



# ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (SPECIFIED NON- PROFIT ORGANISATIONS) CODE 2019

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Statutory Document No. 2019/0200



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

# **ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (SPECIFIED NON- PROFIT ORGANISATIONS) CODE 2019**

*Laid before Tynwald: 21 May 2019  
Coming into Operation: 1 June 2019*

The Department of Home Affairs makes the following Code under section 157 of the Proceeds of Crime Act 2008 and section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014, after carrying out the consultation required by those sections<sup>1</sup>.

## **PART 1 – INTRODUCTORY**

### **1 Title**

This Code is the Anti-Money Laundering and Countering the Financing of Terrorism (Specified Non-Profit Organisations) Code 2019.

### **2 Commencement**

This Code comes into operation on 1 June 2019<sup>2</sup>.

### **3 Interpretation**

(1) In this Code –

“**acceptable applicant**” means a customer in relation to whom the conditions of paragraph 16(3) (acceptable applicants) are met;

<sup>1</sup> Section 157(4) of the Proceeds of Crime Act 2008 and section 68(4) of the Terrorism and Other Crime (Financial Restrictions) Act 2014 require the Department of Home Affairs to consult any body or person that appears to it to be appropriate, before making a Code under those sections.

<sup>2</sup> Section 223(5) of the Proceeds of Crime Act 2008 and section 68(5) of the Terrorism and Other Crime (Financial Restrictions) Act 2014 require a Code made under section 157 of the Proceeds of Crime Act 2008 or section 68 of the Terrorism and Other Crime (Financial Restrictions) Act 2014 to be laid before Tynwald as soon as practicable after it is made, and if Tynwald at the sitting at which the Code is laid or at the next following sitting so resolves, the Code ceases to have effect.

“**AML/CFT**” means anti-money laundering and countering the financing of terrorism;

“**AML/CFT legislation**” means the requirements of —

- (a) sections 7 to 11 and 14 of the Anti-Terrorism and Crime Act 2003;
- (b) Part 3 of the Proceeds of Crime Act 2008;
- (c) Parts 2 to 4 of the Terrorism and Other Crime (Financial Restrictions) Act 2014;
- (d) financial sanctions which have effect in the Island; and
- (e) this Code;

“**beneficial owner**” means a natural person who ultimately owns or controls the customer, or on whose behalf a transaction or activity is being conducted and includes —

- (a) in the case of a legal person other than a company whose securities are listed on a recognised stock exchange, a natural person who ultimately owns or controls (whether through direct or indirect ownership or control, including through bearer share holdings) 25% or more of the shares or voting rights in the legal person;
- (b) in the case of a legal person, a natural person who otherwise exercises ultimate effective control or significant influence over the management of the legal person;
- (c) in the case of a legal arrangement, the trustee or other person who exercises ultimate effective control or significant influence over the legal arrangement; and
- (d) in the case of a foundation, a natural person who otherwise exercises ultimate effective control or significant influence over the foundation;

“**beneficiary**”, in relation to an SNPO, means the person who receives benefit (either directly or indirectly) for charitable, religious, cultural, educational, political, social, fraternal or philanthropic purposes and, for the avoidance of doubt, this includes both the ultimate beneficiary and any intermediaries;

“**beneficiary relationship**” means an arrangement between an SNPO and a beneficiary;

“**beneficiary risk assessment**” has the meaning given in paragraph 7 (beneficiary risk assessment);

“**business risk assessment**” has the meaning given in paragraph 5 (business risk assessment);

“**competent authority**” means all Isle of Man administrative and law enforcement authorities concerned with AML/CFT, including the Isle of

Man Financial Services Authority, the Isle of Man Gambling Supervision Commission, the Department of Home Affairs, the Isle of Man Constabulary, the Financial Intelligence Unit, the Attorney General, and the Customs and Excise and Income Tax Divisions of the Treasury;

“**convertible virtual currency**” has the meaning assigned by paragraph 2(6)(r) Schedule 4 to the Proceeds of Crime Act 2008;

“**customer**” means a donor or beneficiary of an SNPO;

“**customer due diligence**” (except in the expression “**enhanced customer due diligence**”) means the measures specified in paragraphs 9 to 14, 16, 17 and 30 for the purpose of identifying and verifying the identity of customers, any beneficial owners and other persons;

“**director**” includes any person occupying the position of director by whatever name called;

“**donor**” means a person who makes a gift, or a series of linked gifts, to an SNPO where –

- (a) the amount of the gift, or, as the case may be, the aggregate in a series of linked gifts, is more than €15,000; and
- (b) the person ultimately making the gift is not located in the Island;

“**donor relationship**” means the relationship between a donor and an SNPO where the SNPO is in receipt of a gift, or a series of linked gifts, from the donor;

“**donor risk assessment**” has the meaning given in paragraph 6 (donor risk assessment);

“**eligible introducer**” refers to a person (“**the eligible introducer**”) who introduces a customer to a relevant person under the circumstances covered in paragraph 17 (eligible introducers). It includes situations where reliance, in relation to verification of a customer’s identity, is placed on the eligible introducer. The verification is not required to be produced to the relevant person if the conditions in paragraph 17 are satisfied;

“**employee**” or “**worker**” of an SNPO have the same meanings as in section 173 of the Employment Act 2006 and include an individual who –

- (a) works under a contract of employment or any other contract of service for an SNPO;
- (b) practises alone or with others under the terms of a partnership agreement for an SNPO;
- (c) is otherwise engaged with the business of an SNPO, in all cases where the individual undertakes to do or perform; directly or indirectly, any work or service for an SNPO, whether or not engaged directly by the SNPO or through another entity forming

part of the group of entities of which an SNPO is a part, and an SNPO is not by virtue of the contract a customer of the individual;

- (d) is a director or officer of an SNPO; or
- (e) is a regular volunteer for an SNPO;

**“enhanced customer due diligence”** means the steps specified in paragraph 15 (enhanced customer due diligence) which are additional to the measures specified in paragraphs 9 to 14, 16, 17 and 30 for the purpose of identifying and verifying the identity of customers, any beneficial owners and other persons;

**“external disclosure”** means a disclosure made under paragraphs 19(f) (reporting procedures) and 21 (external disclosures);

**“external regulated business”** means business conducted outside the Island that is undertaking an activity equivalent to one specified in paragraph 2(6)(a) to (r) or (11)(c) of Schedule 4 to the Proceeds of Crime Act 2008 and —

- (a) is subject to AML/CFT requirements;
- (b) is regulated or supervised under the law of a jurisdiction listed on List C for AML/CFT purposes by an authority (whether a governmental or professional body and whether in the Island or elsewhere) empowered (whether by law or by the rules of the body) to regulate or supervise such business for such purposes; and
- (c) the SNPO has no reason to believe that the jurisdiction in question does not apply, or insufficiently applies, the FATF Recommendations in respect of the external regulated business;

**“FATF recommendations”** means the Recommendations made by the Financial Action Taskforce (“FATF”) which are recognised as the international standards in relation to AML/CFT;

**“financing of terrorism”** includes the financing of proliferation and is to be construed in accordance with the definitions of **“financing”**, **“terrorism”** and **“proliferation”** in section 3 of the Terrorism and Other Crime (Financial Restrictions) Act 2014;

