

Financial Services Rule Book 2008

PART 9 — MONEY-LAUNDERING AND FINANCING OF TERRORISM

9.1 Application

This Part applies to all licenceholders.

9.2 Interpretation

(1) In this Part —

"beneficial owner" means the natural person who ultimately owns or controls an 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 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 —
 - (i) the trustees or other persons controlling the applicant; and
 - (ii) the settlor or other person by whom the arrangement is made,

"the Code" means the Criminal Justice (Money Laundering) Code 2007;

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

"customer due diligence" (except in the expression "enhanced customer due diligence") means the measures specified in paragraphs 5 to 8 of the Code;

"legal arrangement" means —

- (a) an express trust, or
- (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" means an individual appointed under paragraph 14(1) of the Code;

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

"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;
 - (ii) 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 subparagraph (a) —
 - (e) a spouse;
 - (iii) a partner considered by national law as equivalent to a spouse;

- (iv) 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;
 - (v) any natural person who is in a position to conduct substantial financial transactions on behalf of such a person.

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

- (2) In this Part "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 —

"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) In this Part the following expressions have the same meanings as in the Code —

- "applicant for business"
- "business relationship"
- "FATF Recommendations"
- "one-off transaction"

9.3 Anonymous accounts etc.

- (1) A licenceholder must not maintain —
 - (a) an anonymous account, or
 - (b) an account in a fictitious name.
- (2) If a licenceholder maintains a numbered account it must —
 - (a) identify, and verify the identity of, the customer, and
 - (b) maintain the account in such a way as to comply fully with the requirements of the Code and this Part.

9.4 Business risk assessment

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

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

- (a) the nature, scale and complexity of its activities;
 - (b) the products and services provided by it, and
 - (c) the persons to whom, and the manner in which, they are provided.
- (3) The assessment must be —
- (a) undertaken as soon as reasonably practicable —
 - (i) after this Part comes into force, in the case of an existing business;

- (ii) after the licenceholder commences business, in any other case; and
- (b) regularly reviewed and, where appropriate, amended so as to keep it up to date.

9.5 Customer due diligence — general

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

- (a) on the basis of materiality and risk, and
- (b) in accordance with its current risk assessment under rule 9.4.

9.6 Customer due diligence procedures

(1) This rule applies where a licenceholder is operating the procedures required by paragraphs 5 to 8 of the Code, except where paragraph 5(4) or 7(4) of the Code applies.

- (2) The licenceholder must, in the case of any applicant for business, —
 - (a) determine 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, take reasonable steps to identify that other person, and to verify his identity using relevant information or data obtained from a reliable source.

(3) Without prejudice to paragraph (2), the licenceholder 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 and 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) verify the legal status of the applicant using relevant information or data obtained from a reliable source;
- (e) obtain information concerning the names and addresses of the applicant and any natural persons having power to direct its activities;

- (f) obtain information concerning the person by whom, and the method by which, binding obligations may be imposed on the applicant;
- (g) take reasonable steps to understand the ownership and control structure of the applicant.

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

(5) The licenceholder must not proceed with the business relationship or transaction in question unless the requirements of paragraph (2) and (where appropriate) paragraphs (3) and (4) have been complied with.

(6) In this rule "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.

9.7 Source of funds

- (1) This rule applies where —
 - (a) a licenceholder enters into a new business relationship with a customer,
 - (b) in the course of a continuing business relationship between the licenceholder and a customer, any of the events referred to in paragraph 6(2) of the Code occurs, or
 - (c) the licenceholder enters into a one-off transaction with or on behalf of a customer.

(2) The licenceholder must take all reasonable steps to establish the source of the customer's funds with which the relationship or transaction is concerned.

9.8 Payments to beneficiaries

A licenceholder must not make a payment of income or capital under a legal arrangement to a beneficiary of the arrangement unless it has —

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

9.9 Enhanced customer due diligence

(1) Where in accordance with the risk assessment an applicant for business, business relationship or one-off transaction poses a higher risk, the licenceholder must carry out enhanced customer due diligence.

