make reference to the number and title of the specific provision(s) set out in the draft legislation that you wish to discuss.

The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision on the content of proposed legislation or policy. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

APPENDIX A

Statutory Document No.

Proceeds of Crime Act 2008

PROCEEDS OF CRIME (BUSINESS IN THE REGULATED SECTOR) ORDER 2014

Approved by Tynwald:

October 2014

Coming into Operation:

November 2014

The Department of Home Affairs makes the following Order under paragraph 3 of Schedule 4 to the Proceeds of Crime Act 2008.

1 Title

This Order is the Proceeds of Crime (Business in the Regulated Sector) Order 2014.

2 Commencement

If approved by Tynwald, this Order comes into operation on 1 November 2014

3 Amendment of Schedule 4 of the Proceeds of Crime Act 2008

For paragraph 1 (business in the regulated sector) of Schedule 4 to the Proceeds of Crime Act 2008 substitute the text set out in the Schedule to this Order.

4 Revocation

The Proceeds of Crime (Business in the Regulated Sector) Order 2013 is revoked¹.

MADE

J P WATTERSON
Minister for Home Affairs

¹ SD 0097/13

APPENDIX B**ANTI-MONEY LAUNDERING AND COUNTERING
THE FINANCING OF TERRORISM CODE 2014****Index**

Paragraph	Page
PART 1 – INTRODUCTORY	31
1 Title	31
2 Commencement	31
3 Interpretation.....	31
PART 2 – GENERAL REQUIREMENTS	41
4 General requirements.....	41
5 Specified non-profit organisations	42
PART 3 – RISK ASSESSMENT AND ONGOING MONITORING	42
6 Business risk assessment	42
7 Customer risk assessment	43
8 Technological developments risk assessment	43
9 Ongoing monitoring.....	44
PART 4 – CUSTOMER DUE DILIGENCE	44
10 New business relationships.....	44
11 Continuing business relationships	45
12 Occasional transactions.....	46
13 Beneficial ownership and control.....	47
14 Politically exposed persons	48
15 Enhanced customer due diligence.....	49
PART 5 – SPECIFIED NON-PROFIT ORGANISATIONS	50
16 Application	50
17 New business relationships for specified non-profit organisations	50
18 Continuing business relationships for specified non-profit organisations	51
19 Occasional transactions for specified non-profit organisations	52
PART 6 – SIMPLIFIED CUSTOMER DUE DILIGENCE	52
20 Acceptable applicants	52

21	Eligible introducers	53
22	Miscellaneous	56
PART 7 – REPORTING AND DISCLOSURES		58
<hr/>		
23	Money Laundering Reporting Officer	58
24	Reporting procedures.....	58
25	Internal disclosures.....	59
26	External disclosures.....	60
PART 8 – COMPLIANCE		60
<hr/>		
27	Monitoring and testing compliance	60
28	New staff appointments	60
29	Staff training	61
30	Record keeping	61
31	Record retention.....	61
32	Record format and retrieval	62
33	Registers of internal and external disclosures	63
34	Register of money laundering and financing of terrorism enquiries	63
PART 9 – MISCELLANEOUS		63
<hr/>		
35	Foreign branches and subsidiaries	63
36	Shell banks	64
37	Correspondent services.....	64
38	Fictitious, anonymous and numbered accounts.....	65
PART 10 – OFFENCES AND REVOCATIONS		65
<hr/>		
39	Offences.....	65
40	Revocations.....	66

Statutory Document No. XX/20XX

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

ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM CODE 2014

Laid before Tynwald:

Coming into Operation:

1 January 2015

The Department of Home Affairs makes the following Code under section 157(1) of the Proceeds of Crime Act 2008¹ and section XX of the Terrorism and other Crime (Financial Restrictions) Act 2014² after consulting such persons and bodies that appeared to it to be appropriate³.

PART 1 – INTRODUCTORY

1 Title

This Code is the Anti-Money Laundering and Countering the Financing of Terrorism Code 2014.

2 Commencement

If approved by Tynwald, this Code comes into operation on 1 January 2015.