**“foundation”** means a foundation established under the Foundations Act 2001 or a foundation or similar entity established under the law of another jurisdiction;

**“group”** in relation to a body corporate (“B”), means —

- (a) B;
- (b) any other body corporate that is B’s holding company (“H”) or B’s subsidiary; and
- (c) any other body corporate that is a subsidiary of H,

and “**subsidiary**” and “**holding company**” shall be construed in accordance with section 1 of the Companies Act 1974 or section 220 of the Companies Act 2006 (as applicable);

“**internal disclosure**” means a disclosure made under paragraphs 19(c) (reporting procedures) and 20 (internal disclosures);

“**legal arrangement**” includes —

- (a) an express trust; or
- (b) any other arrangement that has a similar legal effect (including a *fiducie*, *treuhand* or *fideicomiso*),

and includes a person acting for, or on behalf of, a legal arrangement referred to in paragraph (a) or (b) such as a trustee;

“**legal person**” includes any body corporate or unincorporate capable of establishing a donor or beneficiary relationship with an SNPO or of owning property;

“**List A**” is a list maintained by the Department of Home Affairs on its website specifying jurisdictions regarding which the FATF (or a FATF-style regional body) has made a call on its members and other jurisdictions to apply countermeasures to protect the international finance system from the ongoing and substantial risks of ML/FT emanating from the jurisdiction;

“**List B**” is a list maintained by the Department of Home Affairs on its website specifying jurisdictions with strategic AML/CFT deficiencies and those that may be considered to pose a higher risk of ML/FT;

“**List C**” is a list maintained by the Department of Home Affairs on its website specifying jurisdictions which are considered to have an AML/CFT regime of equivalent standard to that of the Island in relation to key areas of the FATF Recommendations;

“**ML/FT**” means money laundering and financing of terrorism or both, and includes attempted money laundering and financing of terrorism or both;

“**money laundering**” means an act that falls within section 158(11) of the Proceeds of Crime Act 2008;

“**Money Laundering Reporting Officer**” or “**MLRO**” means an individual appointed under paragraph 18 (Money Laundering Reporting Officer) and includes a deputy MLRO appointed under paragraph 18(3);

“**National Risk Assessment**” is a jurisdiction’s evaluation of its ML/FT risks which aims to ensure that actions are co-ordinated domestically to combat ML/FT and proliferation, as required under the FATF Recommendations;

“**nominee company**” means a wholly-owned subsidiary that complies with paragraphs 2.7 or 3.1 of Schedule 1 to the Financial Services (Exemptions)

Regulations 2011<sup>3</sup> as they have effect from time to time and any instrument or enactment from time to time amending or replacing those regulations or similar legislation in a jurisdiction included in List C;

**“officer”** includes —

- (a) a director or secretary;
- (b) in relation to a limited liability company to which the Limited Liability Companies Act 1996 applies, a member, manager or registered agent of such a company;
- (c) in relation to a company to which the Companies Act 2006 applies, a member, manager or registered agent of such a company;
- (d) in relation to a limited partnership with legal personality to which sections 48B to 48D of the Partnership Act 1909 apply —
  - (i) if a general partner is a natural person, that person;
  - (ii) if a general partner is a body corporate, the directors and officers of that body corporate;
  - (iii) if a general partner is a foundation, the council members (or equivalent) of that foundation;
- (e) in relation to a foundation, a member of the council (or equivalent) of the foundation;
- (f) in relation to a legal arrangement, a trustee;
- (g) any person in accordance with whose directions or instructions any of the officers are accustomed to act unless the officer is accustomed so to act by reason only that they do so on advice given by that person in a professional capacity;
- (h) in respect of any other legal person or legal arrangement such persons as occupy a position equivalent to that of a director;
  - (i) a liquidator;
  - (j) a receiver;
- (k) a person holding an office under any relevant foreign law analogous to any of the offices specified in paragraphs (a) to (j), in respect of a legal person or legal arrangement; and
- (l) a person, who, in any way, whether directly or indirectly is concerned or takes part in the promotion, formation or management of a legal person or legal arrangement;

**“politically exposed person”** or **“PEP”** means any of the following —

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<sup>3</sup> SD 0885/11 as amended by SD 0374/13, SD 0374/2013, SD 2016/0100, SD 2016/0186, SD 2017/0262, SD 2017/0345

- (a) a natural person who is or has been entrusted with prominent public functions (“P”) 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; or
  - (xi) a senior member of manager of, or member of, the governing body of an international entity or organisation;
- (b) any of the following family members of P, including –
  - (i) a spouse;
  - (ii) a partner considered by national law as equivalent to a spouse;
  - (iii) a child;
  - (iv) the spouse of a partner of a child;
  - (v) a brother or sister (including a half-brother or half-sister);
  - (vi) a spouse or partner of a brother or sister;
  - (vii) a parent;
  - (viii) a parent-in-law;
  - (ix) a grandparent; or
  - (x) a grandchild;
- (c) any natural person known to be a close associate of P, including –
  - (i) a joint beneficial owner of a legal person or legal arrangement, or any other close business relationship, with P;

- (ii) the sole beneficial owner of a legal person or legal arrangement known to have been set up for the benefit of P;
- (iii) a beneficiary of a legal arrangement of which P is the beneficial owner or beneficiary; or
- (iv) a person in a position to conduct substantial financial transactions on behalf of P;

**“regulated person”** means —

- (a) any person holding a financial services licence issued under section 7 of the Financial Services Act 2008;
- (b) any person authorised under section 8 of the Insurance Act 2008;
- (c) any person registered under section 25 of the Insurance Act 2008;
- (d) a retirement benefits schemes administrator registered under section 36 of the Retirement Benefits Schemes Act 2000; or
- (e) a person holding an online gambling licence issued under section 4 of the Online Gambling Regulation Act 2001;

**“sanctions list”** means the list of persons who are subject to international sanctions which apply in the Island which is maintained by the Customs and Excise Division of the Treasury;

**“senior management”** means the directors and officers or any other persons who are nominated to ensure that the SNPO is effectively controlled on a day-to-day basis and who have responsibility for overseeing the SNPO’s proper conduct;

**“shell bank”** means a bank (or shell securities provider) that is —

- (a) incorporated in a jurisdiction in which it has no physical presence; and
- (b) not affiliated with a financial services group that is subject to effective consolidated supervision,

and for the purposes of this definition —

**“consolidated supervision”** in relation to a financial services group, means supervision of the group by a regulatory body on the basis of the totality of its business, wherever conducted;

**“financial services group”** means a group of companies whose activities include to a significant extent activities that are, or if carried on in the Island would be, included in the Regulated Activities Order 2011 (as amended 2018)<sup>4</sup> as it has effect from time to time and any instrument or enactment from time to time amending or replacing that Order; and

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<sup>4</sup> SD884/11 as amended by SD0373/13, SD2016/0099, SD2016/0188, SD 2017/0344

“**physical presence**” means the presence of staff and management based in the jurisdiction who operate at a level at which they are able to make meaningful decisions in respect of the functions and activities of the bank;

