



Isle of Man

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SD No.2018/0242

**ANTI-MONEY LAUNDERING AND
COUNTERING THE FINANCING OF
TERRORISM (AMENDMENT) CODE 2018**



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Statutory Document No. 2018/0242



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

ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (AMENDMENT) CODE 2018

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

The Department of Home Affairs makes the following Code under section 157 of the Proceeds of Crime Act 2008¹ and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014², after consulting such persons and bodies as appear to be appropriate³.

1 Title

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

2 Commencement

This Code comes into operation on 14 September 2018.

3 Interpretation

In this Code “**the 2015 Code**” means the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015⁴.

4 Amendment of the 2015 Code

The 2015 Code is amended as follows.

¹ AT 13 of 2008.

² AT 13 of 2014.

³ As required by section 157(4) of the *Proceeds of Crime Act 2008* and section 68(4) of the *Terrorism and Other Crime (Financial Restrictions) Act 2014*.

⁴ SD 2015/0102.

5 Interpretation: paragraph 3 amended

In paragraph 3(1)—

- (a) in the definition of “**competent authority**” —
 - (i) for “the Financial Supervision Commission, the Insurance and Pensions Authority” substitute ~~the~~ the Isle of Man Financial Services Authority~~;~~;
 - (ii) for “the Financial Crime Unit of the Isle of Man Constabulary” substitute ~~the~~ the Economic Crime Unit of the Isle of Man Constabulary, Financial Intelligence Unit~~;~~;
- (b) omit the definition of “constable”;
- (c) for the definition of “**introducer**” substitute —
~~“introducer”~~ has the meaning given in paragraph 10A(1);~~;~~ and
- (d) at the appropriate point in the list of definitions —
~~“sanctions list”~~ means the list of persons who are currently subject to international sanctions which apply in the Isle of Man: this list is maintained by the Customs and Excise Division of the Treasury of the Isle of Man;~~;~~.

6 General requirements: paragraph 4 amended

- (1) Paragraph 4 is amended as follows.
- (2) In sub-paragraph (1)(a)—
 - (a) omit “and” at the end of subhead (v);
 - (b) after that subhead insert the following—
 - ~~(vi)~~ procedures to determine whether a customer is listed on the sanctions list; and ~~;~~ and
 - (c) renumber the existing subhead (vi) as subhead (vii).
- (3) At the end add—
~~(5)~~ The ultimate responsibility for ensuring that customer due diligence complies with this Code is that of the relevant person, regardless of any outsourcing or reliance on third parties during the process.~~;~~.

7 Business risk assessment: paragraph 6 amended

At the end of sub-paragraph 6(3)(c) add ~~including~~ including whether the relevant person meets its customers;~~;~~.

8 Customer risk assessment: paragraph 7 amended

In paragraph 7(3)—

- (a) omit “and” at the end of head (c);

- (b) insert **13**; and **14** at the end of head (d); and
- (c) at the end add—
 - 13**(e) whether the relevant person and the customer have met during the business relationship or its formation or in the course of an occasional transaction. **14**.

9 Ongoing monitoring: paragraph 9 amended

In paragraph 9(1) —

- (a) omit “and” at the end of head (b);
- (b) insert **13**; and **14** at the end of head (c); and
- (c) at the end add—
 - 13**(d) appropriate scrutiny to determine whether the customer is listed on the sanctions list. **14**.

10 Introduced business: paragraph 10A inserted

After paragraph 10 insert—

13 10A Introduced business

- (1) If a customer is introduced to a relevant person by a third party (the “**introducer**”), and the introducer provides elements of the customer due diligence, the relevant person must comply with—
 - (a) this paragraph; and
 - (b) such of paragraphs 10, 12, 17 or 19 as are applicable.
- (2) The relevant person must undertake a customer risk assessment in accordance with paragraph 7 and which also satisfies sub-paragraph (3).
- (3) The risk assessment referred to in sub-paragraph (2) must—
 - (a) include a risk assessment of the introducer;
 - (b) indicate whether the introducer has met the customer, and if not identify any third party that has met the customer;
 - (c) indicate whether third parties were involved in the process and if so—
 - (i) how many third parties were involved;
 - (ii) who those third parties were;
 - (iii) whether any third party was not a trusted person; and
 - (iv) whether any third party is in a jurisdiction which is for the time being included in List A or List B.

