



# ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (UNREGULATED TRUSTEES) CODE 2018

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Statutory Document No. 2018/0241



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

# ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (UNREGULATED TRUSTEES) CODE 2018

*Laid before Tynwald:* 16 October 2018  
*Coming into Operation:* 14 September 2018

The Department of Home Affairs makes the following Order under section 157 of the Proceeds of Crime Act 2008 and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014.

## 1 Title

This Order is the Anti-Money Laundering and Countering the Financing of Terrorism (Unregulated Trustees) Code 2018.

## 2 Commencement

This Code comes into operation on 14<sup>th</sup> September 2018.<sup>1</sup>

## 3 Interpretation

In this Code —

“**business relationship**” means an arrangement between 2 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 on of business 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 may neither be

<sup>1</sup>This Code is made under section 157 of the Proceeds of Crime Act 2008 and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014 and must be laid before Tynwald as soon as practicable after it is made and if Tynwald, at the sitting at which the document is so laid or the next following sitting so resolves, it ceases to have effect.



known nor capable of being ascertained at the time the arrangement is made;

“**2015 Code**” means the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015<sup>2</sup> as it has effect from time to time and any instrument or enactment from time to time amending or replacing that Code;

“**competent authority**” has the meaning given in paragraph 3(1) of the 2015 Code;

“**designated non-financial business or profession**” means a business within the meaning of Part 1 of Schedule 1 to the Designated Businesses (Registration and Oversight) Act 2015;

“**express trust**” means a trust other than a trust which arises by construction on implication of law such as a constructive or implied trust;

“**financial institution**” includes a financial institution within the meaning given in paragraph 1 of Schedule 4 to the Anti-Terrorism and Crime Act 2003 and a holder of a licence issued under section 7 of the Financial Services Act 2008 which permits the holder to carry on the regulated activity (within the meaning of section 3(1) of that Act) of providing corporate services or trust services;

“**foreign trustee**” has the meaning given by section 157(2C) of the *Proceeds of Crime Act 2008*;

“**occasional transaction**” has the meaning given by paragraph 3(1) of the 2015 Code;

“**regulated agent**” means a regulated person acting in relation to the trust on behalf of —

- (a) the settlor;
- (b) the trustee;
- (c) the protector (if any);
- (d) the beneficiaries;
- (e) any other natural person exercising ultimate effective control over the trust;

“**regulated person**” has the meaning given in paragraph 3(1) of the 2015 Code;

“**service provider**” means a person who provides services to the trustee in relation to the trust and includes —

- (a) a provider of investment advice; or
- (b) a provider of managerial services, accountancy services, tax advisory services, legal services, trust services or company services;

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<sup>2</sup> SD 2015/0102

“**unregulated trustee**” means a trustee of an express trust that is governed by or otherwise subject to the law of the Island, who —

- (a) is either resident in the Island or a foreign trustee;
- (b) is not and is not required to be the holder of a licence issued under section 7 of the Financial Services Act 2008 which permits the holder to carry on the regulated activity (within the meaning of section 3(1) of that Act) of providing trust services; and
- (c) who is not required to comply with the 2015 Code.

#### **4 Application**

This Code applies to an unregulated trustee.

#### **5 Duty to obtain information**

- (1) An unregulated trustee must obtain and hold adequate, accurate and current information on the identity of —
  - (a) the settlor;
  - (b) any co-trustee;
  - (c) the protector (if any);
  - (d) the beneficiaries; and
  - (e) any other natural person exercising ultimate effective control over the trust.
- (2) In respect of a class of beneficiaries where it is not reasonably practicable to identify each beneficiary, details sufficient to identify and describe the class of persons who are beneficiaries.
- (3) An unregulated trustee must hold information on other regulated agents of, and service providers in relation to, a trust of which he or she is a trustee.
- (4) Information held pursuant to this paragraph must be —
  - (a) updated on a timely basis; and
  - (b) accurate.
- (5) The information specified in subparagraphs (1), (2) and (3) must be maintained in accordance with paragraphs 6 and 7.
- (6) For the purposes of subparagraph (1) regard must be had to any guidance made or issued by a supervisory authority of any other appropriate body in interpreting references in this Code to “adequate” and “control”.