“**source of funds**” means the origin of the particular funds or other assets involved in a donor relationship and includes the activity that generated the funds used in the donor relationship, and the means through which the funds were transferred;

“**source of wealth**” means the origins of a donor’s entire body of wealth and includes the total assets of the customer;

“**specified non-profit organisation**” or “**SNPO**” means a body corporate or other legal person, the trustees of a trust, a partnership, other unincorporated association or organisation or any equivalent or similar structure or arrangement established solely or primarily to raise or distribute funds for charitable, religious, cultural, educational, political, social, fraternal or philanthropic purposes with the intention of benefitting the public or a section of the public —

- (a) which has an annual or anticipated annual income of £5,000 or more;
- (b) which has remitted, or is anticipated to remit, at least £2,000 in any one financial year to one or more ultimate recipients in or from one or more high risk jurisdictions; and
- (c) where the decision of where to remit the funds is made within the Island

within the meaning specified in paragraph 2(12) of Schedule 4 to the Proceeds of Crime Act 2008;

“**suspicious activity**” means any activity, including the receipt of information, which in the course of a beneficiary or donor relationship causes the SNPO to —

- (a) know or suspect; or
- (b) have reasonable grounds for knowing or suspecting,

that the activity is ML/FT or that the information is related to ML/FT;

“**technology risk assessment**” has the meaning given in paragraph 8 (technology risk assessment) and includes both new and developing technologies;

“**transaction**” includes an attempted transaction;

“**trusted person**” means —

- (a) a regulated person;

- (b) a nominee company owned by a regulated person, where the regulated person is responsible for the nominee company's compliance with the AML/CFT legislation;
- (c) an advocate within the meaning of the Advocates Act 1976 or a registered legal practitioner within the meaning of the Legal Practitioners Registration Act 1986 and who is registered under the Designated Businesses (Registration and Oversight) Act 2015 for those activities;
- (d) an accountant who is registered under the Designated Businesses (Registration and Oversight) Act 2015 for this activity;
- (e) a person who acts in the course of external regulated business; or
- (f) a nominee company owned by a person who acts in the course of external regulated business where the person is responsible for the nominee company's compliance with AML/CFT requirements at least equivalent to those in this Code; and

**“unusual activity”** means any activity including the receipt of information during the course of a beneficiary or donor relationship where –

- (a) the transaction has no apparent economic or lawful purpose, including a transaction which is –
    - (i) complex;
    - (ii) both large and unusual; or
    - (iii) of an unusual pattern;
  - (b) the SNPO becomes aware of anything that causes the SNPO to doubt the identity of a person that it is obliged to identify; or
  - (c) the SNPO becomes aware of anything that causes the SNPO to doubt the good faith of a customer, beneficial owner or beneficiary of a legal arrangement or SNPO.
- (2) In this Code, a reference to an amount of currency expressed in euros is to be construed as meaning that amount converted into, and expressed as, an amount of any other currency, included fiat or convertible virtual currency.

## PART 2 – GENERAL REQUIREMENTS

### 4 Procedures and controls

- (1) An SNPO must not enter into or carry on a beneficiary or donor relationship with or for a customer or another person unless the SNPO –
  - (a) establishes, records, operates and maintains procedures and controls –

- (i) in order to comply with each paragraph within Parts 3 to 9;
  - (ii) in relation to determining whether a customer, any beneficial owner, beneficiary or eligible introducer is included on the sanctions list; and
  - (iii) in relation to internal controls and communication matters that are appropriate for the purposes of forestalling and preventing ML/FT;
- (b) takes appropriate measures for the purpose of making its employees and workers aware of —
- (i) the AML/CFT legislation; and
  - (ii) the procedures and controls established, recorded, maintained and operated under head (a).
- (2) The procedures and controls referred to in sub-paragraph (1) must —
- (a) have regard to the materiality and risk of ML/FT including whether a customer, beneficial owner, beneficiary, introducer or eligible introducer poses a higher risk of ML/FT;
  - (b) enable the SNPO to manage and mitigate the risks of ML/FT that have been identified by the SNPO when carrying out the requirements of this Code; and
  - (c) be approved by the senior management of the SNPO.
- (3) The ultimate responsibility for ensuring compliance with this Code is that of the SNPO, regardless of any outsourcing or reliance on third parties during the process.

## **PART 3 — RISK BASED APPROACH**

### **5 Business risk assessment**

- (1) An SNPO must carry out an assessment that estimates the risk of ML/FT posed by the SNPO's business and customers.
- (2) The business risk assessment must be —
  - (a) undertaken as soon as reasonably practicable after the SNPO commences business;
  - (b) recorded in order to demonstrate its basis; and
  - (c) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep the assessment up-to-date.
- (3) The business risk assessment must have regard to all relevant risk factors, including —
  - (a) the nature, scale and complexity of the SNPO's activities;

- (b) any relevant findings of the most recent National Risk Assessment relating to the Island;
- (c) the products and services provided by the SNPO;
- (d) the manner in which the products and services are provided, including whether the SNPO meets its customers;
- (e) the involvement of any third parties for elements of the customer due diligence process, including where reliance is placed on a third party;
- (f) any donor risk assessment carried out under paragraph 6;
- (g) any beneficiary risk assessment carried out under paragraph 7; and
- (h) any technology risk assessment carried out under paragraph 8.

## 6 Donor risk assessment

- (1) An SNPO must carry out an assessment that estimates the risk of ML/FT posed by the SNPO's donor.
- (2) A donor risk assessment must be —
  - (a) undertaken prior to the establishment of a donor relationship with a donor;
  - (b) recorded in order to be able to demonstrate its basis; and
  - (c) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep the assessment up-to-date.
- (3) The donor risk assessment must have regard to all relevant risk factors, including —
  - (a) the business risk assessment carried out under paragraph 5;
  - (b) the location of the donor's activities;
  - (c) the risk factors included in paragraph 15(5) and (7);
  - (d) the involvement of any third parties in the donor relationship; and
  - (e) whether the SNPO and the donor have met during the donor relationship or its formation.

## 7 Beneficiary risk assessment

- (1) An SNPO must carry out an assessment that estimates the risk of ML/FT posed by the SNPO's beneficiary.
- (2) A beneficiary risk assessment must be —
  - (a) undertaken prior to the establishment of a beneficiary relationship with a beneficiary;

- (b) be recorded in order to be able to demonstrate its basis; and
  - (c) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep the assessment up-to-date.
- (3) The beneficiary risk assessment must have regard to all relevant risk factors including —
- (a) the business risk assessment carried out under paragraph 5;
  - (b) the nature, scale, complexity and location of the beneficiary’s activities;
  - (c) the persons to whom and the manner in which the products and services are provided;
  - (d) the risk factors included in paragraph 15(5) and (7);
  - (e) the involvement of any third parties within the beneficiary relationship and the process of remitting funds to the beneficiary; and
  - (f) whether the SNPO and the beneficiary have met during the beneficiary relationship or its formation.