- (4) If the risk assessment indicates higher risk, the relevant person must undertake enhanced customer due diligence on the customer in accordance with paragraph 15 including, but not limited to, reasonable measures to establish the source of wealth of the customer and any beneficial owner.
- (5) The relevant person must be satisfied that—
 - (a) the customer due diligence information and any evidence produced in respect of the identity of the customer conforms to the requirements of the Code; and
 - (b) there is no reason to doubt the veracity of the documents produced to evidence the customer's identity.
- (6) If the relevant person is unable to satisfy himself of the customer's identity in accordance with the relevant provisions of the Code—
 - (a) the business relationship or occasional transaction must proceed no further;
 - (b) the relevant person must consider terminating that business relationship; and
 - (c) the relevant person must consider making an internal disclosure, in relation to that business relationship or occasional transaction, in accordance with paragraphs 26 and 27. **22**.

11 Enhanced customer due diligence: paragraph 15 amended

- (1) Paragraph 15 is amended as follows.
- (2) In subparagraph (3) after “paragraphs 10(4), 20,” insert **21**, **22**.
- (3) In subparagraph (5)—
 - (a) omit “and” at the end of head (i);
 - (b) insert **23**; and **24** at the end of head (j); and
 - (c) at the end add—
 - 25**(k) circumstances in which the relevant person and the customer have not met —
 - (i) during the business relationship or during its formation; or
 - (ii) in the course of an occasional transaction. **26**.

12 Reliance upon third parties: paragraph 21 substituted

For paragraph 21 substitute—

21 Persons in a regulated sector acting on behalf of a third party

- (1) This paragraph applies only to a regulated person holding a licence issued under section 7 of the Financial Services Act 2008 to carry on regulated activities under —
 - (a) Class 1 (deposit-taking);
 - (b) Class 2 (investment business);
 - (c) Class 3 (services to collective investment schemes); or
 - (d) Class 8 (money transmission services),of the Regulated Activities Order 2011⁵.
- (2) Where the regulated person determines that a customer is acting on behalf of another person who is an underlying client of the customer, the regulated person need not comply with paragraph 13(2)(c) if the following conditions are met —
 - (a) the regulated person has satisfied itself that the customer is a person specified in sub-paragraph (6);
 - (b) the regulated person is satisfied the customer is regulated and supervised, or monitored for and has measures in place for compliance with, customer due diligence and record keeping requirements in line with FATF Recommendations 10 and 11;
 - (c) the customer has identified and verified the identity of the underlying client in accordance with paragraphs 10 to 13 or to AML/CFT requirement at least equivalent to those in this Code and has no reason to doubt those identities;
 - (d) the customer has risk assessed the underlying client in accordance with paragraph 7 or to AML/CFT requirements at least equivalent to those in this Code and has confirmed to the regulated person there are no higher risk underlying clients in the arrangement;
 - (e) the regulated person and the customer know the nature and intended purpose of the business relationship;
 - (f) the customer has identified the source of funds of the underlying clients;
 - (g) neither the regulated person nor the customer has identified any suspicious activity;
 - (h) written terms of business are in place between the regulated person and the customer in accordance with sub-paragraph (3); and
 - (i) the customer does not pose a higher risk of ML/FT.

⁵ SD 2011/884, amended by SD 2013/0373, 2016/0099 and 0188 and 2017/0344.

