



CRIMINAL JUSTICE ACT 1990

CRIMINAL JUSTICE (MONEY LAUNDERING) CODE 2008

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CRIMINAL JUSTICE ACT 1990

CRIMINAL JUSTICE (MONEY LAUNDERING) CODE 2008

Laid before Tynwald: 16th December 2008

Coming into operation: 18th December 2008

The Department of Home Affairs makes this Code under section 17F of the Criminal Justice Act 1990¹ and after consulting such persons and bodies as it considered appropriate.

1 Title and commencement

The title of this Code is the Criminal Justice (Money Laundering) Code 2008 and it shall come into operation on 18th December 2008.

2 Interpretation and revocation

(1) In this Code —

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

“beneficial owner” means the natural person who ultimately owns or controls the applicant for business or on whose behalf a transaction or activity is being conducted; and in relation to a legal person or legal arrangement, 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

¹ 1990 c.1
Price £3.40

holdings) more than 25% of the shares or voting rights in the legal person; or

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

“business 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 payment or payments to be made by any person to any other in the course of that arrangement is not known or capable of being ascertained at the time the arrangement is made;

“competent authority” means all Isle of Man administrative and law enforcement authorities concerned with combating money laundering and terrorist financing, including; 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, Customs and Excise;

“constable” includes an officer under the Customs and Excise Management Act 1986²;

“correspondent banking services” means banking services provided by a financial institution in one country (“the correspondent bank”) to a financial institution in another country (“the respondent bank”);

“country” includes territory;

“customer due diligence” (except in the expression “enhanced customer due diligence”) means the measures specified in paragraphs 5 to 7 and 9 to 15 of the Code;

“deposit taking” has the meaning given in section 3 of the Financial Services Act 2008³ and Class 1 of Schedule 1 to the Regulated Activities Order 2008⁴, ignoring any exclusions from that class contained within the Order or any exemptions contained with the Financial Services

² 1986 c.34

³ 2008 c.8

⁴ SD 367/08

(Exemption) Regulations 2008⁵;

“director” and “officer” of a body corporate include, in the case of a limited liability company constituted under the Limited Liability Companies Act 1996⁶, a member, manager or registered agent of such a company;

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

- (a) euro 3,000 in the case of a transaction or series of linked transactions entered into in the course of business of a class specified in entries 9 and 11 in Schedule 1; or
- (b) euro 15,000 in any other case;

“external regulated business” means business outside the Island that corresponds to business carried out by a regulated person and which is regulated or supervised by an authority (whether a governmental or private body and whether in the Island or in a country outside the Island) which is empowered (whether by law or by the rules of the body) to regulate or supervise such business;

“FATF Recommendations” means the 40 Recommendations of the Financial Action Task Force on Money Laundering and the Task Force’s 9 Special Recommendations on Terrorist Financing;

“insurer” means an insurer who is authorised under section 8 of the Insurance Act 2008⁷ or which holds a permit under section 22 of the Insurance Act 2008;

“insurance business” has the same meaning as in the Insurance Act 2008;

“investment business” has the meaning given in section 3 of the Financial Services Act 2008 and Class 2 of Schedule 1 to the Regulated Activities Order 2008 ignoring any exclusions for that class contained within the Order or exemptions contained with the Financial Services (Exemptions) Regulations 2008;

“legal arrangement” means —

- (a) an express trust, or

⁵ SD 368/08

⁶ 1996 c.19

⁷ 2008 c.16

(b) any other arrangement which has a similar legal effect (such as a *fiducie, Treuhand* or *fideicomiso*);

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

“money laundering reporting officer” (“MLRO”) means an individual appointed under paragraph 20 of this Code;

“money laundering” includes any act in contravention of the money laundering requirements;

“the Money Laundering Directive” means Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;

“the money laundering requirements” means the requirements of the following enactments —

- (a) sections 45 to 49 of the Drug Trafficking Act 1996⁸;
- (b) sections 17A to 17D and 17K of the Criminal Justice Act 1990;
- (c) section 9 of the Prevention of Terrorism Act 1990⁹; and
- (d) sections 7 to 11 and section 14 of the Anti-Terrorism and Crime Act 2003¹⁰,

and includes, in the case of anything done otherwise than in the Island, anything which would constitute an offence under the provisions specified in paragraphs (a) to (d) if done in the Island and references to “anti-money laundering requirements” shall be construed accordingly;

“one-off transaction” means any transaction other than a transaction carried out in the course of an established business relationship formed by a relevant person and, for the purposes of this definition, a business 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 the identity of the person who, in relation to the formation of that business relationship, was the applicant for business;

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

⁸ 1996 c.3

⁹ 1990 c.19 (Although the Act is repealed, it is possible for proceedings to be taken in respect of acts undertaken when it was in force)

¹⁰ 2003 c.6

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

- (a) a natural person who is or has been entrusted with prominent public functions, including —
 - (i) a head of state, head of government, minister or deputy or assistant minister;
 - (ii) a senior government official;
 - (iii) a member of parliament;
 - (iv) a senior politician;
 - (v) an important political party official;
 - (vi) a senior judicial official;
 - (vii) a member of a court of auditors or the board of a central bank;
 - (viii) an ambassador, chargé d’affaires or other high-ranking officer in a diplomatic service;
 - (ix) a high-ranking officer in an armed force;
 - (x) a senior member of an administrative, management or supervisory body of a State-owned enterprise; and
 - (xi) a senior official of an international entity or organisation;
- (b) any of the following family members of a person mentioned in sub-paragraph (a) —
 - (i) a spouse;
 - (ii) a partner considered by national law as equivalent to a spouse;
 - (iii) a child or the spouse or partner of a child;
 - (iv) a brother or sister (including a half-brother or half-sister);
 - (v) a parent;
 - (vi) a parent-in-law;
 - (vii) a grandparent; and
 - (viii) a grandchild;
- (c) any close associate of a person mentioned in sub-paragraph (a), including —