## **8 Technology risk assessment**

- (1) An SNPO must carry out an assessment that estimates the risk of ML/FT posed by any technology to the SNPO’s business.
- (2) The technology risk assessment must be —
- (a) undertaken as soon as reasonably practicable after the SNPO commences business;
  - (b) undertaken prior to the launch or implementation of new products, new business practices and delivery methods including new delivery systems;
  - (c) undertaken prior to the use of new or developing technologies for both new and existing products;
  - (d) recorded in order to be able to demonstrate its basis; and
  - (e) regularly reviewed (details of any review must be recorded) and, if appropriate, amended so as to keep it up-to-date.
- (3) The technology risk assessment must have regard to all relevant risk factors including —
- (a) technology used by the SNPO to comply with AML/CFT legislation;
  - (b) the business risk assessment carried out under paragraph 5;
  - (c) the products and services provided by the SNPO;

- (d) the manner in which the products and services are provided by the SNPO, considering delivery methods, communication channels and payment mechanisms;
- (e) digital information and document storage;
- (f) electronic verification of documents; and
- (g) data and transaction screening systems.

## **PART 4 – CUSTOMER DUE DILIGENCE AND ONGOING MONITORING**

### **9 New donor relationships**

- (1) An SNPO must, in relation to each new donor relationship, establish, record, maintain and operate the procedures and controls specified in sub-paragraph (3).
- (2) Subject to sub-paragraph (4), the procedures and controls must be undertaken –
  - (a) before a donor relationship is entered into; or
  - (b) during the formation of that donor relationship
- (3) Those procedures and controls are –
  - (a) identifying the donor;
  - (b) verifying the identity of the donor using reliable, independent source documents, data or information;
  - (c) the consideration of other measures which may be needed to ascertain the source of the donation; and
  - (d) taking reasonable measures to establish the source of funds, including where the funds are received from an account not in the name of the donor –
    - (i) understanding and recording the reasons for this;
    - (ii) identifying the account holder and on the basis of materiality and risk of ML/TF taking reasonable measures to verify the identity of the account holder using reliable, independent source documents, data or information; and
    - (iii) if the account holder is assessed as posing a higher risk of ML/FT, satisfying the requirements in paragraph 15.
- (4) In exceptional circumstances the verification of the identity of the donor in accordance with sub-paragraph (3)(b) and (c) may be undertaken after the formation of the donor relationship if –
  - (a) it occurs as soon as reasonably practicable;

- (b) the delay is essential so as not to interrupt the normal course of the donation process;
  - (c) the donor has not been identified as posing a higher risk of ML/FT;
  - (d) the risks of ML/FT are effectively managed;
  - (e) the SNPO has not identified any unusual activity or suspicious activity;
  - (f) the SNPO's senior management has approved the establishment of the donor relationship and any subsequent activity until sub-paragraph (3)(b) and (c) has been complied with; and
  - (g) the SNPO ensures that the amount, type and number of transactions is appropriately limited and monitored.
- (5) Except as provided in sub-paragraph (4) and Part 6, where the requirements of this paragraph are not met, the procedures and controls must provide that—
- (a) the donor relationship must proceed no further;
  - (b) the SNPO must terminate the donor relationship; and
  - (c) the SNPO must consider making an internal disclosure.

## 10 New beneficiary relationships

- (1) An SNPO must, in relation to each new beneficiary relationship, establish, record, maintain and operate the procedures and controls specified in sub-paragraph (3).
- (2) Subject to sub-paragraph (4), the procedures and controls must be undertaken —
  - (a) before a beneficiary relationship is entered into; or
  - (b) during the formation of that beneficiary relationship.
- (3) Those procedures and controls are —
  - (a) identifying the beneficiary;
  - (b) verifying the identity of the beneficiary using reliable, independent source documents, data or information; and
  - (c) obtaining of information on the nature and intended purpose of the beneficiary relationship.
- (4) In exceptional circumstances the verification of the identity of the donor in accordance with sub-paragraph (3)(b) and (c) may be undertaken after the formation of the beneficiary relationship if —
  - (a) it occurs as soon as reasonably practicable;

- (b) the delay is essential so as not to interrupt the normal course of remitting funds to the beneficiary;
  - (c) the beneficiary has not been identified as posing a higher risk of ML/FT;
  - (d) the risks of ML/FT are effectively managed;
  - (e) the SNPO has not identified any unusual activity or suspicious activity;
  - (f) the SNPO's senior management has approved the establishment of the beneficiary relationship and any subsequent activity until sub-paragraph (3)(b) and (c) has been complied with; and
  - (g) the SNPO ensures that the amount, type and number of transactions is appropriately limited and monitored.
- (5) Except as provided in sub-paragraph (4) and Part 6, where the requirements of this paragraph are not met, the procedures and controls must provide that—
- (a) the beneficiary relationship must proceed no further;
  - (b) the SNPO must terminate the beneficiary relationship; and
  - (c) the SNPO must consider making an internal disclosure.

## 11 Continuing donor and beneficiary relationships

- (1) An SNPO must, in relation to each continuing donor or beneficiary relationship, establish, record, maintain and operate the procedures and controls specified in sub-paragraph (3).
- (2) The procedures and controls must be undertaken during a donor or beneficiary relationship as soon as reasonably practicable.
- (3) Those procedures and controls are —
  - (a) an examination of the background and purpose of the donor or beneficiary relationship;
  - (b) if satisfactory verification of the customer's identity was not obtained or produced, requiring such verification to be obtained or produced in accordance with paragraph 9 or 10 (as applicable);
  - (c) if satisfactory verification of the customer's identity was obtained or produced, a determination as to whether it is satisfactory; and
  - (d) if verification of the customer's identity is not satisfactory for any reason, requiring that the SNPO takes measures to verify the customer's identity in accordance with paragraph 9 or 10 (as applicable).
- (4) The SNPO must keep written records of any examination, steps, measures or determination made or taken under this paragraph.

- (5) Except as provided in Part 6, where the requirements of this paragraph are not met within a reasonable timeframe, the procedures and controls must provide that—
  - (a) the donor or beneficiary relationship must proceed no further;
  - (b) the SNPO must consider terminating the donor or beneficiary relationship; and
  - (c) the SNPO must consider making an internal disclosure.

## 12 Beneficial ownership and control

- (1) This paragraph applies when an SNPO is operating any of the procedures and controls required by Parts 3, 4, 5 and 6.
- (2) An SNPO must, in the case of any customer —
  - (a) which is not a natural person —
    - (i) identify who is the beneficial owner of the customer through any number of persons or arrangements of any description; and
    - (ii) subject to paragraph 16(2) take reasonable measures to verify the identity of any beneficial owner of the customer, using reliable, independent source documents, data or information;
  - (b) determine whether the customer is acting on behalf of another person and, if so —
    - (i) identify that other person; and
    - (ii) take reasonable measures to verify that other person's identity using reliable, independent source documents, data or information;
  - (c) determine whether a person is acting on behalf of a customer and verify that any person purporting to act on behalf of the customer is authorised to do so; and, if so —
    - (i) identify that other person; and
    - (ii) take reasonable measures to verify the identity of that person using reliable, independent source documents, data or information.
- (3) Without limiting sub-paragraph (2) an SNPO must, in the case of a legal arrangement, identify and take reasonable measures to verify the identity of the beneficial owner —
  - (a) in the case of an express trust, by identifying —
    - (i) the trustees or any other controlling party;
    - (ii) any known beneficiaries;