- (3) The written terms of business required to be in place in accordance with sub-paragraph (2)(h) must in all cases require the customer to —
- (a) supply to the regulated person information concerning the identity of the underlying clients —
 - (i) in relation to persons to whom any of heads (a) to (d) of subparagraph (6) applies, on request; and
 - (ii) in relation to persons to whom head (e) or (f) that subparagraph applies, immediately;
 - (b) supply to the regulated person immediately on request, copies of the evidence verifying the identity of the underlying clients and all other due diligence information held by the customer in respect of the underlying client in any particular case;
 - (c) confirm to the regulated person there are no underlying clients in the arrangement who have been assessed as higher risk by the customer;
 - (d) inform the regulated person specifically of each case where the customer is not required or has been unable to verify the identity of an underlying client;
 - (e) inform the regulated person if the customer 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 customer; and
 - (f) do all such things as may be required by the regulated person to enable the regulated person to comply with its obligations under sub-paragraph (2).
- (4) In satisfying the conditions under sub-paragraph (2), the regulated person must take reasonable measures to ensure that —
- (a) the evidence produced or to be produced is satisfactory; and
 - (b) the customer due diligence procedures of the customer are fit for purpose.
- (5) The regulated person must take reasonable measures to satisfy itself that —
- (a) the procedures for implementing this paragraph are effective by testing them on a random and periodic basis no less than once every 12 months; and
 - (b) the written terms of business confer the necessary rights on the regulated person.
- (6) The persons referred to in sub-paragraph (2)(a) are —
- (a) a regulated person;

- (b) a nominee company of a regulated person where the regulated person is responsible for the nominee company's compliance with the AML/CFT requirements;
 - (c) a collective investment scheme (except for a scheme within the meaning of Schedule 3 (exempt schemes) to the *Collective Investment Schemes Act 2008*) where the manager or administrator of such a scheme is a regulated person, or where the person referred to in sub-paragraph (2)(a) is an equivalent scheme in a jurisdiction in List C where the manager or administrator of that scheme is a person referred to in head (e);
 - (d) a designated business;
 - (e) a person who acts in the course of external regulated business and who is —
 - (i) regulated under the law of a jurisdiction in List C; and
 - (ii) subject to AML/CFT requirements and procedures that are at least equivalent to the Code,but does not solely carry on activities equivalent to either or both of Class 4 (corporate services) or Class 5 (trust services) under the Regulated Activities Order 2011; and
 - (f) a nominee company of a person specified in head (e) where that person is responsible for the nominee company's compliance with the equivalent AML/CFT requirements.
- (7) If suspicious activity is identified this paragraph ceases to apply and an internal disclosure must be made in accordance with paragraphs 26 and 27.
- (8) If the regulated person is unable to comply with any of the provisions of this paragraph, this paragraph ceases to apply and the regulated person must comply with the requirements of Part 4 of Code.
- (9) In this paragraph “underlying client” includes a beneficial owner of that underlying client. **22**.

13 Eligible introducers: paragraph 23 amended

- (1) Paragraph 23 is amended as follows.
- (2) For “introducer” wherever occurring substitute **23** eligible introducer **22**.
- (3) For sub-paragraph (2) substitute —
 - 23**(2) The relevant person must establish, maintain and operate a customer risk assessment procedure in accordance with paragraph 7. **22**.

- (4) Omit sub-paragraph (4).
- (5) In sub-paragraph (5)—
- (a) after head (b) insert—
 - █(ba) has taken reasonable steps to identify the source of funds; █;
 - (b) at the end of head (d)(i) omit “or”
 - (c) for head (d)(ii) substitute—
 - █(ii) sub-paragraph (5A) applies; or █ and
 - (d) in head (e) at the beginning insert —
 - █ has conducted a risk assessment of the eligible introducer and █.
- (6) After sub-paragraph (5) insert—
- █(5A) This subparagraph applies if, but only if, the following four conditions are met—
 - (a) the relevant person and the customer are bodies corporate in the same group;
 - (b) the group operates AML/CFT programmes and procedures which conform to Part 4 and paragraphs 32 to 34 of this Code;
 - (c) the operation of those programmes and procedures is supervised at a group level by an appropriate authority; and
 - (d) the group’s AML/CFT policies adequately mitigate any risk associated with a jurisdiction for the time being specified on List A or List B. █.
- (7) In sub-paragraph (6) —
- (a) at the end of head (f) insert—
 - █ or
 - (iv) the eligible introducer informs the relevant person that it no longer intends to comply with the terms of business under this paragraph; █; and
 - (b) in head (g) after “beneficial owner (if any)” insert—
 - █: in such a case—
 - (i) the business relationship or occasional transaction must proceed no further;
 - (ii) the relevant person must consider terminating that business relationship; and
 - (iii) the relevant person must consider making an internal disclosure, in relation to that business

relationship or occasional transaction, in accordance with paragraphs 26 and 27; **22**.