## 6 Record retention

- (1) An unregulated trustee must keep the records required by paragraph 5 for at least 5 years –
  - (a) in the case of records relating to a transaction, from the date –
    - (i) of the completion of the transaction; or
    - (ii) when all activities relating to an occasional transaction or a series of linked transactions were completed; or
  - (b) in respect of other activities, from –
    - (i) the date the business relationship was formally ended; or
    - (ii) if the business relationship was not formally ended, when all activities relating to the transaction were completed.
- (2) Without limiting sub-paragraph (1), if an unregulated trustee knows or believes that a matter is under investigation by a competent authority or becomes aware that a request for information or an enquiry is underway by a competent authority, the trustee must retain all relevant records for as long as required by the competent authority.

## 7 Record format and retrieval

- (1) In the case of any records required to be established and maintained under paragraph 5 –
  - (a) if the records are in the form of hard copies kept in the Island, an unregulated trustee must ensure they are capable of retrieval without undue delay;
  - (b) if the records are in the form of hard copies kept outside the Island, an unregulated trustee must ensure the copies can be sent to the Island and be 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), an unregulated trustee must ensure they are readily accessible in or from the Island and that they are capable of retrieval without undue delay.
- (2) An unregulated trustee may rely on the records of a third party if it is satisfied that the third party will –
  - (a) produce copies of the records on request in accordance with subparagraph (1); and
  - (b) notify the relevant person if the third party is no longer able to produce copies of the records on request.

## 8 Duty to disclose status

- (1) An unregulated trustee must disclose the fact that he or she acts as a trustee to a financial institution and a designated non-financial business or profession in the circumstances specified in subparagraph (2).

- (2) The circumstances referred to in subparagraph (1) are when —
- (a) a business relationship is formed; and
  - (b) an occasional transaction above the threshold specified in paragraph (d) of the definition of “exempted occasional transaction” in paragraph 3 of the 2015 Code is carried out,
- and in relation to that business relationship or transaction, the unregulated trustee is acting in his or her capacity as a trustee.

## 9 Power to disclose information

- (1) Upon request from a person to which subparagraph (2) applies, an unregulated trustee may disclose any information the trustee holds relating to —
- (a) the trust;
  - (b) the beneficiaries of the trust; and
  - (c) the assets of the trust.
- (2) This subparagraph applies to —
- (a) a competent authority;
  - (b) a designated non-financial business or profession; and
  - (c) a financial institution,
- (in the case of (b) and (c) above, which the unregulated trustee has a business relationship in relation to the trust).
- (3) The power to disclose information under subparagraph (1) has effect despite any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, common law, contract or otherwise.

## 10 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 level 5 on the standard scale, 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 of this Code, a court may take account of —
- (a) any relevant supervisory or regulatory guidance given by a competent authority that applies to that person; or
  - (b) in a case where no guidance falling within (a) applies, any other relevant guidance issued by a body that regulates, or is

representative of, any trade, business, profession or employment carried on by that person.

- (3) In proceedings against a person for an offence under this paragraph, it is a defence for the person to show that he or she took all reasonable measures to avoid committing the offence.
- (4) If an offence under this paragraph is committed by a 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 and liable to the penalty provided for it.

## 11 Revocation

The Anti-Money Laundering and Countering the Financing of Terrorism (Unregulated Domestic Trustees) Code 2018<sup>3</sup> is revoked.

**MADE 13 SEPTEMBER 2018**

**W M MALARKEY**  
*Minister for Home Affairs*

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<sup>3</sup>SD 2018/0191

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

This Code is made jointly under section 157 of the Proceeds of Crime Act 2008 and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014. It contains provisions to prevent money laundering and the financing of terrorism by unregulated trustees (whether domestic or foreign). Failure to comply with the requirements of this Code is an offence.