- (iii) any class of beneficiaries and, 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;
  - (iv) the protector (if any);
  - (v) the enforcer (if any);
  - (vi) the settlor, or other person by whom the legal arrangement is made or on whose instructions the legal arrangement is formed; and
  - (vii) any other natural person exercising ultimate effective control over the trust traced through any number of persons or arrangements of any description; and
- (b) in the case of other types of legal arrangement by identifying any natural persons in equivalent or similar positions to those mentioned in head (a), traced through any number of persons or arrangements of any description.
- (4) Without limiting sub-paragraph (2), an SNPO must, in the case of a foundation, identify and take reasonable measures to verify the identity of the beneficial owner by identifying –
- (a) the council members (or equivalent);
  - (b) any known beneficiaries;
  - (c) any class of beneficiaries, and 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;
  - (d) the founder and any other dedicator; and
  - (e) any other natural person exercising ultimate effective control over the foundation through any number of persons or arrangements of any description.
- (5) Without limiting sub-paragraphs (2) and (4), in respect of a customer that is a legal person, the SNPO must identify and take reasonable measures to verify the identity of the beneficial owner by –
- (a) obtaining the identity of the beneficial owner who ultimately has a controlling interest in the legal person;
  - (b) if it is not possible to comply with head (a) or where no natural person is the ultimate beneficial owner, identifying and taking reasonable measures to verify the identity of any natural person who exercises control of the legal person; and
  - (c) if it is not possible to comply with head (a) or (b), or where no natural person is the ultimate beneficial owner, identifying and

taking reasonable measures to verify the identity of any natural person who exercises control of the legal person through other means, such as acting as a senior managing official.

- (6) Without limiting sub-paragraphs (2) to (5), in the case of a customer that is a legal arrangement or a legal person the SNPO must –
  - (a) obtain the name and address of any other natural person who has the power to direct the customer’s activities and take reasonable measures to verify that information using reliable, independent source documents, data or information;
  - (b) obtain information concerning the person by whom, and the method by which, binding obligations may be entered into or imposed on the customer; and
  - (c) obtain information to understand the nature of the customer’s business and the ownership and control structure of the customer.
- (7) Without limiting sub-paragraphs (2) to (6), the SNPO must not, in the case of a customer that is a legal person or a legal arrangement, make any payment or loan to, or on behalf of, a beneficial owner of that person or for the benefit of a beneficiary of that arrangement unless it has –
  - (a) identified the recipient or beneficiary of the payment or loan;
  - (b) on the basis of materiality and risk of ML/FT, verified the identity of the recipient or beneficiary using reliable, independent source documents, data or information; and
  - (c) understood the nature and purpose of that payment or loan in accordance with paragraph 13.
- (8) Except as provided in Part 6, where the requirements of this paragraph are not met within a reasonable timeframe, the procedures and controls must provide that –
  - (a) the donor or beneficiary relationship must proceed no further;
  - (b) the SNPO must consider terminating the donor or beneficiary relationship; and
  - (c) the SNPO must consider making an internal disclosure.

### 13 Ongoing monitoring

- (1) An SNPO must perform ongoing and effective monitoring of any donor or beneficiary relationship, including –
  - (a) a review of information and documents held for the purpose of customer due diligence and enhanced customer due diligence to ensure they are up-to-date, accurate and appropriate, in particular where the transaction or relationship poses a higher risk of ML/FT;

- (b) appropriate scrutiny of transactions to ensure that they are consistent with –
    - (i) the SNPO's knowledge of the customer, the customer's business and risk profile and source of funds of the transaction;
    - (ii) the business risk assessment carried out under paragraph 5;
    - (iii) the donor and beneficiary risk assessments carried out under paragraphs 6 and 7; and
    - (iv) any technology risk assessments carried out under paragraph 8; and
  - (c) monitoring whether the customer, beneficial owner, beneficiary or eligible introducer is listed on the sanctions list.
- (2) Where an SNPO identifies any unusual activity in the course of a donor or beneficiary relationship the SNPO must –
- (a) perform appropriate scrutiny of the activity;
  - (b) conduct enhanced customer due diligence in accordance with paragraph 15; and
  - (c) consider whether to make an internal disclosure.
- (3) Where an SNPO identifies any suspicious activity in the course of donor or beneficiary relationship the SNPO must –
- (a) conduct enhanced customer due diligence in accordance with paragraph 15, unless the relevant person reasonably believes conducting enhanced customer due diligence will tip off customer; and
  - (b) make an internal disclosure.
- (4) The extent and frequency of any monitoring under this paragraph must be determined –
- (a) on the basis of materiality and risk of ML/FT;
  - (b) in accordance with the risk assessments carried out under Part 3; and
  - (c) having particular regard to whether a customer poses a higher risk of ML/FT.
- (5) An SNPO must record the date when each review of the donor or beneficiary relationship takes place and details of any examination, steps, measures or determination made or taken under this paragraph.

## PART 5 – ENHANCED MEASURES

### 14 Politically exposed persons

- (1) An SNPO must establish, record, maintain and operate appropriate procedures and controls for the purpose of determining whether any of the following is, or subsequently becomes, a PEP –
  - (a) any customer;
  - (b) any natural person having the power to direct the activities of a customer; and
  - (c) any beneficial owner or known beneficiary.
- (2) An SNPO must establish, record, maintain and operate appropriate procedures and controls for requiring the approval of its senior management before –
  - (a) any donor or beneficiary relationship is established with; or
  - (b) a donor or beneficiary relationship is continued with, a domestic PEP who has been identified as posing a higher risk of ML/FT or any foreign PEP.
- (3) An SNPO must take reasonable measures to establish the source of wealth of –
  - (a) a domestic PEP who has been identified as posing a higher risk of ML/FT; and
  - (b) any foreign PEP.
- (4) An SNPO must perform ongoing and effective enhanced monitoring of any donor or beneficiary relationship with –
  - (a) a domestic PEP who has been identified as posing a higher risk of ML/FT; and
  - (b) any foreign PEP.
- (5) To avoid doubt, this paragraph does not affect the requirement for the SNPO to conduct enhanced customer due diligence in accordance with paragraph 15 where the person identified as a PEP has been assessed as posing a higher risk of ML/FT.
- (6) Where the requirements of this paragraph are not met within a reasonable timeframe, the procedures and controls must provide that –
  - (a) the donor or beneficiary relationship must proceed no further;
  - (b) the SNPO must consider terminating the relationship; and
  - (c) the SNPO must consider making an internal disclosure.
- (7) In this paragraph –

“**domestic PEP**” means a PEP who is or has been entrusted with prominent public functions in the Island and any family members or close associates of the PEP, regardless of the location of that PEP, those family members or close associates; and

“**foreign PEP**” means a PEP who is or has been entrusted with prominent public functions outside of the Island and any family members or close associates of the PEP, regardless of the location of that PEP, those family members or close associates.