(2) For the purpose of this rule matters which 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 licenceholder 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 the Commission for the purpose of this rule; and
- (c) a company which has shares in bearer form.

(3) In this rule "enhanced customer due diligence" means steps, additional to the measures specified in paragraphs 5 to 8 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) taking reasonable measures 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 rule 9.15.

9.10 Introduced business

(1) This rule applies where a licenceholder enters into a business relationship with a person ("the customer") who is introduced by a third party ("the introducer").

(2) The written terms of business between the licenceholder and the introducer which are required by sub-paragraph (6) of paragraph 8 of the Code must, in addition to the requirements specified in that sub-paragraph, include that mentioned in paragraph (3).

(3) The requirement referred to in paragraph (2) is that, if the introducer at any time is no longer able to comply with those requirements, whether —

- (i) because of a change in the law applicable to the introducer, or in the terms of business between the introducer and the customer;
- (ii) because the introducer has ceased to do business with the customer, or has ceased trading; or
 - (iii) for any other reason;

the introducer must —

- (a) notify the licenceholder that he is no longer able to comply, and
- (b) provide the licenceholder with the records, or copies of the records, which the introducer maintains pursuant to that sub-paragraph.

9.11 Politically exposed persons

(1) A licenceholder 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 subparagraph (a) or (b).

(2) A licenceholder 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) where it is discovered that an existing business relationship is with a politically exposed person, to the continuance of that relationship.

9.12 Correspondent banking services

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

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

(3) A licenceholder must not enter into or continue a relationship to which this rule 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 rule applies, a licenceholder 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 licenceholder's senior management is obtained;
- (e) document the respective responsibilities of the licenceholder 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 rule applies involves a payable-through account, a licenceholder 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 licenceholder on request with relevant evidence of the identity of the customer.

9.13 Technological developments

A licenceholder 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.

9.14 Foreign branches and subsidiaries

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

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

(3) The licenceholder must inform the Commission when a branch or subsidiary is unable to take any of the measures referred to in paragraph (1) or (2) because it is prohibited by the laws and regulations of the country or territory concerned.

(4) In this rule "subsidiary", in relation to a licenceholder, means a legal person more than half of whose equity share capital is owned by the licenceholder.

9.15 Ongoing monitoring

(1) A licenceholder 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 for the purpose of rule 9.9);

(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 of transactions,

and which have no apparent economic or lawful purpose; and

- (c) appropriate scrutiny of transactions to ensure that they are consistent with the licenceholder'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 rule must be determined —
 - (a) on the basis of materiality and risk,
 - (b) in accordance with the licenceholder's current risk assessment under rule 9.4, and
 - (c) having regard to whether the business relationship poses a higher risk for the purpose of rule 9.9.
- (3) Where the licenceholder deals with a customer otherwise than face-to-face, it must, in carrying out any monitoring under this rule, take adequate measures to compensate for any risk arising as a result.

9.16 Retention etc. of records

- (1) Where a licenceholder takes any steps under this Part for —
 - (a) identifying, or verifying the identity of, or obtaining any information concerning, any person, or
 - (b) ascertaining the source of any funds,
- it must retain a record of those steps and copies of any documents produced for that purpose.
- (2) The licenceholder must make the record and copies available if required to —
 - (a) the licenceholder's money laundering reporting officer,
 - (b) any other appropriate staff of the licenceholder;
 - (c) any constable, and
 - (d) the Commission.
 - (3) The licenceholder must keep the record and copies for at least 5 years —
 - (a) in the case of activities relating to a one-off transaction or a series of linked transactions, from the date when the activities were completed;
 - (b) in the case of activities under a business relationship —

- (i) from the date when the relationship was formally ended; or
 - (ii) if the relationship was not formally ended, from the date when all activities relating to the transaction in question were completed.
- (4) Without prejudice to paragraph (3), where —
- (a) a report has been made to a constable in pursuance of paragraph 14(2)(f) of the Code, or
 - (b) the licenceholder knows or believes that a matter is under investigation, the licenceholder must retain all relevant records for as long as required by a constable.