- (i) any natural person who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with such a person;
- (ii) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of such a person;
- (iii) any natural person who is known to be beneficiary of a legal arrangement of which such a person is a beneficial owner or beneficiary;
- (iv) any natural person who is 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 carrying on insurance business or acting as an insurance manager within the meaning of the Insurance Act 2008;
- (c) the trustee of a retirement benefits scheme that is authorised under section 3 of the Retirement Benefits Schemes Act 2000¹¹; or
- (d) a retirement benefits schemes administrator who is registered under section 36 of the Retirement Benefits Schemes Act 2000;

“relevant business” means engaging by way of business in one or more of the businesses, transactions or activities specified in Schedule 1;

“relevant person” means a person carrying on relevant business.

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

- (2) In this Code, “shell bank” means a bank which is —
 - (a) incorporated in a country or territory in which it has no physical presence; and
 - (b) not affiliated with a financial services group which is subject to effective consolidated supervision;

and for this purpose —

¹¹ 2000 c.14

“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 which are, or if carried on in the Island would be, regulated activities.

(3) The Criminal Justice (Money Laundering) Code 2007¹², the Criminal Justice (Money Laundering) (Amendment) Code 2007¹³ and the Criminal Justice (Money Laundering) (Amendment) Code 2008¹⁴ are revoked.

3 Risk assessment

(1) For the purpose of determining the measures to be taken when carrying out customer due diligence, a relevant person must carry out a risk assessment in accordance with this paragraph.

(2) The assessment must estimate the risk of money laundering and terrorist financing on the part of the relevant person’s customers, having regard to —

- (a) the nature, scale and complexity of its activities;
- (b) the products and services provided;
- (c) the persons to whom, and the manner in which they are provided; and
- (d) reliance on third parties for elements of the customer due diligence process.

(3) The assessment must be —

- (a) undertaken as soon as reasonably practicable —
 - (i) after this Code comes into force, in the case of an existing business; or
 - (ii) after the relevant person commences business, in any other case; and
- (b) regularly reviewed and, where appropriate, amended so as to keep it up to date.

¹² SD 712/07

¹³ SD 903/07

¹⁴ SD 296/08

(4) When carrying out customer due diligence, whether in relation to an applicant for business, an existing business relationship or a one-off transaction, a relevant person must do so —

- (a) on the basis of materiality and risk;
- (b) in accordance with its current risk assessment under this paragraph; and
- (c) having regard to whether the applicant for business, an existing business relationship or a one-off transaction poses a higher risk.

4 General requirements

(1) In conducting relevant business a relevant person shall not form a business relationship or carry out a one-off transaction with or for another person nor continue a business relationship unless the relevant person —

- (a) establishes, maintains and operates —
 - (i) identification procedures in accordance with paragraphs 5 to 15;
 - (ii) record keeping procedures in accordance with paragraphs 16 to 19;
 - (iii) internal reporting procedures in accordance with paragraph 20;
 - (iv) internal staff screening procedures in accordance with paragraph 21;
 - (v) internal controls and communication procedures which are appropriate for the purposes of forestalling and preventing money laundering; and
 - (vi) procedures and controls in accordance with paragraph 23;
- (b) takes appropriate measures from time to time for the purpose of making employees aware of —
 - (i) the procedures established, maintained and operated under head (a); and
 - (ii) the provisions of the money laundering requirements; and
- (c) provides education and training in accordance with paragraph 22.

(2) Any person who contravenes sub-paragraph (1) shall be guilty of an

offence and liable —

- (a) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both; and
- (b) on conviction on information to custody not exceeding 2 years or to a fine, or to both.

(3) In determining whether a person has complied with any of the requirements of sub-paragraph (1), a court may take account of —

- (a) any relevant supervisory or regulatory guidance which applies to that person and which is given by a competent authority; or
- (b) in a case where no guidance falling within head (a) applies, any other relevant guidance issued by a body that regulates, or is representative of, any trade, business, profession or employment carried on by that person.

(4) In proceedings against a person for an offence under this paragraph, it shall be a defence for that person to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(5) Sub-paragraph (6) applies where an offence under this paragraph is committed by a body corporate and it is proved that the offence —

- (a) was committed with the consent or connivance of, or
- (b) was attributable to neglect on the part of, an officer of the body.

(6) The officer, as well as the body, shall be guilty of the offence.

(7) Sub-paragraph (8) applies where an offence under this paragraph is committed by a partnership, 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.

(8) The partner or (as the case may be) the person concerned, as well as the

partnership or association, shall be guilty of the offence.

(9) Where a person is convicted of an offence under this paragraph by virtue of sub-paragraph (6) or (8), that person shall be liable —

- (a) on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £5,000, or to both; and
- (b) on conviction on information to custody not exceeding 2 years or to a fine, or to both.

(10) In this paragraph “officer” includes —

- (a) a director, manager or secretary;
- (b) a person purporting to act as a director, manager or secretary;
- (c) a member, if the affairs of the body are managed by its members.

IDENTIFICATION PROCEDURES

5 Beneficial ownership and control

(1) This paragraph applies where a relevant person is operating the procedures required by paragraphs 6 to 11 and 15 of the Code.