## 15 Enhanced customer due diligence

- (1) An SNPO must establish, record, maintain and operate appropriate procedures and controls in relation to undertaking enhanced customer due diligence.
- (2) Enhanced customer due diligence includes –
  - (a) considering whether additional identification information needs to be obtained and, if so, obtaining such additional information;
  - (b) considering whether additional aspects of the identity of the customer need to be verified by reliable independent source documents, data or information and, if so, taking reasonable measures to obtain such additional verification;
  - (c) taking reasonable measures to establish the source of the wealth of a customer;
  - (d) undertaking further research, where considered necessary, in order to understand the background of a customer and the customer’s business; and
  - (e) considering what additional ongoing monitoring should be carried on in accordance with paragraph 13 and carrying it out.
- (3) An SNPO must conduct enhanced customer due diligence –
  - (a) where a customer poses a higher risk of ML/FT as assessed by the donor or beneficiary risk assessment;
  - (b) without limiting paragraph 13, in the event of any unusual activity; and
  - (c) without limiting paragraph 20, in the event of any suspicious activity, unless the SNPO reasonably believes conducting enhanced customer due diligence will tip off the customer.
- (4) For the avoidance of doubt, if higher risk of ML/FT within the meaning of sub-paragraph (3)(a) is assessed, then paragraphs 9(4), 10(4), 16 and 17 do not apply.
- (5) Matters that pose a higher risk of ML/FT include –

- (a) a donor or beneficiary relationship with a customer that is resident or located in a jurisdiction in List A; and
  - (b) a customer that is the subject of a warning in relation to AML/CFT matters issued by a competent authority or equivalent authority in another jurisdiction.
- (6) If sub-paragraph (5)(a) or (b) applies the SNPO's senior management must approve the establishment, or continuation, of the donor or beneficiary relationship.
- (7) Matters that may pose a higher risk of ML/FT include —
- (a) activity in a jurisdiction the SNPO deems to be higher risk of ML/FT;
  - (b) a donor or beneficiary relationship or occasional transaction with a customer resident or located in a jurisdiction in List B;
  - (c) activity in a jurisdiction in List A or B;
  - (d) a situation that by its nature presents an increased risk of ML/FT;
  - (e) a donor or beneficiary relationship with a PEP;
  - (f) a company that has nominee shareholders or shares in bearer form;
  - (g) the provision of high risk products;
  - (h) the involvement of any high-net-worth individuals;
  - (i) a legal arrangement;
  - (j) persons performing prominent functions for international organisations; and
  - (k) circumstances in which the SNPO and the customer have not met during the donor or beneficiary relationship or during its formation.
- (8) Except as provided in Part 6, where the requirements of this paragraph are not met within a reasonable timeframe, the procedure must provide that —
- (a) the donor or beneficiary relationship must proceed no further;
  - (b) the SNPO must consider terminating that relationship; and
  - (c) the SNPO must consider making an internal disclosure.

## PART 6 – EXEMPTIONS AND SIMPLIFIED MEASURES

### 16 Acceptable applicants

- (1) If each of the conditions in sub-paragraph (3) are met, verification of the identity of a customer is not required to be produced for –
  - (a) a new donor relationship in accordance with paragraph 9(3)(b) and (c); or
  - (b) a new beneficiary relationship in accordance with paragraph 10(3)(b) and (c).
- (2) If each of the conditions in sub-paragraph (3) are met, paragraph 12(2)(a) ceases to apply.
- (3) The conditions referred to in sub-paragraphs (1) and (2) are that the SNPO –
  - (a) has identified the customer and has no reason to doubt that identity;
  - (b) has not identified the customer as posing a higher risk of ML/FT;
  - (c) knows the nature and intended purpose of the donor or beneficiary relationship;
  - (d) has not identified any suspicious activity; and
  - (e) is satisfied that –
    - (i) the customer is acting on its own behalf and not on behalf of a third party; and
    - (ii) either the customer –
      - (A) is a trusted person; or
      - (B) is a company listed on a recognised stock exchange or a wholly owned subsidiary of such a company in relation to which the SNPO has taken reasonable measures to establish that there is effective control of the company by an individual, group of individuals or another legal person or legal arrangement (and such persons are treated as beneficial owners for the purposes of this Code).

### 17 Eligible introducers

- (1) If a customer is introduced to an SNPO by a third party (“**eligible introducer**”), the SNPO may, if it thinks fit, comply with this paragraph, instead of paragraph 9 or 10 (as applicable) provided –
  - (a) the eligible introducer agrees to the SNPO doing so; and
  - (b) each of the conditions in sub-paragraphs (4) and (5) are met.

- (2) The SNPO must establish, maintain and operate donor and beneficiary risk assessment procedures in accordance with paragraphs 6 and 7.
- (3) The procedures and controls of this paragraph must be undertaken before a donor or beneficiary relationship is entered into.
- (4) Verification of a customer's identity is not required to be produced by the eligible introducer if the SNPO —
  - (a) has identified the customer and any beneficial owner and has no reason to doubt those identities;
  - (b) has not identified the customer as posing a higher risk of ML/FT;
  - (c) knows the nature and intended purpose of the donor or beneficiary relationship;
  - (d) has taken reasonable steps to establish the source of funds including the measures specified in paragraph 9(3)(d);
  - (e) has not identified any suspicious activity;
  - (f) is satisfied that —
    - (i) the eligible introducer is a trusted person other than a nominee company of either a regulated person or a person who acts in the course of external regulated business; or
    - (ii) each of the conditions in sub-paragraph (5) are met;
  - (g) has conducted a risk assessment of the eligible introducer and is satisfied that the eligible introducer does not pose a higher risk of ML/FT.
- (5) The conditions referred to in sub-paragraph 4(f)(ii) are that—
  - (a) the SNPO and the eligible introducer are bodies corporate in the same group;
  - (b) the group operates AML/CFT programmes and procedures which conform to Parts 4 and 5 and paragraphs 27 to 30;
  - (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.
- (6) The SNPO must not enter into a donor or beneficiary relationship with a customer that is introduced by an eligible introducer unless written terms of business are in place between the SNPO and the eligible introducer.
- (7) Without limiting sub-paragraphs (4) and (5), those terms of business must require the eligible introducer to —

- (a) verify the identity of all customers introduced to the SNPO in accordance with paragraphs 9 to 12 or with AML/CFT requirements at least equivalent to those in this Code and has no reason to doubt those identities;
- (b) take reasonable measures to verify the identity of any beneficial owners in accordance with paragraphs 9 to 12 or with AML/CFT requirements at least equivalent to those in this Code and has no reason to doubt those identities;
- (c) establish and maintain a record of the evidence of identity for at least 5 years calculated in accordance with paragraph 28(3);
- (d) establish and maintain records of all transactions between the eligible introducer and the customer if the records are concerned with or arise out of the introduction (whether directly or indirectly) for at least 5 years calculated in accordance with paragraph 28(4);
- (e) supply to the SNPO immediately on request, copies of the documents, data or information used to verify the identity of the customer and any beneficial owner and all other customer due diligence information held by the beneficial owner in any case;
- (f) supply to the SNPO immediately copies of the documents, data and information used to verify the identity of the customer and any beneficial owner and all other customer due diligence information, held by the eligible introducer in any case if —
  - (i) the eligible introducer is to cease trading;
  - (ii) the eligible introducer is to cease doing business with the customer;
  - (iii) the SNPO informs the eligible introducer that it no longer intends to rely on the terms of business referred to in this paragraph; or
  - (iv) the eligible introducer informs the SNPO that it no longer intends to comply with the terms of business referred to in this paragraph;
- (g) inform the SNPO specifically of each case where the eligible introducer is not required or has been unable to verify the identity of the customer or any beneficial owner within a reasonable timeframe in; and in such a case—
  - (i) the donor or beneficiary relationship must proceed no further;
  - (ii) the SNPO must consider terminating the donor or beneficiary relationship; and