3 Interpretation

(1) In this Code —

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

“**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 1990⁴;

¹ AT 13 of 2008

² AT X of 2014

³ As required by section 157(4) of the Proceeds of Crime Act 2008 and section 27A(4) of the Terrorism (Finance) Act 2009

⁴ 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

- (b) sections 7 to 11 and section 14 of the Anti-Terrorism and Crime Act 2003⁵;
- (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 an offence under the provisions 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 customer; and
- (d) in the case of a foundation, a natural person who otherwise exercises ultimate effective control over the customer;

“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;

“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

⁵ AT 6 of 2003

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 AML/CFT, 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 1986⁶;

“**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**”);

“**customer**” —

(a) in respect of a relevant person other than 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 21; and

(b) in respect of a specified non-profit organisation means the natural persons, or groups of natural persons who receive charitable, humanitarian or other types of assistance through the services of the specified non-profit organisation;

“**customer due diligence**” (except in the expression “**enhanced customer due diligence**”) means the measures specified in paragraphs 9 to 14, 17 to 22, 35 and 37 of this Code;

“**designated business**” has the meaning given in section 4 of the Designated Businesses (Registration and Oversight) Bill 2014;

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

⁶ AT 34 of 1986

- (a) for a limited liability company constituted under the Limited Liability Companies Act 1996⁷, a member, manager or registered agent of such a company; and
- (b) for a limited partnership with legal personality in accordance with sections 48B to 48D of the Partnership Act 1909⁸ —
 - (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 member (or equivalent) of that foundation;
- (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;

“**domestic PEP**” means a PEP who is or has been entrusted with prominent public functions in the Isle of Man;

“**eligible introducer**” means an introducer that satisfies the requirements of paragraph 21;

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

- (a) works under a contract of employment or any other contract of service;
- (b) practises alone or with others under the terms of a partnership agreement;
- (c) is otherwise engaged within the business of a designated business, in all cases where the individual undertakes to do or perform, directly or indirectly, any work or service within a designated business, whether or not engaged directly by the designated business or through another entity forming part of the group of entities of which the designated business is a part, and the designated business is not by virtue of the contract a customer of the individual; or
- (d) is a director or officer;

⁷ AT 19 of 1996

⁸ AT 3 of 1909

“enhanced customer due diligence” means steps, additional to the measures specified in paragraphs 9 to 14, 17 to 22, 35 and 37, for the purpose of identifying customers and other persons, namely —

- (a) considering whether additional identification data 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 —

- (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) €5,000 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) (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(ll) (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 under paragraphs 24(f) and 26;

“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 another jurisdiction) 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**” is to be construed in accordance with the definition of “**financing**” in section 3 of the Terrorism and Other Crime (Financial Restrictions) Act 2014;

“**foreign PEP**” means a PEP who is or has been entrusted with prominent public functions outside the Isle of Man;

“**foundation**” means a foundation established under the Foundations Act 2011⁹, or a foundation or similar entity established under the law of another jurisdiction;

“**insurer**” means a person authorised to carry on insurance business under section 8 of the Insurance Act 2008¹⁰ or to whom a permit is issued under section 22 of that Act;

“**internal disclosure**” means a report under paragraphs 24(c) and 25;

“**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;

“**List A**” is a list maintained by the Financial Supervision Commission on its website specifying jurisdictions which FATF 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 threat risks of ML/FT emanating from the jurisdiction;

“**List B**” is a list maintained by the Financial Supervision Commission on its website specifying jurisdictions with strategic AML/CFT deficiencies;

“**List C**” is a list maintained by the Financial Supervision Commission on its website specifying jurisdictions;

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

“**Money Laundering Reporting Officer**” (“**MLRO**”) means an individual appointed under paragraph 23 and, except in relation to paragraph 33(3), includes an individual appointed in the same way to act as a deputy to the principal MLRO;

⁹ AT 17 of 2011

¹⁰ AT 16 of 2008

“**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 2011¹¹ or equivalent regulations in a jurisdiction listed in List C;

“**occasional 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 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 customer;

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

“**PEP**” means a politically exposed person;

“**politically exposed person**” 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;

¹¹ SD 0885/2011, as amended by SD 0374/2013

- (xi) a senior member of management of, or a member of, the governing body of an international entity or organisation;
- (xii) an honorary consul;
- (b) any of the following family members of a natural person mentioned 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; and
 - (viii) a grandchild;
- (c) any close associate of a natural person mentioned in (a), including –
 - (i) any natural person known to be a joint beneficial owners 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; and
 - (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 2000¹²;

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

“**senior management**” means 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;

“**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**” has the meaning assigned by paragraph 1(3) 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;

¹² AT 14 of 2000

- (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 1976¹³, a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986¹⁴ 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 and regulations of a jurisdiction listed 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;
- (e) a nominee company of a person who acts in the course of external regulated business and is regulated under the law and regulations of a jurisdiction included in the 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, including 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 customer, beneficial owner, beneficiary or introducer;
- (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.