(2) The relevant person must, in the case of any applicant for business —

- (a) identify who is the beneficial owner of the applicant;
- (b) take reasonable steps to verify the identity of those persons, using relevant information or data obtained from a reliable source; and
- (c) determine whether the applicant is acting on behalf of another person and, if so, identify that other person, and take reasonable steps to verify his identity using relevant information or data obtained from a reliable source.

(3) Without prejudice to sub-paragraph (2), the relevant person must, in the case of an applicant for business which is a legal person or legal arrangement —

- (a) verify that any person purporting to act on behalf of the applicant is authorised to do so;

- (b) identify that person and take reasonable steps to verify the identity of that person using reliable and independent source documents, data or information;
- (c) in the case of a legal arrangement, identify any known beneficiaries;
- (d) in the case of a legal arrangement, identify the settlor or other person by whom the legal arrangement is made;
- (e) verify the legal status of the applicant using relevant information or data obtained from a reliable source;
- (f) obtain information concerning the names and addresses of the applicant 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 applicant;
- (h) obtain information to understand the ownership and control structure of the applicant.

(4) Without prejudice to sub-paragraphs (2) and (3), the relevant person must not, in the case of an applicant for business which is a legal person or legal arrangement, make any payment to a beneficiary of the arrangement unless it has —

- (a) identified the beneficiary; and
- (b) verified his identity using relevant information and data obtained from a reliable source.

(5) Where the relevant person deals with an applicant for business otherwise than face-to-face, it must, in taking any steps under this paragraph, take adequate measures to compensate for any risk arising as a result.

(6) In this paragraph “applicant for business”, in relation to a continuing business relationship, means the person who, in relation to the formation of the business relationship, was the applicant for business.

6 New business relationships

(1) A relevant person shall establish, maintain and operate the procedures specified in sub-paragraph (3).

- (2) Those procedures shall be undertaken —
 - (a) before a business relationship is entered into; or
 - (b) during the formation of that relationship,

but in any event as soon as reasonably practicable (taking into account the need not to interrupt the normal conduct of business where there is little risk of money laundering or terrorist financing occurring) after contact is first made between the relevant person and the applicant for business concerning any particular business relationship.

- (3) The procedures referred to in sub-paragraph (1) are —
 - (a) the identification of the applicant for business;
 - (b) the verification of the identity of the applicant for business using reliable, independent source documents, data or information;
 - (c) the obtaining of information on the purpose and intended nature of the business relationship;
 - (d) the taking of reasonable steps to establish the source of funds;
 - (e) ensure sub-paragraphs (a) to (d) are carried out in accordance with paragraph 5.

(4) Sub-paragraph (1) shall not require verification of identity to be produced if —

- (a) the identity of the applicant for business is known to the relevant person;
- (b) the relevant person knows the nature and intended purpose of the relationship; and
- (c) the relevant person has satisfied itself that the applicant for business is a person listed in sub-paragraph (5).

(5) The persons referred to in sub-paragraph (4)(c) are —

- (a) a regulated person;
- (b) an advocate within the meaning of the Advocates Act 1976, a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986¹⁵ or an accountant carrying out business in or from the Isle of Man, where the relevant person is satisfied that the rules of the professional body of the

¹⁵ 1986 c.15

applicant for business embody requirements and procedures that are at least equivalent to this Code; or

- (c) a person who acts in the course of external regulated business and is regulated under the law and regulations of a country that is included in the list in Schedule 2.

(6) Where the relevant person deals with an applicant for business otherwise than face-to-face, it must, in taking any steps under this paragraph, take adequate measures to compensate for any risk arising as a result.

(7) Sub-paragraph (4) shall not have effect in respect of a person mentioned in sub-paragraph (5)(c) if the relevant person has reason to believe that the country in question does not apply, or insufficiently applies, the FATF Recommendations in respect of the business of that person.

(8) Sub-paragraph (4) shall not have effect if any one of the following occurs —

- (a) the relevant person knows or suspects that the transaction is or may be related to money laundering;
- (b) a suspicious pattern of behaviour that causes the relevant person to know or suspect that the behaviour is or may be related to money laundering;
- (c) the relevant person becomes aware of anything which causes the relevant person to doubt the identity of the applicant for business or beneficial owner;
- (d) the relevant person becomes aware of anything which causes the relevant person to doubt the *bona fides* of the applicant for business or beneficial owner.

(9) Except as provided in sub-paragraph (4), procedures comply with sub-paragraph (1) if they require that when evidence of identity in accordance with paragraph 6(3) is not obtained or produced;

- (a) the business relationship and transactions shall not proceed any further; and
- (b) the relevant person shall terminate that relationship; and
- (c) the relevant person must consider whether a suspicious transaction report should be made.

7 Continuing business relationships

(1) A relevant person shall establish, maintain and operate the procedures specified in sub-paragraph (3).

(2) Those procedures shall be undertaken during a business relationship as soon as reasonably practicable after any one of the following occurs —

- (a) a transaction that the relevant person suspects may be related to money laundering; or
- (b) a suspicious pattern of behaviour that causes the relevant person to know or suspect that the behaviour is or may be related to money laundering; or
- (c) transactions or patterns of transactions that are complex or unusually large and which have no apparent economic or visible lawful purpose; or
- (d) unusual patterns of transactions which have no apparent economic or visible lawful purpose; or
- (e) the relevant person becomes aware of anything which causes the relevant person to doubt the identity of the person who, in relation to the formation of the business relationship, was the applicant for business; or
- (f) the relevant person becomes aware of anything which causes the relevant person to doubt the veracity or adequacy of evidence of identity produced under paragraph 6(3).