- (iii) the SNPO must consider making an internal disclosure in relation to that donor or beneficiary relationship;
  - (h) inform the SNPO if the eligible 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 eligible introducer; and
  - (i) do all such things as may be required by the SNPO to enable the SNPO to comply with its obligation under sub-paragraph (9).
- (8) An SNPO must ensure that the procedures under this paragraph are fit for the purpose of ensuring that the documents, data or information used to verify the identity of the customer and any beneficial owner are satisfactory and that the procedures of the eligible introducer are likewise fit for that purpose.
- (9) An SNPO must take 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 least once every 12 months; and
  - (b) the written terms of business confer the necessary rights on the SNPO to satisfy the requirements of this paragraph.
- (10) In order to rely on an eligible introducer an SNPO must —
  - (a) take measures to satisfy itself that the eligible introducer is not itself reliant on a third party for the evidence of identity of the customer; and
  - (b) take such measures as necessary to ensure it becomes aware of any material change to the eligible introducer's status or the status of the jurisdiction in which the eligible introducer is regulated.
- (11) Where the requirements of this paragraph are not met within a reasonable timeframe, the procedures must provide that —
  - (a) the donor or beneficiary relationship must proceed no further;
  - (b) the SNPO must consider terminating that donor or beneficiary relationship; and
  - (c) the SNPO must consider making an internal disclosure.
- (12) The ultimate responsibility for ensuring that procedures comply with the terms of this Code remains with the SNPO and not with the eligible introducer.

## PART 7 – REPORTING AND REGISTERS

### 18 Money Laundering Reporting Officer

- (1) An SNPO must appoint an Money Laundering Reporting Officer (“**MLRO**”) to exercise the functions required under paragraphs 19 and 21.
- (2) To be effective in the exercise of those functions an MLRO must –
  - (a) be sufficiently senior in the organisation of the SNPO or have sufficient experience and authority;
  - (b) have a right of direct access to the officers of the SNPO;
  - (c) have sufficient time and resources to properly discharge the responsibilities of the position; and
  - (d) retain responsibility for all external disclosures, including where a branch or subsidiary is in another jurisdiction.
- (3) An SNPO may appoint a Deputy Money Laundering Reporting Officer (“**Deputy MLRO**”) in order to exercise the functions required under paragraphs 19 and 21 in the MLRO’s absence.

### 19 Reporting procedures

An SNPO must establish, record, maintain and operate reporting procedures and controls that –

- (a) enable its officers and all other persons involved in its management, and all appropriate employees and workers to know to whom any suspicious activity should be disclosed;
- (b) ensure that there is a clear reporting chain to the MLRO;
- (c) require an internal disclosure to be made to the MLRO if any information, or other matters that come to the attention of the person handling that business, are in that person’s opinion suspicious activity;
- (d) ensure that the MLRO has full access to any other information that may be of assistance and that is available to the SNPO;
- (e) require the MLRO to consider internal disclosures in the light of all other relevant information available to the MLRO for the purpose of determining whether the activity is, in the MLRO’s opinion, suspicious activity;
- (f) enable the information to be provided as soon as is practicable to the Financial Intelligence Unit as an external disclosure if the MLRO knows or suspects, or has reasonable grounds for knowing or suspecting, the activity is ML/FT; and

- (g) ensure the registers required by paragraphs 22 and 23 are maintained and completed in accordance with those paragraphs.

## 20 Internal disclosures

Where an SNPO identifies any suspicious activity in the course of a donor or beneficiary relationship the SNPO must –

- (a) conduct enhanced customer due diligence in accordance with paragraph 15, unless the SNPO reasonably believes conducting enhanced customer due diligence will tip off the customer; and
- (b) make an internal disclosure.

## 21 External disclosures

- (1) Where an internal disclosure has been made, the MLRO must assess the information contained within the disclosure to determine whether there are reasonable grounds for knowing or suspecting that the activity is ML/FT.
- (2) The MLRO must make an external disclosure to the Financial Intelligence Unit in accordance with the reporting procedures and controls established under paragraph 19 as soon as is practicable if the MLRO –
  - (a) knows or suspects; or
  - (b) has reasonable grounds for knowing or suspecting; that the activity is ML/FT.
- (3) A disclosure under sub-paragraph (2) does not breach –
  - (a) any obligation of confidence owed by the MLRO; or
  - (b) any other restriction on the disclosure if information (however imposed).

## 22 Registers of disclosures

- (1) An SNPO must establish and maintain separate registers of –
  - (a) all internal disclosures;
  - (b) all external disclosures; and
  - (c) any other disclosures to the Financial Intelligence Unit.
- (2) The registers must include details of –
  - (a) the date on which the disclosure is made;
  - (b) the person who made the disclosure;
  - (c) for internal disclosures, whether it is made to the MLRO or deputy MLRO;

- (d) for external disclosures, the reference number supplied by the Financial Intelligence Unit; and
  - (e) information sufficient to identify and relevant papers or records.
- (3) The registers of disclosures required by sub-paragraph (1) may be contained in a single document if the details required to be included in those registers under sub-paragraph (2) can be presented separately for each type of disclosure on request by a competent authority.

### **23 Register of money laundering and financing of terrorism enquiries**

- (1) An SNPO must establish and maintain a register of ML/FT enquiries received by it from competent authorities.
- (2) The register must be kept separate from other records and include –
- (a) the date of the enquiry;
  - (b) the nature of the enquiry;
  - (c) the name and agency of the enquiring officer;
  - (d) the powers being exercised; and
  - (e) details of the accounts or transactions involved.

## **PART 8 – COMPLIANCE AND RECORD KEEPING**

### **24 Monitoring and testing compliance**

- (1) An SNPO must establish, record, maintain and operate appropriate procedures and controls for monitoring and testing compliance with the AML/CFT legislation, so as to ensure that –
- (a) the SNPO has robust and recorded arrangements for managing the risks identified by the business risk assessment carried out in accordance with paragraph 5;
  - (b) the operational performance of those arrangements is suitably monitored; and
  - (c) prompt action is taken to remedy any deficiencies in arrangements.
- (2) A report to the senior management of the SNPO must be submitted, at least annually, describing –
- (a) the SNPO's AML/CFT environment including any developments in relation to AML/CFT legislation during the period covered by the report;

- (b) progress on any internal developments during the period covered by the report in relation to the SNPO's policies and procedures and controls for AML/CFT;
  - (c) any activities relating to compliance with this Code that have been undertaken by the SNPO during the period covered by the report; and
  - (d) the results of any testing undertaken in accordance with sub-paragraph (1)
- (3) An SNPO must ensure there is a suitable person at management level that is responsible for the functions specified in this paragraph.
- (4) To be effective in the exercise of the functions the suitable person must —
- (a) be sufficiently senior in the organisation of the SNPO or have sufficient experience and authority;
  - (b) have a right of direct access to the officers of the SNPO; and
  - (c) have sufficient time and resources to properly discharge the responsibilities of the position.