¹³ AT 27 of 1976

¹⁴ AT 15 of 1986

- (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 form or continue 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) subject to paragraph 6(1), identification procedures in accordance with parts 4, 5 and 6 and paragraphs 35 and 37;
 - (iii) record keeping procedures in accordance with paragraphs 30 to 34;
 - (iv) appointment procedures in accordance with paragraph 23;
 - (v) reporting procedures in accordance with paragraphs 24 to 26;
 - (vi) internal staff screening procedures in accordance with paragraph 28; 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 procedures established, maintained and operated under (a); and
 - (ii) the AML/CFT requirements;
 - (c) monitors and tests compliance in accordance with paragraph 27;
 - (d) provides education and training in accordance with paragraph 29; and

- (e) complies with paragraphs 36 and 38.
- (2) The procedures and controls referred to in sub-paragraph (1) must be approved by the senior management of the relevant person.
- (3) The identification 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 carried out in accordance with part 3.
- (4) Subject to paragraph 5, 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 carried out under part 3; and
 - (c) having particular regard to whether a customer poses a higher risk of ML/FT.

5 Specified non-profit organisations

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; and

- (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; and
 - (d) reliance on third parties for elements of the customer due diligence process.

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.
- (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; or
 - (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 documentation storage;
- (c) electronic verification of documentation; and
- (d) data and transaction screening systems.

9 Ongoing monitoring

- (1) A relevant person must perform ongoing and effective monitoring of any existing business relationship, including –
 - (a) review of all 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; and
 - (c) appropriate scrutiny of transactions to ensure that they are consistent with –
 - (i) the relevant person's knowledge of the customer, its business and risk profile and, if necessary, the source of funds;
 - (ii) the business risk assessment carried out under paragraph 6; and
 - (iii) the customer risk assessment carried out under paragraph 7.
- (2) The extent and frequency of any monitoring under this paragraph must be determined in accordance with paragraph 4(4).

PART 4 – CUSTOMER DUE DILIGENCE

10 New business relationships

- (1) A relevant person other than 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) Those 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 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.
- (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 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 paragraphs 10(4) and 20(1), procedures comply with this sub-paragraph if they require, when evidence of identity in accordance with sub-paragraph (1) 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 making an internal disclosure in accordance with paragraphs 24 and 25.

11 Continuing business relationships

- (1) A relevant person other than 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) 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 activity;
 - (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 under paragraph 10(1), 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 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 or under sub-paragraph (1) (which records shall be records to which paragraph 30 applies); and
 - (b) must, on request, make such findings available to the competent authorities and auditors (if any).
- (5) Procedures comply with this paragraph if they require, when evidence of identity, in accordance with paragraph 10(1), 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 making an internal disclosure in accordance with paragraphs 24 and 25.

12 Occasional transactions

- (1) A relevant person other than 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) Those 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 obtaining of information on the purpose and intended nature of the occasional transaction; and
 - (d) the taking of reasonable measures to establish the source of funds.

- (4) Except as provided in paragraph 20(2), procedures comply with this paragraph if they require, when 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 24 and 25.

13 Beneficial ownership and control

- (1) This paragraph applies when a relevant person is operating the procedures required by paragraphs 9 to 12 and 14 to 21 (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 or data obtained from a reliable, independent source; and
 - (c) subject to paragraph 22(7)(b), 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 or data 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 and 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;
 - (d) in the case of a foundation, identify —
 - (i) the founder and any other dedicator;
 - (ii) any known beneficiaries; and
 - (iii) the council members (or equivalent);

- (e) verify the legal status of the customer using relevant information or data obtained from a reliable, independent source;
 - (f) obtain information concerning the names and addresses of the customer and any natural persons having power to direct its activities;
 - (g) obtain information concerning the person by whom, and the method by which, binding obligations may be imposed on the customer; and
 - (h) 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 or data obtained from a reliable, independent source; and
 - (c) subject to paragraph 22(7)(b), 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 or data obtained from a reliable, independent source.
- (5) Subject to paragraph 22(7)(b) 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 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.