14 Reporting procedures: paragraph 26 amended

In paragraph 26(f), for “to a constable who is for the time being serving with the Financial Crime Unit of the Isle of Man Constabulary” substitute **23** to the Financial Intelligence Unit **22**.

15 External disclosure: paragraph 28 amended

In paragraph 28(2), for “to a constable who is for the time being serving with the Financial Crime Unit of the Isle of Man Constabulary” substitute **23** to the Financial Intelligence Unit **22**.

16 Record retention: paragraph 33 amended

In paragraph 33(2)—

- (a) in head (a), for “a constable” substitute **23** the Financial Intelligence Unit **22**; and
- (b) in head (c) omit “constable or”.

17 Registers of internal and external disclosures: paragraph 35 amended

In paragraph 35(3)(d), for “the constable’s name” substitute **23** the reference number supplied by the Financial Intelligence Unit **22**.

MADE 13 SEPTEMBER 2018

W M MALARKEY
Minister for Home Affairs

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

This Code amends the Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 (SD 2015/0102: “the 2015 Code”) to give effect to recommendations made in the Mutual Evaluation Report issued by MONEYVAL (a permanent monitoring body established by the Council of Europe for anti-money laundering (“AML”) and countering the financing of terrorism (“CFT”)) following its Fifth Round Mutual Evaluation of the Isle of Man.

Paragraphs 1 to 3 are introductory, providing for the title commencement and interpretation of this amending Code.

Paragraph 4 introduces the amendments to the 2015 Code.

Paragraph 5 amends paragraph 3 of the 2015 Code to insert a definition of “sanctions list” in the main list of defined expressions in paragraph 3(1) (i.e. the list of persons subject to international sanctions applying in the Isle of Man and which is maintained by the Customs and Excise Division of the Treasury). Paragraph 5 also amends paragraph 3 of the 2015 Code to amend the definition of “Introducer” to reflect the changes introduced by paragraph 10A. The definition of “Competent Authority” has been updated.

Paragraph 6 amends paragraph 4 of the 2015 Code to emphasise that the ultimate responsibility for the compliance of customer due diligence requirements with the Code’s requirements is always that of the relevant person, regardless of outsourcing of functions or reliance upon third parties. It also imposes a general obligation on a relevant person to establish, maintain and operate procedures to check that a customer is not on the sanctions list.

Paragraph 7 amends paragraph 6 of the 2015 Code to add an additional consideration in the list of matters to be taken into account in conducting a business risk assessment, namely whether the relevant person meets its customers.

Paragraph 8 amends paragraph 7 of the 2015 Code and adds an additional consideration in determining the level of risk for a customer relationship or an occasional transaction, namely whether the relevant person and the customer have met in the course of the relationship or the transaction.

Paragraph 9 adds to the ongoing monitoring requirements in paragraph 9 of the 2015 Code an obligation to carry out appropriate checks to determine whether a customer is on the sanctions list

Paragraph 10 inserts a new paragraph 10A in the 2015 Code. The relevant person must comply with the new paragraph if business is being introduced to the relevant person and the introducer is providing elements of the customer due diligence. The paragraph

imposes a requirement to undertake a risk assessment of the introducer and the process.

Paragraph 11 makes an amendment to paragraph 15 of the 2015 Code disapplying the concession available at paragraph 21 of the 2015 Code where a higher risk of money laundering / financing of terrorism is identified. It also expands upon matters that may pose a higher risk and therefore may require enhanced due diligence to be undertaken.

Paragraph 12 replaces the existing paragraph 21 of the 2015 Code to expand the conditions which must be satisfied, where a regulated person who is also a licenceholder under Class 1, 2, 3 or 8 of the Regulated Activities Order 2011 determines that a customer is acting on behalf of a third party, before the regulated person is relieved of the obligation under paragraph 13(2)(c) to verify the identity of the third party using reliable independent information.

Paragraph 13 amends paragraph 23 of the 2015 Code to expand the conditions for the use of the eligible introducer provisions.

Paragraphs 14 to 17 make amendments to paragraphs 26, 28, 33 and 35 of the 2015 Code to reflect the creation of the Island's Financial Intelligence Unit and the fact that functions formerly performed by constables are now performed by civilians.