## **25 New staff appointments**

An SNPO must establish, record, maintain and operate appropriate procedures and controls to enable the SNPO to satisfy itself of the integrity of new officers of the SNPO and of all new appropriate employees and workers.

## **26 Staff training**

- (1) An SNPO must provide or arrange education and training, including refresher training, at least annually, for —
- (a) all officers;
  - (b) any other persons involved in its management; and
  - (c) appropriate employees and workers.
- (2) The education and training referred to in sub-paragraph (1) must make those persons aware of —
- (a) the provisions of the AML/CFT legislation;
  - (b) any personal obligations in relation to the AML/CFT legislation;
  - (c) the reporting procedures and controls established under Part 7;
  - (d) the SNPO's policies and procedures and controls for AML/CFT as required by paragraph 4;
  - (e) the recognition and handling of unusual activity and suspicious activity;

- (f) their personal liability for failure to report information or suspicions in accordance with internal procedures and controls, including the offence of tipping off; and
  - (g) new methods and developments, including information on current techniques, methods and trends in ML/FT.
- (3) Where there have been significant changes to AML/CFT legislation, or the SNPO's policies and procedures, the SNPO must provide appropriate education and training to the persons referred to in sub-paragraph (1) within a reasonable timeframe.
- (4) The SNPO must maintain records which demonstrate compliance with this paragraph.

## 27 Record keeping

An SNPO must keep —

- (a) a copy of the documents obtained or produced under Parts 3 to 6, and paragraph 30, including identification information, account files, business correspondence records and the results of any analysis undertaken (or information that enables a copy of such documents to be obtained);
- (b) a record of all transactions carried out in the course of activity under this Code, including identification information, account files, business correspondence records and the results of any analysis undertaken (or information that enables a copy of such records to be obtained); and
- (c) such other records as are sufficient to permit reconstruction of individual transactions and compliance with this Code.

## 28 Record retention

- (1) An SNPO must keep the records required by this Code for at least the period specified in sub-paragraph (3) or (4).
- (2) To avoid doubt, the obligation in sub-paragraph (1) continues to apply after a person ceases to be an SNPO.
- (3) In the case of records required to be kept under sub-paragraph 27(b), the records must be kept for a period of 5 years from the date of the completion of the transaction.
- (4) In the case of records to which sub-paragraph (3) does not apply, the records must be kept for a period of 5 years beginning on the date on which —
  - (a) the donor or beneficiary relationship was formally ended; or

- (b) if the donor or beneficiary relationship was not formally ended, when all activities relating to the relationship were completed.
- (5) Without limiting sub-paragraph (1) if —
- (a) an external disclosure has been made to the Financial Intelligence Unit under paragraphs 19(f) and 21;
  - (b) the SNPO knows or believes that a matter is under investigation by a competent authority; or
  - (c) the SNPO becomes aware that a request for information or an enquiry is underway by a competent authority,
- the SNPO must retain all relevant records for as long as required by the competent authority.

## 29 Record format and retrieval

- (1) To avoid doubt, the obligations of this paragraph continue to apply after a person ceases to be an SNPO.
- (2) In the case of any records required to be established and maintained under this Code —
  - (a) if the records are in the form of hard copies kept in the Island, the SNPO must ensure that they are capable of retrieval without undue delay;
  - (b) if the records are in the form of hard copies kept outside the Island, the SNPO must ensure that the copies can be sent to the Island and made available within 7 working days; and
  - (c) if the records are not in the form of hard copies (such as records kept on a computer system), the SNPO must ensure that they are readily accessible in or from the Island and that they are capable of retrieval without undue delay.
- (3) An SNPO may rely on the records of a third party in respect of the details of payments and transactions by customers if it is satisfied that that third party will —
  - (a) produce copies of the records on request; and
  - (b) notify the SNPO if the third party is no longer able to produce copies of the records on request.

## PART 9 – MISCELLANEOUS

### 30 Branches and subsidiaries

- (1) This paragraph applies to the SNPO if a branch or majority owned subsidiary of the SNPO is undertaking an activity which is equivalent to any activity included in Schedule 4 to the Proceeds of Crime Act 2008.
- (2) An SNPO must ensure that any branch or majority owned subsidiary in a jurisdiction outside the Island takes measures consistent with this Code and guidance issued by a competent authority for AML/CFT, to the extent permitted by that jurisdiction's laws.
- (3) If the minimum measures for AML/CFT in such a jurisdiction are lower than those required by the law of the Island, the SNPO must apply appropriate additional measures to manage the ML/FT risk and ensure that any branch or majority owned subsidiary in that jurisdiction applies those additional standards, to the extent permitted by that jurisdiction's laws.
- (4) An SNPO must inform the relevant competent authority within a reasonable timeframe when a branch or majority owned subsidiary is unable to take any of the measures referred to in sub-paragraph (2) or (3) because it is prohibited by the laws of the jurisdiction concerned.

### 31 Fictitious, anonymous and numbered accounts

An SNPO must not set up or maintain an account in a name that it knows, or has reasonable cause to suspect, is fictitious, an anonymous account, or a numbered account for any new or existing customer.

## PART 10 – OFFENCES

### 32 Offences

- (1) A person who contravenes the 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; or
  - (b) on conviction on indictment, 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 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.
- (3) In proceedings against a person for an offence under this paragraph, it is a defence for the person to show that it took all reasonable measures to avoid committing the offence.
- (4) If an offence under this paragraph is committed by a body corporate or foundation and it is proved that the offence —
  - (a) was committed with the consent or connivance of; or
  - (b) was attributable to the neglect on the part of,an officer of the body, the officer, as well as the body, is guilty of the offence and liable to the penalty provided for it.
- (5) If an offence under this paragraph is committed by a partnership that does not have legal personality, or by an association other than a partnership or body corporate and it is proved that the offence —
  - (a) was committed with the consent or connivance of; or
  - (b) was attributable to the neglect on the part of,a partner in the partnership or a person concerned in the management or control of the association, the partner or the person concerned, as well as the partnership or association, is guilty of the offence and liable to the penalty proved for it.

**MADE 2 MAY 2019**

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

***EXPLANATORY NOTE***

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

The Anti-Money Laundering and Countering the Financing of Terrorism Code 2015 (SD 2015/0102) (“the 2015 Code”) was revoked by the Anti-Money Laundering and Countering the Financing of Terrorism Code 2019 (SD 2019/0202) and has been replaced with 3 Codes which apply to different categories of businesses and organisations carrying out business in the regulated sector under Schedule 4 to the Proceeds of Crime Act 2008. This Code applies to specified non-profit organisations.

This Code contains, with modifications, much of what comprised Part 5 of the 2015 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 in line with the Financial Action Task Force’s Recommendations on preventing money laundering and the financing of terrorism. Failure to comply with the requirements of this Code is an offence for which this Code specifies the penalties.