



Statutory Document No.

## FINANCIAL SERVICES ACT 2008

### FINANCIAL SERVICES (MONEY-LAUNDERING AND FINANCING OF TERRORISM) RULE BOOK 2008

<i>Laid before Tynwald</i>	2008
<i>Approved by Tynwald</i>	2008
<i>Coming into operation</i>	2008

In exercise of the powers conferred on the Financial Supervision Commission by section 18 of and Schedule 3 to the Financial Services Act 2008<sup>1</sup>, and of all other enabling powers, and after carrying out the consultations required by section 43(5) of that Act, the following Rules are hereby made:—

#### 1. Citation and commencement

These Rules may be cited as the Financial Services (Money Laundering and Financing of Terrorism) Rule Book 2008 and shall come into operation on

#### 2. Interpretation

(1) In these Rules —

"the Act" means the Financial Services Act 2008;

"beneficial owner", in relation to a legal person or legal arrangement, means a natural person who ultimately owns or controls it, including for example —

(a) in the case of a legal person —

(i) the natural persons with a controlling interest in the applicant, and

(ii) the natural persons who comprise the mind and management of the company;

but not, where the applicant or the owner of the controlling interest is a public company listed on a recognised stock exchange, the shareholders of that company;

(b) in the case of a legal arrangement —

(i) the trustees or other persons controlling the applicant;

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<sup>1</sup> 2008 c.  
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- (ii) the settlor or other person exercising effective control over the applicant; trust, and
- (iii) any known beneficiaries;

in all other cases the individual on whose behalf a transaction or activity is being conducted;

"the Code" means the Criminal Justice (Money Laundering) Code 2007<sup>2</sup>;

"the Commission" means the Financial Supervision Commission;

"correspondent bank" means a financial institution by which correspondent banking services are provided;

"correspondent banking services" means banking services provided by one financial institution to another financial institution;

"cross-border correspondent banking services" means correspondent banking services provided by a financial institution in one country or territory to a financial institution in another country or territory;

"customer" includes a client;

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

"legal arrangement" means —

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

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

"money laundering reporting officer" means an individual appointed under paragraph 14(1) of the Code;

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

"politically exposed person" means any of the following (whether resident in the Island or elsewhere) —

- (a) a natural person who is or has been entrusted with prominent public functions, including —
  - (i) a head of state, head of government, minister or deputy or assistant minister;
  - (ii) a senior government official;
  - (iii) a member of parliament;
  - (iv) a senior politician;
  - (v) an important political party official;

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<sup>2</sup> SD /08

- (vi) a member of a supreme court, constitutional court or other high-level judicial body whose decisions are not generally subject to further appeal;
  - (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; and
  - (x) a member of an administrative, management or supervisory body of a State-owned enterprise;
- (b) an equivalent official of an international entity or organisation;
- (c) any of the following family members of a person mentioned in sub-paragraph (a) or (b) —
- (i) a spouse;
  - (ii) a partner considered by national law as equivalent to a spouse;
  - (iii) a child or the spouse or partner of a child;
  - (iv) a sibling;
  - (v) a parent;
  - (vi) a grandparent; and
  - (vii) a grandchild;
- (d) any close associate of a person mentioned in sub-paragraph (a) or (b), including —
- (i) any natural person who is known to have joint beneficial ownership of a legal entity or legal arrangement, or any other close business relations, with such a person;
  - (ii) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit of such a person;
  - (iii) any natural person who is in a position to conduct substantial financial transactions on behalf of such a person.

"respondent bank" means a financial institution for which correspondent banking services are provided;

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

(2) In these Rules the following expressions have the same meanings as in the Code —

"applicant for business"

"business relationship"

"FATF Recommendations"

"one-off transaction"

### **3. Anonymous accounts etc.**

- (1) A licenceholder must not maintain —
  - (a) an anonymous account, or
  - (b) an account in a fictitious name.
- (2) If a licenceholder maintains a numbered account it must —
  - (a) maintain it in such a way as to comply fully with the requirements of the Code and these Rules;
  - (b) retain a record of the identification and verification of the customer and copies of any documents produced for that purpose;
  - (c) make the record and copies available if required to —
    - (i) the Money Laundering Reporting Officer,
    - (ii) any other appropriate staff of the licenceholder;
    - (iii) any constable, and
    - (iv) the Commission.

### **4. Risk assessment**

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

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

- (a) the nature, scale and complexity of its activities;
  - (b) the products and services provided by it, and
  - (c) the persons to whom, and the manner in which, they are provided.
- (3) The assessment must be —
- (a) undertaken as soon as reasonably practicable —
    - (i) after these Rules come into force, in the case of an existing business;
    - (ii) after the licenceholder commences business, in any other case;
  - (b) regularly reviewed so as to keep it up to date, and
  - (c) regularly changed, where changes are required as a result of such a review.

### **5. Customer due diligence — general**

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

- (a) on the basis of materiality and risk, and
- (b) in accordance with its current risk assessment under rule 4.

## **6. Customer due diligence procedures**

(1) When operating the procedures required by paragraphs 5 to 8 of the Code, a licenceholder must, in the case of an applicant for business which is a legal person or legal arrangement —

- (a) verify that any person purporting to act on behalf of the applicant is authorised to do so;
- (b) identify and verify the identity of that person using reliable and independent source documents, data or information;
- (c) verify the legal status of the applicant using reliable and independent source documents, data or information;
- (d) obtain information concerning the names and addresses of the applicant and any natural persons having power to direct its activities;
- (e) obtain information concerning the person by whom, and the method by which, binding obligations may be imposed on the applicant;
- (f) take reasonable steps to understand the ownership and control structure of the applicant.

