

States of Guernsey, Policy and Resources Committee  
Guernsey Financial Services Commission

# Revisions to the Bailiwick's AML/CFT Framework

## Consultation Paper

June 2017



Policy & Resources  
Committee



Guernsey Financial  
Services Commission

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## Table of Acronyms

<b>ACDD</b>	Additional Customer Due Diligence
<b>AML</b>	Anti-Money Laundering
<b>CDD</b>	Customer Due Diligence
<b>CECIS</b>	Closed Ended Collective Investment Scheme
<b>CFT</b>	Countering the Financing of Terrorism
<b>CIS</b>	Collective Investment Scheme
<b>Commission</b>	The Guernsey Financial Services Commission
<b>ECDD</b>	Enhanced Customer Due Diligence
<b>FATF</b>	Financial Action Task Force
<b>FCCO</b>	Financial Crime Compliance Officer
<b>FCRO</b>	Financial Crime Reporting Officer
<b>FIS</b>	Financial Intelligence Service
<b>FSB</b>	Financial Services Business
<b>FT</b>	Financing of Terrorism
<b>ICC</b>	Incorporated Cell Company
<b>IMF</b>	International Monetary Fund
<b>IOPEP</b>	Persons Entrusted with a Prominent Function by an International Organisation
<b>ML</b>	Money Laundering
<b>MONEYVAL</b>	The Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism
<b>NGCIS</b>	Non-Guernsey Collective Investment Scheme
<b>NO</b>	Nominated Officer
<b>NRA</b>	National Risk Assessment
<b>NRFSB</b>	Non-Regulated Financial Services Business
<b>P&amp;R</b>	The Policy and Resources Committee of the States of Guernsey
<b>PB</b>	Prescribed Business
<b>PCC</b>	Protected Cell Company
<b>PEP</b>	Politically Exposed Person
<b>SAR</b>	Suspicious Activity Report
<b>SCDD</b>	Simplified Customer Due Diligence

## Responding to this Consultation Paper

Responses to this Consultation Paper are sought by close of business on **Monday 31 July 2017**.

The Policy and Resources Committee of the States of Guernsey (“P&R”) and the Guernsey Financial Services Commission (“the Commission”) are consulting simultaneously on revisions to the Proceeds of Crime legal and regulatory framework to bring it into line with international standards issued in 2012 by the FATF and to address recommendations made in MONEYVAL’s mutual evaluation of Guernsey which were published in January 2016.

Respondents are invited to provide their feedback or comments on the proposed legislation, rules and guidance using the online submission tool, Citizen Space, accessible via the Commission’s Consultation Hub<sup>1</sup>. Responses received via the Consultation Hub will be available automatically to P&R and the Commission.

*<https://consultationhub.gfsc.gg/>*

Responses in writing should be addressed jointly to:

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<sup>1</sup> Please be advised that the content of responses submitted using the Consultation Hub will be stored in the cloud. Respondents are therefore encouraged to submit written responses if sensitive data is included.

## 1. Introduction

Most AML and CFT obligations and guidance for financial services businesses and prescribed businesses are contained in:

- the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 as amended;
- the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 as amended;
- the Commission Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing;
- the Commission Handbook for Legal Professionals, Accountants and Estate Agents on Countering Financial Crime and Terrorist Financing.

In light of enhancements to the international AML/CFT standards issued by the FATF in February 2012<sup>2</sup> (“the FATF 2012 Recommendations”) and recommendations made by MONEYVAL in its evaluation report on the Bailiwick’s AML/CFT framework issued at the beginning of 2016, P&R is consulting on revisions to the framework of regulations and the Commission is consulting on revisions to the Handbook framework. In order to ensure that the consultations are as efficient and effective as possible for businesses, P&R and the Commission are issuing the consultations as a combined package and requesting that respondents to each consultation respond in practice to both authorities.