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;
 - (d) for legal arrangements, any known beneficiaries; and
 - (e) for foundations, any 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 a foreign PEP or a domestic PEP that has been identified as posing a higher risk of ML/FT;
 - (b) before any occasional transaction is carried out with a foreign PEP or a domestic PEP that has been identified as posing a higher risk of ML/FT; and
 - (c) if it is discovered that an existing business relationship is with a foreign PEP or a domestic PEP that has been identified as posing a higher risk of ML/FT, to the continuance of that relationship.
- (3) A relevant person must take reasonable measures to establish the source of wealth of a foreign PEP or a domestic PEP that has been identified as posing a higher risk of ML/FT.
- (4) A relevant person must perform ongoing and effective enhanced monitoring of any business relationship with a foreign PEP or a domestic PEP that has been identified as posing a higher risk of ML/FT.
- (5) For the avoidance of doubt, this paragraph does not remove the requirement to conduct enhanced 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 where —
 - (a) a customer poses a higher risk of ML/FT as assessed by the customer risk assessment carried out in accordance with paragraph 7;
 - (b) the relevant person has identified any suspicious activity.
- (2) A relevant person must consider whether to obtain enhanced customer due diligence in the event of any unusual 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(5), 22(2), 22(5), 22(7), 22(8) and 22(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 person or legal arrangement resident or located in a jurisdiction 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; 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) activity in a jurisdiction listed in List A or B;
 - (c) a situation that by its nature presents a significant risk of money laundering or the financing of terrorism;
 - (d) a business relationship or occasional transaction with a PEP;
 - (e) a company that has nominee shareholders or shares in bearer form;
 - (f) the provision of high risk products;
 - (g) the provision of services to high-net-worth individuals;
 - (h) a legal arrangement; and
 - (i) persons performing prominent functions for international organisations.

PART 5 – SPECIFIED NON-PROFIT ORGANISATIONS

16 Application

This part only applies to specified non-profit organisations.

17 New business relationships for 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) Those 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 any beneficiaries of a charitable fund;
 - (b) the taking of reasonable measures to verify the identity of the beneficiaries using reliable, independent sources.

- (4) A specified non-profit organisation must, in the case of any beneficiary, determine whether the beneficiary is receiving funds 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 or data obtained from reliable, independent sources.
- (5) A specified non-profit organisation must, in the case of any beneficiary —
 - (a) where the beneficiary is not a natural person, identify any beneficial owners of the beneficiary; and
 - (b) take reasonable measures to verify the identity of the beneficiary and any beneficial owner, using relevant information or data obtained from reliable, independent sources.

18 Continuing business relationships for 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) 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 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; or
 - (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) The specified non-profit organisation —
 - (a) must keep written records of any examination, steps, measures or determination made or taken or under sub-paragraph (1) (which records shall be records to which paragraph 30 applies); and

- (b) must, on request, make such findings available to the competent authorities and auditors (if any).
- (5) 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 and transactions to proceed no further;
 - (b) the specified non-profit organisation to consider terminating that relationship; and
 - (c) the specified non-profit organisation to consider making an internal disclosure in accordance with paragraphs 24 and 25.

19 Occasional transactions for 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; and
 - (b) the verification of the identity of the donor using reliable, independent sources.

PART 6 – SIMPLIFIED CUSTOMER DUE DILIGENCE

20 Acceptable applicants

- (1) 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 —
 - (a) the identity of the customer is known to the relevant person;
 - (b) the relevant person knows the nature and intended purpose of the relationship;
 - (c) the relevant person has not identified any suspicious activity; and
 - (d) the relevant person has satisfied itself that the customer 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).

- (2) Verification of the identity of a customer for an occasional transaction in accordance with paragraph 12(1) is not required to be produced if —
 - (a) the identity of the customer is known to the relevant person;
 - (b) the relevant person knows the nature and intended purpose of the relationship;
 - (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 transaction is an exempted occasional transaction.

21 Eligible introducers

- (1) If a customer is introduced to a relevant person by a third party, 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 the procedures specified in sub-paragraph (4).
- (3) Those procedures must be undertaken before a business relationship or occasional transaction 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 customer in accordance with paragraph 10(1), 12(1), 17(1) or 19(1) (as applicable); or
 - (b) the taking of such other measures as will produce evidence of identity in accordance with paragraph 10(1), 12(1), 17(1) or 19(1) (as applicable); and
 - (c) the undertaking of a customer risk assessment in accordance with paragraph 7.
- (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;
 - (c) has not identified any suspicious activity; and

- (d) has satisfied itself that —
 - (i) the introducer is a trusted person other than a nominee company of either a regulated person or an external regulated business; or
 - (ii) the introducer is a nominee company of either a regulated person or an external regulated business where the Regulated person or external regulated business is responsible for the nominee company's compliance with the AML/CFT requirements; or
 - (iii) the relevant person and the customer are bodies corporate in the same group; or
 - (iv) the transaction is an exempted occasional 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 customers introduced to the relevant person sufficiently to comply with the AML/CFT requirements;
 - (b) 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 31(1);
 - (d) establish and maintain records of all transactions between the 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 31(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 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 customer and the beneficial owner (if any) and all other customer due diligence data, in accordance with paragraphs 10(1), 12(1), 17(1) or 19(1) (as applicable), 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 customer;

- (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 customer or the beneficial owner (if any);
 - (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 (8).
- (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) In order to rely upon an introducer, a relevant person must take measures to satisfy itself that —
 - (a) the introducer is a person as described in sub-paragraph (5)(d)(i) or (ii);
 - (b) the 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),
for the purposes of verifying the identity of the customer in question 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) Except as provided in sub-paragraph (5), procedures comply with this sub-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 and transactions to proceed no further; and
 - (b) the relevant person to terminate that relationship and consider making an internal disclosure in accordance with paragraphs 24 and 25.