(3) The procedures referred to in sub-paragraph (1) are —

- (a) an examination of the background and purpose of the transactions or circumstances;
- (b) if no evidence of identity was produced after the business relationship was established, the taking of such steps as will require the production by the person who, in relation to the formation of the business relationship, was the applicant for business of information in accordance with paragraph 6(3);
- (c) if evidence of identity was produced under paragraph 6(3), the taking of such steps as will determine whether the evidence of identity produced under that paragraph is satisfactory; or
- (d) if evidence of identity produced under paragraph 6(3) is not for any reason satisfactory, the taking of such steps as will require

the production by the other party of evidence of his identity or the taking of such measures as will produce evidence of his identity in accordance with paragraph 6(3).

- (4) The relevant person —
- (a) shall keep written records of any examination, steps, measures or determination made or taken or under sub-paragraph (3) (which records shall be records to which paragraph 16 applies); and
 - (b) shall, on request, make such findings available to the competent authorities and auditors (if any).

(5) Where the relevant person deals with an applicant for business otherwise than face-to-face, it must, in taking any steps under this paragraph, take adequate measures to compensate for any risk arising as a result.

(6) Procedures comply with this paragraph if they require that when evidence of identity, in accordance with paragraph 6(3), is not obtained or produced—

- (a) the business relationship and transactions shall not proceed any further; and
- (b) the relevant person shall consider terminating that relationship; and
- (c) the relevant person considers whether a suspicious transaction report should be made.

8 Enhanced customer due diligence

(1) Where in accordance with the risk assessment an applicant for business, poses a higher risk, the relevant person must carry out enhanced customer due diligence.

(2) For the purpose of this paragraph matters which may pose a higher risk include but are not restricted to —

- (a) a business relationship or one-off transaction with —
 - (i) a politically exposed person; or
 - (ii) a person or legal arrangement resident or located in a country which the relevant person has reason to believe does

not apply, or insufficiently applies, the FATF Recommendations in respect of the business or transaction in question;

- (b) a person or legal arrangement which is the subject of a warning issued by a competent authority ;
- (c) a company which has shares in bearer form.

(3) In this paragraph “enhanced customer due diligence” means steps, additional to the measures specified in paragraphs 5 to 7 and 9 to 11 of the Code, 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 customer’s identity need to be verified;
- (c) the taking of reasonable steps to establish the source of the wealth of the customer and any beneficial owner; and
- (d) considering what ongoing monitoring should be carried on in accordance with paragraph 15.

9 One-off transactions

(1) A relevant person shall establish, maintain and operate the procedures specified in sub-paragraph (3).

(2) Those procedures shall be undertaken before a one-off transaction is entered into.

(3) The procedures referred to in sub-paragraph (1) are the production by the applicant for business of –

- (a) the identification of the applicant for business;
- (b) the verification of the identity of the applicant for business using reliable, independent source documents, data or information;
- (c) the obtaining of information on the purpose and intended nature of the one-off transaction;
- (d) taking reasonable steps to establish the source of funds; and
- (e) ensure sub-paragraphs (a) to (d) are carried out in accordance with paragraph 5.

(4) Sub-paragraph (1) shall not require verification of identity to be produced if the identity of the applicant for business is known to the relevant person, the relevant person knows the nature and intended purpose of the relationship and the relevant person has satisfied itself that —

- (a) the applicant for business is —
 - (i) a regulated person;
 - (ii) an advocate within the meaning of the Advocates Act 1976, a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986¹⁶ or an accountant carrying out business in or from the Isle of Man, where the relevant person is satisfied that the rules of the professional body of the applicant for business embody requirements and procedures that are at least equivalent to this Code; or
 - (iii) a person who acts in the course of external regulated business and is regulated under the law and regulation of a country that is included in the list in Schedule 2; or
- (b) the transaction is an exempted one-off transaction.

(5) Where the relevant person deals with an applicant for business otherwise than face-to-face, it must, in taking any steps under this paragraph, take adequate measures to compensate for any risk arising as a result.

(6) Where the one-off transaction is complex or unusually large, and has no apparent economic or visible lawful purpose, the relevant person shall take adequate measures to compensate for any risk arising as a result

(7) Sub-paragraph (4) shall not have effect in respect of a person who acts in the course of external regulated business and is based or incorporated in or formed under the law of a country that is included in the list in Schedule 2 if the relevant person has reason to believe that the country in question does not apply, or insufficiently applies, the FATF Recommendations in respect of the business of that person.

(8) Sub-paragraph (4) shall not have effect if any one of the following occurs —

¹⁶ 1986 c.15

- (a) the relevant person knows or suspects that the transaction may be, related to money laundering;
- (b) a suspicious pattern of behaviour that causes the relevant person to know or suspect that the behaviour is or may be related to money laundering;
- (c) the relevant person becomes aware of anything which causes the relevant person to doubt the identity of the applicant for business or beneficial owner;
- (d) the relevant person becomes aware of anything which causes the relevant person to doubt the *bona fides* of the applicant for business or beneficial owner;
- (e) where the provisions of sub paragraph (6) apply.

(9) Except as provided in sub-paragraph (4), procedures comply with sub-paragraph (1) if they require that when evidence of identity in accordance with paragraph 6(3) is not obtained or produced;

- (a) no one-off transactions shall be carried out ; and
- (b) the relevant person must consider whether a suspicious transaction report should be made.