Questions can be found in grey boxes. A full list of questions, together with space for answers, is also available. While this document has been provided for reference, responses are requested to be provided electronically through the Citizen Space Consultation Hub. A link to this has been provided on page 4 of this Consultation Paper.

Please note that this Consultation Paper is a working document and does not prejudice any final decisions made by P&R or the Commission.

Feedback on key points made in response to this consultation will be provided in due course by P&R and the Commission.

## 2. P&R – Overarching Proposals

Each of the two sets of Regulations (one for financial services businesses and one for prescribed businesses) is made by P&R under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (“the Proceeds of Crime Law”). Each set of Regulations is complemented by a Handbook (one for financial services businesses and one for prescribed businesses) issued by the Commission; the Handbooks contain a combination of rules and guidance.

One of the changes introduced by the FATF 2012 Recommendations was a different hierarchy for the way in which certain of the standards, including customer due diligence (“CDD”) standards, should be expressed in a jurisdiction’s regime. The Bailiwick has two options in seeking to ensure certainty in addressing this new hierarchy. One option is to include a number of elements of, for example, CDD requirements in primary legislation such as the Proceeds of Crime Law and to address the remaining elements by revisions to the Regulations and also revisions to the rules and guidance in the Handbooks. This approach would be very difficult to draft successfully and also cumbersome for businesses. The second option, which is the one embodied in these documents issued for consultation, is much easier from every perspective.

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<sup>2</sup> <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>

Hence, this consultation is based on the premise that the Regulations will be repealed and replaced by Schedules to the Proceeds of Crime Law. This would remove the need for legislative CDD requirements to be in the law as well as in regulations and would therefore allow retention of the existing three tiered approach of one layer of legislation complemented by rules and guidance, as opposed to having two layers of legislation complemented by rules and guidance.

It is for this reason that the document replacing the Regulations for the purposes of the consultation is headed “The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017”. This draft Ordinance includes amendments to the main body of the Proceeds of Crime Law so as to allow the addition of new schedules as well as the three draft Schedules imposing requirements on businesses.

There is one further overarching change worthy of note here. As articulated above, different sets of regulations apply to financial services businesses and to prescribed businesses. Each set of regulations was drafted sequentially in conjunction with representatives of the businesses to be covered by them. Prescribed businesses were brought into the AML/CFT framework for the first time in 2008 and it was considered at that time that a separate set of regulations, potentially with quite significant differences to the financial services businesses framework, would be easier for many prescribed businesses to understand as opposed to amending the financial services businesses regulations and carving out different provisions for prescribed businesses where necessary. In the event, the differences between the regulations are minor and, now that prescribed businesses are used to meeting AML/CFT obligations, it is appropriate for most purposes to have a single set of obligations applying to both financial services businesses and prescribed businesses. It is for this reason that the proposed Schedule 3 to the Proceeds of Crime Law, which deals with matters such as risk and CDD, uses the concept of “specified business”. This expression covers both financial services businesses and prescribed businesses.

Two other (much smaller) Schedules have been prepared to address matters where the concept of specified business does not work well. Accordingly, the proposed Schedule 4 to the Proceeds of Crime Law incorporates requirements relating to registration by financial services businesses which are money or value transfer services businesses and money or currency changing businesses with the Commission, while the proposed Schedule 5 includes requirements relating to registration by prescribed businesses with the Commission.

It is also proposed that the Schedules should be capable of amendment by regulations made by P&R. This would mean that there would be no loss of flexibility compared with the existing framework in terms of the speed with which changes could be made to the Schedules.

### 3. P&R – Key Differences

The requirements of the proposed Schedules revise and enhance the obligations of the existing regulations rather than replacing those obligations in their entirety. As a result, this Consultation Paper focusses on key differences between the draft proposed revisions by way of Schedules to the Proceeds of Crime Law and the existing framework of regulations.