- (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 introducer.
- (12) In sub-paragraph (5)(d)(iii), “**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 1974¹⁵.

22 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 paragraphs 10 to 15 and 21 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)(a) or (b) an insurer may, having paid due regard to the risk of ML/FT, consider it appropriate to comply with paragraphs 10 to 15 and 21 but to defer such compliance unless a claim is made or the policy is cancelled.
- (4) If a claim is made 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).
- (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

¹⁵ AT 30 of 1974

- (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.
- (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 10 to 15 and 21.
- (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, as defined in section 1 of the Collective Investment Schemes Act 2008¹⁶ or equivalent in a jurisdiction listed in List C; and
- (b) if the manager or administrator of such a scheme is a regulated person or an external regulated business carrying on equivalent regulated activities in a jurisdiction listed in List C;
- (9) The Isle of Man Post Office need not comply with paragraphs 10 to 15 and 21, 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 or statutory boards up to the value of £650 in cash or £5,000 by other means of payment;
- (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;

¹⁶ AT 7 of 2008

- (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 consider making an internal disclosure in accordance with paragraphs 24 and 25.

PART 7 – REPORTING AND DISCLOSURES

23 Money Laundering Reporting Officer

- (1) A relevant person must appoint a Money Laundering Reporting Officer (“**MLRO**”) to exercise the functions conferred by paragraphs 24 and 26.
- (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 24 and 26 in the MLRO’s absence.

24 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 –
 - (i) money laundering or the financing of terrorism activity; or

- (ii) attempted transactions related to money laundering or the financing of terrorism;
- (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 matter that comes 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 –
 - (i) money laundering or the financing of terrorism; or
 - (ii) attempted transactions related to money laundering or the financing of terrorism;
- (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 money laundering or the financing of terrorism or attempted transactions related to money laundering or the financing of terrorism;
- (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 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 Financial Crime Unit if the MLRO knows or suspects that another is engaged in –
 - (i) money laundering or the financing of terrorism; or
 - (ii) attempted transactions related to money laundering or the financing of terrorism.

25 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) obtain enhanced customer due diligence in accordance with paragraph 15; and
 - (b) make an internal disclosure in accordance with the procedures established under paragraph 24.
- (2) Where a relevant person identifies any unusual activity the relevant person must perform appropriate scrutiny of the activity and consider –

- (a) whether enhanced customer due diligence is required in accordance with paragraph 15; and
- (b) whether to make an internal disclosure in accordance with the procedures established under paragraph 24.

26 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 money laundering or the financing of terrorism.
- (2) The MLRO must make an external disclosure in accordance with the procedures established under paragraph 24 as soon as is practicable to a constable who is for the time being serving with the Financial Crime Unit if the MLRO –
 - (a) knows or suspects; or
 - (b) has reasonable grounds for knowing or suspecting, that another is engaged in money laundering or the financing of terrorism.

PART 8 – COMPLIANCE

27 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.

28 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 or partners (as the case may be) of the relevant person and of all new appropriate employees and workers.

29 Staff training

A relevant person must provide or arrange education and training, including refresher training, at least 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 AML/CFT requirements;
- (b) their personal obligations in relation to the AML/CFT requirements;
- (c) the reporting procedures established under paragraph 24;
- (d) the relevant person's policies and procedures for AML/CFT;
- (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, including the offence of tipping off; and
- (h) new developments, including information on current techniques, methods and trends in ML/FT.

30 Record keeping

A relevant person must keep —

- (a) a copy of the documents obtained or produced under paragraphs 6 to 22, 35 and 37 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, 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.

31 Record retention

- (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 30(b), the date of the completion of the transaction;
 - (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 a constable under paragraphs 24(f) and 26;
 - (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.

32 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.

33 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 constable's name; and
 - (e) information sufficient to identify the relevant papers.

34 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**35 Foreign branches and subsidiaries**

- (1) A relevant person must ensure that any branch or subsidiary in another 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 and regulations.
- (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 and regulations.