(2) When operating the procedures required by paragraphs 5 to 8 of the Code, a licenceholder must, in the case of all applicants for business -

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

## **7. Enhanced customer due diligence**

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

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

- (a) a customer who is not resident in the Island;
- (b) a customer with whom the licenceholder deals otherwise than face-to-face;
- (b) private banking;
- (c) a legal person or legal arrangement which appears to be a vehicle for holding assets belonging to a natural person;
- (d) a company which has nominee shareholders or shares in bearer form;
- (e) a business relationship or one-off transaction which has a substantial connection with —

- (i) a politically exposed person; or
- (ii) a person, legal person or legal arrangement resident or located in a country which the licenceholder has reason to believe does not apply, or insufficiently applies, the FATF Recommendations in respect of the business or transaction in question;

(f) cross-border correspondent banking services.

(3) In this rule "enhanced customer due diligence" means steps, additional to the measures specified in paragraphs 5 to 8 of the Code, for the purpose of identifying customers and other persons, namely —

- (a) considering whether additional identification data needs to be obtained;
- (b) considering whether additional aspects of the customer's identity need to be verified;
- (c) taking reasonable measures to establish the source of any funds and of the wealth of the customer and any beneficial owner and underlying principal; and
- (d) considering what ongoing monitoring should be carried on in accordance with rule 13.

## **8. Introduced business**

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

(2) The written terms of business between the licenceholder and the introducer which are required by sub-paragraph (6) of paragraph 8 of the Code must, in addition to the requirements specified in that sub-paragraph, require the introducer to notify the licenceholder if at any time he is no longer able to comply with those requirements, whether —

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

## **9. Politically exposed persons**

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

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

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

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

(3) A licenceholder must take reasonable steps to establish the source of wealth and the source of funds of any person mentioned in paragraph (1) who is identified as a politically exposed person.

(4) A licenceholder must at regular intervals carry out enhanced customer due diligence on any business relationship involving a politically exposed person.

#### **10. Cross-border correspondent banking**

(1) A licenceholder must not enter into or continue a correspondent banking relationship with a shell bank.

(2) A licenceholder must be satisfied that the respondent bank in a foreign country does not permit its accounts to be used by shell banks.

(3) Before entering into a business relationship or one-off transaction which involves cross-border correspondent banking services or other similar arrangements, a licenceholder must take the following additional steps —

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

(4) Where a relationship or transaction to which paragraph (3) applies involves a payable-through account, a licenceholder must be satisfied that the respondent bank —

- (a) has taken steps complying with the requirements of Recommendation 5 (customer due diligence and record keeping) of the FATF Recommendations with respect to every customer having direct access to the account; and

- (b) will provide the licenceholder on request with relevant evidence of the identity of the customer.

## **11. Technological developments**

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

## **12. Foreign branches and subsidiaries**

(1) A licenceholder must secure that any branch or subsidiary in a country or territory outside the Island takes measures consistent with the Code, these Rules and the FATF Recommendations for preventing money laundering and the financing of terrorism, to the extent permitted by the laws and regulations of that country or territory.

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

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

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

## **13. Ongoing monitoring**

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

- (a) review of identification documents, data and information to ensure they are kept up to date and appropriate (in particular where the relationship poses a higher risk for the purpose of rule 7);
- (b) appropriate scrutiny of transactions and other activities, paying particular attention to transactions which are —
  - (i) complex,
  - (ii) both large and unusual, or
  - (iii) of an unusual pattern of transactions,

and which have no apparent economic or lawful purpose; and

- (c) appropriate scrutiny of transactions to ensure that they are consistent with the licenceholder's knowledge of the customer, its business and risk profile and, where necessary, the source of funds.

(2) The extent and frequency of any monitoring under this rule must be determined —

- (a) on the basis of materiality and risk,



- (b) in accordance with the licenceholder's current risk assessment under rule 4, and
- (c) having regard to whether the business relationship poses a higher risk for the purpose of rule 7.

**14. Retention of records**

(1) A licenceholder shall keep the records required by these Rules for at least 5 years from -

- (a) the date when-
  - (i) all activities relating to a one-off transaction or a series of linked transactions were completed; or
  - (ii) in respect of other activities –
    - (A) the business relationship was formally ended; or
    - (B) if the business relationship was not formally ended, when all activities relating to the transaction were completed.
- (2) Where a report has been made to a constable in pursuance of paragraph 14(2)(f) of the Code, or the person knows or believe that a matter is under investigation, that person shall, without prejudice to subparagraph (1), retain all relevant records for as long as required by the constable.

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THE COMMON SEAL of the Financial  
Supervision Commission is hereunto  
affixed in the presence of:

Chairman

Secretary

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#### EXPLANATORY NOTE

*(This note is not part of the Rule Book.)*

This Rule Book supplements the Criminal Justice (Money Laundering) Code 2007, and imposes additional requirements on persons regulated under the Financial Services Act 2008 for preventing money laundering and the financing of terrorism. It implements certain recommendations of the Financial Action Task Force on money laundering, which are available on the internet at —

*<http://www.fatf-gafi.org/dataoecd/7/40/34849567.pdf>*

*<http://www.fatf-gafi.org/dataoecd/8/17/34849466.pdf>*