These key differences include the following matters:

1. The proposed Schedule 3 includes much more focus on risk. Paragraph 2 contains a new general duty for specified businesses to understand, assess and mitigate money laundering (“ML”) and terrorist financing (“FT”) risks. Linked with this, paragraph 3 includes more comprehensive provisions for business risk assessments and assessments of business relationships and occasional transactions.

The revisions also provide for a more demonstrable focus on financing of terrorism risk by referring to a business risk assessment for ML and a risk assessment for FT. Both assessments can be included in one document as is the case now but, internationally, AML/CFT often seems to mean a focus on ML to the detriment of FT and it is important to take every opportunity to demonstrate that Guernsey is focussing on CFT as well as AML. This was also one of the important conclusions at the major event on FT risk identification and mitigation (promoted by P&R together with other Bailiwick authorities) held earlier this year.

The proposed Schedule 3 also stipulates that specified businesses must have regard to the ML and FT National Risk Assessment (“NRA”); it is envisaged that this assessment will be published at the same time as the draft legislation subject to this consultation is finalised and issued.

2. Paragraph 5 of Schedule 3 includes the concept of additional customer due diligence (“ACDD”) separate to that of enhanced customer due diligence (“ECDD”) required for high risk relationships.

It is proposed that ACDD should be required automatically in relation to:

- (i) a customer who is not a resident in Guernsey;
- (ii) the provision of private banking services;
- (iii) a customer which is a legal person or legal arrangement used for personal asset holding purposes; and
- (iv) a customer who is a company with nominee shareholders or that issues shares in bearer form.

The concept of ACDD has worked well in Jersey for some time. A significant number of Guernsey businesses are already meeting the proposed requirements in practice. It is proposed to introduce similar provisions in legislation domestically to seek to ensure that Guernsey’s wider ML/FT risk profile is demonstrably being addressed by legislation and to address a recommendation made in the MONEYVAL report. The draft Commission Handbook contains the rules and guidance on how the provisions on ACDD might be met.

Businesses are requested to pay particular attention to this aspect of Schedule 3 (paragraph 5) and to advise P&R whether subparagraphs (i) to (iv) above (also expressed in paragraph 5 of Schedule 3) should be modified. Please note that it will be important to base comments on ML and/or FT risk.

Do you foresee any problems arising from the introduction of the concept of ACDD?

If yes, what additional/alternative steps could be taken?

On the basis of risk, should there be any revisions to the four types of business specified in paragraph 5 of Schedule 3 where ACDD would be required?

3. The provisions on politically exposed persons (“PEPs”) have been extended to cover domestic PEPs and persons with a prominent function by an international organisation (paragraphs 4 and 5 of Schedule 3).

In broad terms, the ECDD provisions for PEPs now apply to foreign and domestic PEPs, including persons who have, or have had, at any time a prominent political function; persons with a prominent function by an international organisation (“IOPEPs”); immediate family members of such persons; and close associates of such persons (albeit there are differences between the

treatment for ECDD purposes of foreign PEPs on the one hand and domestic PEPs and IOPEPS on the other).

When a person with a prominent political office has stepped down from office, as is the case now, there is no limitation on when ECDD is applicable. This is on the basis that PEPs are high risk and, if criminal acts such as corruption have been committed by a PEP while in office, there should be no limitation on when ECDD should be applicable so as to provide opportunity to detect the laundering of the proceeds of the criminality.

P&R is particularly requesting feedback on whether, based on evidence arising from ML and/or FT risk in the Bailiwick, there might be any specific circumstances in which former PEPs or their close family members or close associates might feature in business relationships or occasional transactions in such a way so as to justify a risk based approach being taken. For example, this might include whether there are any circumstances (based on ML and/or FT risk in Bailiwick) when some or all of the ECDD provisions need not be applied.

Based on evidence arising from ML and/or FT risk in the Bailiwick, are there any specific circumstances in which former PEPs or their close family members or close associates might feature in business relationships or occasional transactions in such a way so as to justify a risk based approach being taken?