- (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 subparagraphs (1) or (2) because it is prohibited by the laws and regulations 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.

36 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 it does not enter into or continue a relationship with a respondent institution that permits its accounts to be used by a shell bank.

37 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 in another jurisdiction unless it is satisfied that the respondent institution does not permit its accounts to be used by shell banks.
- (3) Before entering into a business relationship or transaction to which this paragraph applies, a relevant person must —
 - (a) obtain sufficient information about the respondent institution to understand fully the nature of its business;
 - (b) determine from publicly available information —
 - (i) the reputation of the respondent institution;
 - (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 institution for AML/CFT, 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 with respect to measures for AML/CFT.
- (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 institution –
- (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.

38 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 Insurance and Pensions Authority specifically for this purpose.

PART 10 – OFFENCES AND REVOCATIONS

39 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 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 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.

40 Revocations

The following are revoked —

- (a) Money Laundering and Terrorist Financing Code 2013¹⁷; and
- (b) Money Laundering and Terrorist Financing (Amendment) Code 2013¹⁸.

¹⁷ SD 0095/13

¹⁸ SD 0188/13

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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 XX 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.

APPENDIX C(1)

CUSTOMER DUE DILIGENCE AND RECORD-KEEPING

Customer due diligence *

Financial institutions should be prohibited from keeping anonymous accounts or accounts in obviously fictitious names.

Financial institutions should be required to undertake customer due diligence (CDD) measures when:

- (i) establishing business relations;
- (ii) carrying out occasional transactions: (i) above the applicable designated threshold (USD/EUR 15,000); or (ii) that are wire transfers in the circumstances covered by the Interpretive Note to Recommendation 16;
- (iii) there is a suspicion of money laundering or terrorist financing; or
- (iv) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

The principle that financial institutions should conduct CDD should be set out in law. Each country may determine how it imposes specific CDD obligations, either through law or enforceable means. The CDD measures to be taken are as follows:

- (a) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information.
- (b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner, such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions understanding the ownership and control structure of the customer.
- (c) Understanding and, as appropriate, obtaining information on the purpose and intended nature of the business relationship.
- (d) Conducting ongoing due diligence on the business relationship and scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, including, where necessary, the source of funds.

Financial institutions should be required to apply each of the CDD measures under (a) to (d) above, but should determine the extent of such measures using a risk-based approach (RBA) in accordance with the Interpretive Notes to this Recommendation and to Recommendation 1.

Financial institutions should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers. Countries may permit financial institutions to complete the verification as soon as reasonably practicable following the establishment of the relationship, where the money laundering and terrorist financing risks are effectively managed and where this is essential not to interrupt the normal conduct of business.

Where the financial institution is unable to comply with the applicable requirements under paragraphs (a) to (d) above (subject to appropriate modification of the extent of the measures on a risk-based approach), it should be required not to open the account, commence business relations or perform the transaction; or should be required to terminate the business relationship; and should consider making a suspicious transactions report in relation to the customer.

These requirements should apply to all new customers, although financial institutions should also apply this Recommendation to existing customers on the basis of materiality and risk, and should conduct due diligence on such existing relationships at appropriate times.

APPENDIX C(2)

Reliance on third parties *

Countries may permit financial institutions to rely on third parties to perform elements (a)-(c) of the CDD measures set out in Recommendation 10 or to introduce business, provided that the criteria set out below are met. Where such reliance is permitted, the ultimate responsibility for CDD measures remains with the financial institution relying on the third party.

The criteria that should be met are as follows:

- (a) A financial institution relying upon a third party should immediately obtain the necessary information concerning elements (a)-(c) of the CDD measures set out in Recommendation 10.
- (b) Financial institutions should take adequate steps to satisfy themselves that copies of identification data and other relevant documentation relating to the CDD requirements will be made available from the third party upon request without delay.
- (c) The financial institution should satisfy itself that the third party is regulated, supervised or monitored for, and has measures in place for compliance with, CDD and record-keeping requirements in line with Recommendations 10 and 11.
- (d) When determining in which countries the third party that meets the conditions can be based, countries should have regard to information available on the level of country risk.

When a financial institution relies on a third party that is part of the same financial group, and (i) that group applies CDD and record-keeping requirements, in line with Recommendations 10, 11 and 12, and programmes against money laundering and terrorist financing, in accordance with Recommendation 18; and (ii) where the effective implementation of those CDD and record-keeping requirements and AML/CFT programmes is supervised at a group level by a competent authority, then relevant competent authorities may consider that the financial institution applies measures under (b) and (c) above through its group programme, and may decide that (d) is not a necessary precondition to reliance when higher country risk is adequately mitigated by the group AML/CFT policies.