10 Politically Exposed Persons

(1) A relevant person must maintain appropriate procedures and controls for the purpose of determining whether any of the following is a politically exposed person —

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

(2) A relevant person must maintain appropriate procedures and controls for requiring the approval of its senior management —

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

11 Introduced business

(1) Where an applicant for business is introduced to a relevant person by a third party (in this paragraph referred to as “the introducer”), the relevant person may, if that person thinks fit, choose to comply with the provisions of this paragraph, instead of the provisions of paragraphs 6 or 9.

(2) The relevant person shall establish, maintain and operate the procedures specified in sub-paragraph (4).

(3) Those procedures shall be undertaken before a business relationship is entered into.

(4) The procedures referred to in sub-paragraph (1) are —

- (a) the production by the introducer of evidence of the identity of the applicant for business in accordance with paragraph 6(3); or
- (b) the taking of such other measures as will produce evidence of their identity in accordance with paragraph 6(3).

(5) Sub-paragraph (1) shall not require verification of identity to be produced if —

- (a) the relevant person has identified the applicant for business and the beneficial owner;
- (b) the relevant person knows the nature and intended purpose of the relationship; and
- (c) the relevant person has satisfied itself that —
 - (i) the introducer is —
 - (A) a regulated person; or

- (B) an advocate, a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986 or an accountant carrying out business in or from the Isle of Man, where the relevant person is satisfied that the rules of the professional body of the introducer embody requirements and procedures that are at least equivalent to this Code;
- (ii) the relevant person and the applicant for business are bodies corporate in the same group; or
- (iii) the transaction is an exempted one off transaction; or
- (iv) the introducer acts in the course of an external regulated business and is regulated under the law and regulations of a country that is included in the list in Schedule 2.

(6) Sub-paragraph (5)(c)(iv) shall not have effect in any case where the relevant person has reason to believe that the country in question does not apply, or insufficiently applies, the FATF Recommendations in respect of the business of the introducer.

(7) The relevant person shall 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 those terms of business, notwithstanding sub-paragraph (3) and (4), in all cases require the introducer to —

- (a) verify the identity of all applicants for business introduced to the relevant person sufficiently to comply with the money laundering requirements;
- (b) verify the identity of the beneficial owner;
- (c) establish and maintain a record of the evidence of identity for at least 5 years calculated in accordance with paragraph 17(1);
- (d) establish and maintain records of all transactions between —
 - (i) the introducer and the applicant for business;
 - (ii) the relevant person and the introducer; and
 - (iii) the relevant person and the applicant for business if the introducer has received copies of records relating to those transactions,

if the records are concerned with or arise out of the introduction (whether directly or indirectly) for at least 5 years calculated in accordance with paragraph 17(1);

- (e) supply to the relevant person forthwith upon request, copies of the evidence verifying the identity of the applicant for business and the beneficial owner and all other customer due diligence data held by the introducer in any particular case;
- (f) supply to the relevant person forthwith copies of the evidence verifying the identity of the applicant for business and the beneficial owner and all other customer due diligence data, in accordance with paragraph 6(3), held by the introducer in any particular case where —
 - (i) the introducer is to cease trading;
 - (ii) the introducer is to cease doing business with the applicant for business;
 - (iii) where the relevant person informs the introducer that it no longer intends to rely on the terms of the terms of business entered into under the provisions of this paragraph;
- (g) inform the relevant person specifically of each case where the introducer is not required or has been unable to verify the identity of the applicant for business or the beneficial owner;
- (h) inform the relevant person where the introducer is no longer able to comply with the provisions of the written terms of business because of a change of the law applicable to the introducer; and
- (i) do all such things as may be required by the relevant person to enable the relevant person to comply with its obligation under sub-paragraph (9).

(8) It is the responsibility of the relevant person to 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.

(9) A relevant person shall take steps 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 shall confer the necessary rights on the relevant person.

(10) A relevant person shall take steps to satisfy itself that the introducer is a person as described by sub-paragraph 5(c) and take such steps as necessary to ensure

he becomes aware of any material change to the introducers status or the status of the jurisdiction in which the introducer is regulated.

(11) Sub-paragraph (5) shall not have effect if any one of the following occurs —

- (a) the relevant person knows or suspects that the transaction is or may be related to money laundering;
- (b) a suspicious pattern of behaviour that causes the relevant person to know or suspect that the behaviour is or may be related to money laundering;
- (c) the relevant person becomes aware of anything which causes the relevant person to doubt the identity of the applicant for business or the introducer or beneficial owner;
- (d) the relevant person becomes aware of anything which causes the relevant person to doubt the *bona fides* of the applicant for business or the introducer or beneficial owner.

(12) Except as provided in sub-paragraph (5), procedures comply with this paragraph if they require that when evidence of identity, in accordance with paragraph 6(3), is not obtained or produced —

- (a) the business relationship and transactions shall not proceed any further; and
- (b) the relevant person shall terminate that relationship; and
- (c) the relevant person must consider whether a suspicious transaction report should be made.

(13) The ultimate responsibility for ensuring that customer due diligence procedures comply with the terms of this Code remains with the relevant person.

(14) In sub-paragraph (5)(c)(ii), “group”, in relation to a body corporate, means that body corporate, any other body corporate which is its holding company or subsidiary and any other body corporate which is a subsidiary of that holding company, and “subsidiary” and “holding company” shall be construed in accordance with section 1 of the Companies Act 1974¹⁷.