4. Paragraph 1(2) of Schedule 3 to the Proceeds of Crime Law retains the existing exemption for persons carrying on prescribed business activity who would otherwise be required to meet the AML/CFT obligations in the Schedule. While the exemption was originally established on the basis of ML and FT risk, it is timely to consider again whether it remains appropriate on the basis of such risk.

Based on evidence arising from ML and/or FT risk, do you consider the exemption at paragraph 1(2) of Schedule 3 to be appropriate?

Likewise, there are currently no proposed changes to Part II of Schedule 1 to the Proceeds of Crime Law, which provides for the exemptions from what is considered to be a financial services business for the purposes of the Proceeds of Crime Law.

Based on evidence arising from ML and/or FT risk, do you consider the provisions set out in Part II of Schedule 1 to the Proceeds of Crime Law remain appropriate?

#### 4. P&R – Transitional Provisions

At this stage, it is envisaged that the legislation and Commission Handbook will be issued in final form in the autumn of 2017 with a transitional period of three months for specified businesses to comply with the revised requirements. As part of this, it is expected that the policy letter and draft legislation will be provided to the States of Guernsey for consideration so as to allow the revisions to the Proceeds of Crime Law to be made and to come into force at the end of the transitional period.

Paragraph 3(1)(a) of Schedule 3 provides that the business risk assessment must be carried out as soon as possible after the Schedule comes into force. While businesses are already required to carry out business risk assessments under the existing framework, a date or period of time for carrying out the business risk assessment after the coming into force of the Schedule has not been specified at this stage pending feedback.



Do you consider four months after the coming into force of Schedule 3 to be a reasonable period of time for carrying out a (revised) business risk assessment?

Linked with the foregoing, paragraph 3(6) specifies that specified businesses must have in place policies, procedures and controls approved at board level to enable it to mitigate and manage risks identified in the business risk assessment.

Do you consider six months after the coming into force of Schedule 3 to be a reasonable period of time to revise policies, procedures and controls so as to mitigate and manage the risks identified in the business risk assessment?

Do you have any other comments about the draft Schedules that you would like to raise as part of this consultation?

## 5. GFSC - Overview

The Commission's primary objective is to regulate and supervise financial services in the Bailiwick of Guernsey with integrity, proportionality and professional excellence and, in doing so, help to uphold the international reputation of the Bailiwick of Guernsey as a finance centre.

In addition to the above objective, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended ("the FSC Law") defines the general duties of the Commission and includes:

(a) the countering of financial crime and of the financing of terrorism; and in this paragraph "financial crime" includes any offence involving –

- (i) fraud or dishonesty,
- (ii) misconduct in, or misuse of information relating to, a financial market, or
- (iii) handling the proceeds of crime,

and "offence" includes an act or omission which would be an offence if it had taken place in the Bailiwick,

(b) to take such steps as the Commission considers necessary or expedient for –

- (i) maintaining confidence in the Bailiwick's financial services sector, and
- (ii) the safety, soundness and integrity of that part of the Bailiwick's financial services sector for which it has supervisory responsibility.

As part of its primary objective and in achieving its duties under the FSC Law, the Commission is responsible for ensuring that all financial services businesses ("FSBs") and prescribed businesses ("PBs") maintain appropriate policies, procedures and controls to counter the threat of those businesses being used for ML, FT, and various types of financial crime (henceforth in this Consultation Paper referred to collectively as "ML and FT").

The purpose of this Consultation Paper is to seek feedback from all firms licensed or registered with the Commission, and subject to the Bailiwick's AML and CFT framework, on proposed revisions to the rules and guidance in the Handbook on Countering Financial Crime and Terrorist Financing ("the revised Handbook").

The Commission is proposing to consolidate the current Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing (“the FSB Handbook”) and the current Handbook for Prescribed Businesses on Countering Financial Crime and Terrorist Financing (“the PB Handbook”) into one document containing rules and guidance for meeting the requirements proposed in Schedule 3 to the Proceeds of Crime of Law.