APPENDIX C(3)

PROPOSED SIMPLIFIED DUE DILIGENCE MEASURES

INTERMEDIARY POOLED ACCOUNTS

- (1) Provided that the intermediary pooled account concession is only to be used for two or more underlying clients and the conditions set out in Appendix C(4) are met, the relevant person may, if it thinks fit, comply with this paragraph, instead of paragraphs [X]
- (2) The relevant person must establish, maintain and operate the procedures specified in sub-paragraph (4) and (5).
- (3) Those procedures must be undertaken before a business relationship is entered into.
- (4) The procedures referred to in sub-paragraph (2) for all underlying clients are that—
 - (a) the intermediary must produce identification information for all underlying clients
 - (b) the intermediary must identify to the relevant person any underlying clients which are assessed or re-assessed as high risk
 - (c) the intermediary must notify the relevant person of the addition when:
 - (i) new underlying clients are added to the pool
 - (ii) underlying clients are removed from the pool
 - (iii) underlying clients are re-assessed as high risk
- (5) The procedures referred to in sub-paragraph (2) for high risk underlying clients are—
 - (a) Funds belonging to high risk underlying clients must remain separate from the main pooled account(s)
 - (b) Funds belonging to a high risk underlying client must be passed only through a separate high risk pooled account
 - (c) The relevant person must carry out and document its own enhanced due diligence procedures
 - (d) Identification and verification documents may be provided to the relevant person by the intermediary provided that the
 - (i) documentation is not out of date
 - (ii) intermediary confirms to the relevant person that they are satisfied with the suitability of the certifier
- (6) The relevant person must not allow its services to be used by an intermediary providing a pooled account for its underlying clients unless written terms of business are in place between the relevant person and the intermediary, and despite sub-paragraphs (3) , (4) and (5), those terms of business, require in all cases the intermediary to —
 - (a) confirm that the accounts will only be operated by the intermediary and that the intermediary must have ultimate effective control over the financial product or service
 - (b) verify the identity of all underlying clients sufficiently to comply with the money laundering and prevention of terrorist financing requirements;
 - (c) verify the identity of the beneficial owner;
 - (d) establish and maintain a record of the evidence of identity for at least 5 years calculated in accordance with paragraph 31(1);

Department of Home Affairs

Anti-Money Laundering and Countering the Financing of Terrorism Code 2014 Consultation

- (e) establish and maintain records of all transactions between the intermediary and the underlying client;
 - (e) supply to the relevant person immediately on request, copies of the evidence verifying the identity of underlying clients and the beneficial owner and all other customer due diligence data held by the intermediary in any particular case;
 - (f) immediately advise the relevant of any change in circumstance such as clients being added or removed from the pool or change in their risk rating
 - (g) immediately advise the relevant person so that the accounts may be closed if-
 - (i) the intermediary is to cease trading
 - (ii) the intermediary no longer intends to rely on the terms of business entered into under this paragraph.
 - (h) inform the relevant person specifically of each case where the intermediary is not required or has been unable to verify the identity of the underlying client or the beneficial owner;
 - (i) inform the relevant person if the intermediary 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 intermediary; and
 - (j) 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 subparagraph (4) and (5) are fit for the purpose of ensuring that the evidence produced or to be produced is satisfactory and that the procedures of the intermediary 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 intermediary is a person as described in Appendix C(4) and take such measures as necessary to ensure it becomes aware of any material change to the intermediary's status or the status of the jurisdiction in which the intermediary is regulated.
- (10) If there is any suspicious activity, sub-paragraphs (1), to (9) cease to apply and the relevant person must consider making an internal disclosure in accordance with paragraph 24 and 25.
- (11) Except as provided in sub paragraph (4) and (5), procedures comply with this subparagraph if they require, when evidence of 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 intermediary.

APPENDIX C(4)

PROPOSED SIMPLIFIED DUE DILIGENCE MEASURES

ALLOWED INTERMEDIARIES & ACTIVITIES

1) Allowed Intermediaries

In order to be subject to the Intermediary Pooled Account Simplified Due Diligence measures, the relevant business must ensure that the proposed Intermediary is one of the following and not assessed as high risk:

(a) **A regulated person**, being

- i. Person holding a financial services licence issued under section 7 of the Financial Services Act 2008 (excluding licenceholders under Class 7 (management or administration services) and Class 8 (Money Transmission Services));