¹⁷ 1974 c.30

12 Exceptions from customer due diligence procedures

- (1) An insurer need not comply with paragraphs 5 to 11 where —
 - (a) a premium is an exempted one off transaction; or
 - (b) a policy has neither a surrender value nor a maturity value (for example, term insurance).

- (2) In respect of sub-paragraph (1) having paid due regard to the money laundering risk, an insurer may consider it appropriate —
 - (a) to comply immediately with the requirements of the Code referred to in those paragraphs; or
 - (b) to comply with the requirements of the Code referred to in those paragraphs, but to defer compliance until a claim is made or the policy is cancelled.

- (3) Where a claim is made on a policy with neither a surrender value nor a maturity value (for example on the occurrence of an event), and the amount of the settlement is greater than that set out in sub-paragraph (1)(a) the insurer must satisfy itself as to the identity of the policyholder or claimant (if not the policyholder).

- (4) Where a policy is cancelled resulting in the repayment of premium(s) and the amount of the settlement is greater than that set out in sub-paragraphs (1)(a) the insurer must satisfy itself as to the identity of the applicant or claimant (if different to the policyholder) and must also ensure it is satisfied as to the original source of wealth and source of funds.

- (5) An insurer need not comply with sub-paragraph (3) where settlement of the claim is to—
 - (a) a third party in payment for services provided (for example to a hospital where health treatment has been provided);
 - (b) a supplier for services or goods; or
 - (c) the policyholder(s) where invoices for services or goods have been provided to the insurer,and the insurer believes the services or goods to have been supplied.

13 Correspondent banking services

(1) This paragraph applies to a business relationship or one-off transaction, as the case may be, which involves correspondent banking services or similar arrangements.

(2) A relevant person must not enter into or continue a relationship to which this paragraph applies with a shell bank.

(3) A relevant person must not enter into or continue a relationship to which this paragraph applies with a financial institution in a country or territory outside the Island unless it is satisfied that the respondent bank does not permit its accounts to be used by shell banks.

(4) Before entering into a relationship or transaction to which this paragraph applies, a relevant person must take the following additional steps —

- (a) obtain sufficient information about the respondent bank to understand fully the nature of its business;
- (b) determine from publicly available information —
 - (i) the reputation of the respondent bank;
 - (ii) the quality of the supervision to which it is subject; and
 - (iii) whether it has been subject to investigation or regulatory action with respect to money laundering or the financing of terrorism;
- (c) assess the procedures and controls maintained by the respondent bank for preventing money laundering or the financing of terrorism, and ascertain that they are adequate and effective;
- (d) ensure that the approval of the relevant person's senior management is obtained; and
- (e) document the respective responsibilities of the relevant person and the respondent bank with respect to measures to prevent money laundering and the financing of terrorism.

(5) Where a relationship or transaction to which this paragraph applies involves a payable-through account, a relevant person must be satisfied that the respondent bank —

- (a) has taken steps complying with the requirements of Recommendation 5 (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 the identity of the customer.

14 Foreign branches and subsidiaries

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

(2) Where the minimum measures for preventing money laundering and the financing of terrorism in such a country differ from those required by the law of the Island, the relevant person must ensure that any branch or subsidiary in that country applies the higher standard, to the extent permitted by the laws and regulations of that country.

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

(4) In this paragraph “subsidiary”, in relation to a relevant person, means a legal person more than half of whose equity share capital is owned by the relevant person.

15 Ongoing monitoring

(1) A relevant person must perform ongoing and effective monitoring of any existing business relationship, including —

- (a) review of information held for the purpose of customer due diligence to ensure that it is up to date and appropriate (in particular where the relationship poses a higher risk);
- (b) appropriate scrutiny of transactions and other activities, paying particular attention to transactions which are —
 - (i) complex;

- (ii) both large and unusual; or
- (iii) of an unusual pattern,
and which have no apparent economic or lawful purpose; and
- (c) appropriate scrutiny of transactions to ensure that they are consistent with the relevant person's knowledge of the customer, its business and risk profile and, where necessary, the source of funds.

(2) The extent and frequency of any monitoring under this paragraph must be determined in accordance with paragraph 3(4)

(3) Where the relevant person deals with a customer otherwise than face-to-face, it must, in carrying out any monitoring under this paragraph, take adequate measures to compensate for any risk arising as a result.

RECORD KEEPING

16 Records

A relevant person must keep the records specified in this paragraph —

- (a) a copy of the evidence of identity obtained or information that enables a copy of such evidence to be obtained pursuant to paragraphs 5 to 14;
- (b) a record of all transactions carried out in the course of relevant business, including identification data, account files and business correspondence records ; and
- (c) such other records as are sufficient to permit reconstruction of individual transactions and compliance with this Code.

17 Retention of records

(1) A relevant person shall keep the records required by this Code for at least 5 years from —

- (a) in the case of records required by paragraph 16(b), the date of the completion of the transaction;
- (b) in other cases, from the date when —
 - (i) all activities relating to a one-off transaction or a series of linked transactions were completed; or
 - (ii) in respect of other activities —

- (A) the business relationship was formally ended; or
- (B) if the business relationship was not formally ended, when all activities relating to the transaction were completed.

(2) Where a report has been made to a constable in pursuance of paragraph 20(2)(f), or the person knows or believes that a matter is under investigation, that person shall, without prejudice to sub-paragraph (1), retain all relevant records for as long as required by the constable.

(3) Where the relevant person becomes aware that a request for information or an enquiry is underway by a competent authority, that person shall, without prejudice to sub-paragraph (1), retain all relevant records for as long as required by the competent authority.