(b) **A collective investment scheme**

- i. as defined in section 1 of the Collective Investment Schemes Act 2008 except for a scheme under Schedule 3 to the Collective Investment Schemes Act 2008 (exempt schemes); or
- ii. an equivalent scheme in a jurisdiction included in the list in the Schedule [to the Code],

and where the manager or administrator of such a scheme is a regulated person (as defined at (a) above) or an equivalent business (as defined at (d) below);

(c) **An advocate** within the meaning of the Advocates Act 1976, if the relevant person is satisfied that the rules of the professional body of the advocate, embody AML/CFT requirements and procedures that are at least equivalent to this Code and that the advocate is appropriately and effectively regulated and supervised for compliance with those AML/CFT requirements;

(d) **An equivalent business** being a person who acts in the course of business outside the Island which is:

- i. Equivalent to a regulated person, but excluding Class 4 (CSP) and Class 5 (TSP) activities;
- ii. regulated business and is regulated under the law and regulations of a country included in the list in the Schedule [to the Code] (i.e. an equivalent jurisdiction);
- iii. subject to AML/CFT requirements and procedures that are at least equivalent to the Code; and
- iv. regulated or supervised for compliance with those AML/CFT requirements under the law and regulations of a country included in the list in the Schedule [to the Code] by an authority empowered to regulate or supervise such business.

(e) **A directly and wholly owned subsidiary nominee company** of a person holding a Class 2 or Class 3 financial services licence issued under section 7 of the Financial Services Act 2008 (or an equivalent business) operating according to sections 2.7 (Investment Business) or 3.1 (Collective Investment Schemes) respectively of the Financial Services

(Exemptions) Regulations 2011 (as amended 2013) (or equivalent regulations) with the additional conditions that:

- i. The nominee company is in an AML/CFT equivalent country
- ii. The parent entity has responsibility for AML/CFT compliance with CDD requirements for all persons (underlying clients and ultimate beneficial owners) within or using the nominee company

2) **Allowed Activities**

The Intermediary Pooled Account Concession may only be used where a business relationship has been established to provide for one or more of the following products and services:

- (a) **Pooled investments via discretionary investment mandate** or pooled investments by custodians of their customers' monies where the funds (and any income) may not be returned to a third party and the customer relationship is with the regulated financial services business, i.e. the discretionary manager or custodian or wholly owned subsidiary nominee company as defined at (e) above.
- (b) **Pooled investments where customer investments are arranged through a trading platform** which meets the definition of (a) or (d) above and where the funds (and any income) may not be returned to a third party and the customer relationship is with the regulated financial adviser or trading platform.
- (c) **Pooled client money accounts held by banks** for a Class 2 or Class 3 Licenceholder (or equivalent business) where the funds are subject to and dealt with in accordance with the Client Money Rules of the FS Rule Book 2013 (or equivalent) and the customer relationship is with the Class 2 or Class 3 Licenceholder
- (d) **Pooled general client bank account** (as defined at rule 3.4 of the FS Rule Book 2013) opened, operated and in the name of a Class 4 (CSP) or Class 5 (TSP) Licenceholder, where the funds are typically held on a short term basis and where necessary to facilitate a transaction or where the funds (or any income generated) will only be returned to the originating bank account (for the avoidance of doubt, this would not include any of the TCSP's nominee companies, corporate directors or corporate trustees) and the customer relationship is with the Class 4 or Class 5 Licenceholder (IOM intermediaries only)
- (e) **Pooled Clients Bank Account opened, operated and in the name of an IOM advocate**, supervised for AML/CFT purposes by the IOM Law Society or FSC, where the funds are held on a short term basis and is necessary to facilitate a transaction and the customer relationship is with the IOM based advocate.
- (f) **A collective investment** scheme which meets the definition of (b) above and the customer relationship is with the Collective Investment Scheme

APPENDIX D

CONSULTATION CRITERIA

THE SIX CONSULTATION CRITERIA

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your Department's effectiveness at consultation.
6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.

APPENDIX E

LIST OF PERSONS OR BODIES CONSULTED REGARDING THIS CODE

Consultation has already taken place with the professional organisations that represent business affected by the AML/CFT Code over a number of months re the drafting of a new code and other interested parties have also been approached for views. The attached Code has therefore been prepared after the submission of the various industries views. In addition meetings have taken place through Joint Anti-Money Laundering Advisory Group to inform of the actions being taken and most recently to announce the consultation exercise and provide copies of the Code and Order.

Given the technical nature of the changes to the legislation concerned consultation is primarily being undertaken through Joint Anti-Money Laundering Advisory Group and other identified interested parties.



Isle of Man
Government

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This document can be provided in a large print format upon request.

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