18 Format and retrieval of records

(1) A relevant person shall ensure that 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, 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, ensure that the copies can be sent to the Island and made available within 7 working days; and
- (c) in the case of other records (e.g. copies kept on a computer system), 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, provided that it is satisfied that —

- (a) the third party is required upon request to produce copies of the records required;
- (b) the third party must notify the relevant person that they are no longer able to comply with sub-paragraph (a) for whatever reason

19 Register of money laundering enquiries

(1) A relevant person shall establish and maintain a register of all enquiries made of it by law enforcement or other authorities acting under powers provided by the money laundering requirements.

(2) The register established and maintained under sub-paragraph (1) shall be kept separate from other records and shall contain as a minimum the date and nature of the enquiry, the name and agency of the inquiring officer, the powers being exercised, and details of the accounts or transactions involved.

20 Recognition and reporting of suspicious transactions

(1) A relevant person shall appoint a Money Laundering Reporting Officer to exercise the functions conferred on him by this paragraph and the MLRO —

- (a) must be —
 - (i) sufficiently senior in the organisation of the relevant person; or
 - (ii) if not within that organisation, have sufficient experience and authority; and
- (b) must have a right of direct access to the directors, the managing board or the partners (as the case may be) of the relevant person,

to be effective in the exercise of his or her functions.

(2) A relevant person shall establish, maintain and operate written internal reporting procedures which, in relation to its relevant business, will —

- (a) enable all its directors or, as the case may be, partners, all other persons involved in its management, and all appropriate employees to know to whom they should report any knowledge or suspicions of money laundering activity;
- (b) ensure that there is a clear reporting chain under which those suspicions will be passed to the MLRO;
- (c) require reports to be made to the MLRO of any information or other matter which comes to the attention of the person handling that business and which in that person's opinion gives rise to a knowledge or suspicion that another person is engaged in money laundering;

- (d) require the MLRO to consider any report in the light of all other relevant information available to him for the purpose of determining whether or not it gives rise to a knowledge or suspicion of money laundering;
- (e) ensure that the MLRO has full access to any other information which may be of assistance to him and which is available to the relevant person; and
- (f) enable the information or other matter contained in a report to be disclosed promptly to a constable who is for the time being serving with the organisation known as the Financial Crime Unit where the MLRO knows or suspects that another is engaged in money laundering.

(3) A relevant person shall establish and maintain a register of all reports made to a constable in pursuance of sub-paragraph (2)(f).

(4) The register established and maintained under sub-paragraph (3) shall contain details of the date on which the report is made, the person who makes the report, the constable to whom it is made and information sufficient to identify the relevant papers.

STAFF, TRAINING AND TECHNOLOGICAL DEVELOPMENTS

21 Staff, etc. screening

A relevant person shall 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.

22 Staff training: money laundering requirements

A relevant person shall provide or cause to be provided education and training including refresher training (not less than annually) for all directors or, as the case may be, partners, all other persons involved in its management, all key staff and appropriate employees to ensure that they are aware of —

- (a) the provisions of the money laundering requirements;
- (b) their personal obligations under the money laundering requirements;
- (c) the internal reporting procedures established under paragraph 20;
- (d) the relevant person's policies and procedures to prevent money laundering;

- (e) the relevant person's customer identification, record-keeping and other procedures;
- (f) the recognition and handling of suspicious transactions;
- (g) their personal liability for failure to report information or suspicions in accordance with internal procedures; and
- (h) new developments, including information on current techniques, methods and trends in money laundering and the financing of terrorism.

23 Technological developments

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

Made

2008

Minister for Home Affairs

SCHEDULES

Paragraph 2

SCHEDULE 1

RELEVANT BUSINESS

1. Business carried on by a building society within the meaning of section 7 of the Industrial and Building Societies Act 1892.
2. Business carried on by a society (other than a building society or credit union) registered under the Industrial and Building Societies Act 1892.
3. Any activity carried on for the purpose of raising money authorised to be borrowed under the Isle of Man Loans Act 1974¹⁸.
4. The business of an estate agent within the meaning of the Estate Agents Act 1975¹⁹.
5. The provision by way of business of audit services in respect of a body corporate.
6. (1) Any activity specified in sub-paragraph (2) that is undertaken by —
 - (a) an advocate within the meaning of the Advocates Act 1976;
 - (b) a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986;
 - (c) a Notary Public within the meaning of the Advocates Act 1995 and the Notaries Regulations 2000;
 - (d) an accountant or a person who, in the course of business, provides accountancy services,(2) The activities referred to in sub-paragraph (1) are —
 - (a) holding or managing any assets belonging to a client;
 - (b) the provision of legal services which involves participation in a financial or real property transaction (whether by assisting in the planning or execution of any such transaction or otherwise) by acting for, or on behalf of, a client in respect of —
 - (i) the sale or purchase of land;
 - (ii) managing bank, savings or security accounts;
 - (iii) organising contributions for the promotion, formation, operation or management of bodies corporate;
 - (iv) the sale or purchase of a business;

¹⁸ 1974 c.6

¹⁹ 1975 c.6

- (v) the creation, operation or management of a legal structure or legal arrangement.
7. Insurance business within the meaning of the Insurance Act 2008.
 8. The business of acting as an insurance manager for or in relation to an insurer within the meaning of the Insurance Act 2008.
 9. Any activity permitted to be carried on by a licence holder under a casino licence granted under the Casino Act 1986²⁰.
 10. A collective investment scheme within the meaning of section 1 of the Collective Investment Schemes Act 2008 notwithstanding the provisions of the Collective Investment Scheme (Definition) Order 2008 had not been made²¹.
 11. The business of a bookmaker within the meaning of the Gaming, Betting and Lotteries Act 1988²² but excluding activities to which the Anti-Money Laundering (Online Gambling and Peer to Peer Gambling) Code 2006²³ applies.
 12. Investment business within the meaning of section 3 of the Financial Services Act 2008 and Class 2 of Schedule 1 to the Regulated Activities Order 2008 as if the exclusions contained within the Order or the Financial Services (Exemptions) Regulations 2008 had not been made.
 13. Business carried by a society registered as a credit union within the meaning of the Credit Unions Act 1993²⁴.
 14. The business of insurance intermediary within the meaning of the Insurance Act 2008
 15. Deposit taking within the meaning of section 3 of the Financial Services Act 2008 and Class 1 of Schedule 1 to the Regulated Activities Order 2008 ignoring any exclusions for that class contained within the Order or the Financial Services (Exemptions) Regulations 2008 had not been made.
 16. Corporate services or trust services within the meaning of section 3 of the Financial Services Act 2008 and Classes 4 and 5 of Schedule 1 to the Regulated Activities Order 2008 ignoring any exclusions for that class contained within the Order or the Financial Services (Exemptions) Regulations 2008.
 17. Acting as a retirement benefits schemes administrator within the meaning of Part 6 of the Retirement Benefits Schemes Act 2000.
 18. Acting as the trustee of a retirement benefits scheme within the meaning of the Retirement Benefits Schemes Act 2000.

²⁰ 1986 c.16

²¹ 1988 c.16

²² 1988 c.17

²³ SD 782/06

²⁴ 1993 c.19

19. Any activity carried on for the purpose of raising money by a local authority.
20. The business of a *bureau de change*.
21. The business of the Post Office in respect of any activity undertaken on behalf of the National Savings Bank.
22. Any activity involving money (including any representation of monetary value) transmission services or cheque encashment facilities.
23. The provision of safe custody facilities for cash or liquid securities on behalf of other persons.
24. The business of dealing in goods of any description (including dealing as an auctioneer) whenever a transaction involves accepting a total cash payment of euro 15,000 or more.
25. Subject to note 2 below, lending including, but not limited to, consumer credit, mortgage credit factoring and the finance of commercial transactions.
26. Subject to note 2 below, financial leasing arrangements in respect of products other than consumer products.
27. Any business involving the issuing and managing of means of payment (including but not limited to credit and debit cards, cheques, traveller's cheques, money orders, bankers' drafts and electronic money).
28. Subject to note 2 below, the business of providing financial guarantees and commitments.
29. Administering or managing money on behalf of other persons.
30. Services to collective investment schemes as defined in section 3 of the Financial Services Act 2008 and Class 3 of Schedule 1 to the Regulated Activities Order 2008 ignoring any exclusions for that class contained within the Order or the Financial Services (Exemptions) Regulations 2008.

Note 1. Paragraphs 25 to 30 are additional to paragraphs 1 to 24.

Note 2. A person does not carry on relevant business by reason only of the provisions of paragraphs 25, 26 or 28 of this Schedule if the lending, leasing or provision of guarantees or commitments (as the case may be) is made by:-

- (a) a parent undertaking to a subsidiary of that parent undertaking;
- (b) a subsidiary of a parent undertaking to the parent undertaking; or
- (c) a subsidiary of a parent undertaking to another subsidiary of that parent undertaking.

Note 3. In Note 2 "parent undertaking" means an undertaking which, in relation to another undertaking, a "subsidiary":-

- (a) owns or controls, whether directly or indirectly, shares or other interests in the subsidiary together aggregating in excess of 50 per cent of the votes exercisable at general or other meetings of the subsidiary on any or all matters;
- (b) has a right to appoint or remove a majority of its board of directors, or other governing body;
- (c) has the right to exercise a dominant influence over the subsidiary:-
 - (i) by virtue of the provisions contained in the subsidiary's constitutional documents, or
 - (ii) by virtue of a control contract; or
- (d) controls, alone or pursuant to an agreement with other persons, a majority of the voting rights in the subsidiary; and

“undertaking” means a natural person, body corporate, trust, partnership or unincorporated association.

Note 4. For the purposes of Note 3:-

- (a) an undertaking is taken to have the right to exercise a dominant influence over another undertaking only if it has a right to give directions with respect to the operating and financial policies of that other undertaking with which its directors are, or governing body is, obliged to comply whether or not they are for the benefit of that other undertaking;
- (b) “control contract” means a contract in writing conferring a dominant influence right which:-
 - (i) is of a kind authorised by the constitutional documents of the undertaking in relating to which the right is exercisable; and
 - (ii) is permitted by the law under which that undertaking is established; and
- (c) any undertaking which is a subsidiary of another undertaking is also a subsidiary of any further undertaking of which that other is a subsidiary.”

SCHEDULE 2

LIST OF COUNTRIES

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

Explanatory Note

(This note is not part of the Code)

The Criminal Justice (Money Laundering) Code 2008 is made under section 17F of the Criminal Justice Act 1990 and revokes and replaces the Anti-Money Laundering Code 2007 (SD 712/07), as amended by SD 903/07 and SD 296/07. The Code contains anti-money laundering provisions in line with Financial Action Task Force's Recommendations on money laundering and terrorist financing and accompanying methodology.