Responses to this Consultation Paper will be considered by the Commission and changes to the rules and guidance in the Handbook will be made where it is considered appropriate to do so.

## 6. GFSC - Introduction

The FSB Handbook was introduced on 15 December 2007, followed by the PB Handbook in September 2008 (together “the current Handbooks”). The current Handbooks are based upon the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 as amended and the Criminal Justice (Proceeds of Crime) (Lawyers, Accountants and Estate Agents) Regulations, 2008 as amended which brought the Bailiwick’s regime into line with the standards set by the FATF in 2003.

Since their introduction the current Handbooks have been reviewed as part of two international assessments of the Bailiwick’s AML and CFT framework, firstly by the IMF in 2010 and secondly by MONEYVAL in 2014, with the report for the latter published in January 2016.

In light of the findings from the IMF and MONEYVAL assessments and as part of the revisions to the Bailiwick’s regime to bring it into compliance with the FATF 2012 Recommendations, the Commission is proposing a number of revisions to the rules and guidance contained in the current Handbooks.

The key changes to the legislation, and which consequently affect the rules and guidance have been outlined by P&R in earlier sections of this Consultation Paper. In its consultation the Commission is posing questions where material changes to rules and guidance are proposed but respondents are also invited to use the general comments section if they wish to provide feedback on other areas if they consider it appropriate.

## 7. GFSC - Corporate Governance

As part of the revised corporate governance arrangements, a key change under the new regime is the requirement within paragraph 15(1)(a) of Schedule 3 to appoint a Financial Crime Compliance Officer (“FCCO”). This is driven by the FATF 2012 Recommendations which require that firms’ compliance management arrangements include the appointment of a compliance officer at management level.

Whilst the introduction of an FCCO is a new prescribed position for firms, the role draws upon the duties which are already undertaken by the Money Laundering Reporting Officer (“MLRO”) under the current regime. There will be the obligation to notify the Commission of the identity of the individual fulfilling the FCCO role but the Commission is proposing to give a firm the flexibility to decide, based upon its size, nature and complexity, whether to appoint two different individuals to the role of the FCCO and the role of reporting officer or to appoint one individual to fulfil both roles.

With regard to the MLRO role, going forward it is proposed that the title will be changed to Financial Crime Reporting Officer (“FCRO”), reflecting that the focus of the reporting function is on all financial crime, including TF, and not just ML.

The FATF 2012 Recommendations continue to state that firms should have an independent audit function to test AML and CFT controls and this was also an issue raised as a recommendation by the IMF in its assessment (this aspect of the FATF 2012 Recommendations was not reviewed by MONEYVAL in 2014 as part of its evaluation).

While neither Schedule 3 nor the revised Handbook propose making this a mandatory, it will remain obligatory for boards to consider whether maintaining such a function would be appropriate based upon the size and risk profile of the firm. In this respect, the revised Handbook recognises that firms which are part of large financial groups are likely to have an audit function or are subject to a group audit function.

The Commission considers the current approach therefore remains appropriate and does not feel it is necessary, based on the varying size, nature and complexity of the sectors which make the industry and their respective participants, to introduce a mandatory requirement which would disproportionately affect smaller firms. However, it is acknowledged that by not mandating a requirement for an independent audit function, the Bailiwick will not precisely meet the relevant international standard in this area. It is therefore proposed that the individual fulfilling the FCCO role must be appropriately independent from business development and customer facing roles so as to bring independence to the compliance testing programme.

Rules and guidance in the proposed Handbook continue with the focus on board responsibility for compliance and implementing effective review programmes to test firms' policies, procedures and controls. Consequently it is proposed that the board will be responsible for oversight of the FCCO.

The approach proposed in respect of the FCCO in the revised Handbook is consistent with some other jurisdictions. For example Jersey already requires the appointment of a Money Laundering Compliance Officer alongside the MLRO. The UK is also consulting on similar proposals.

Based on evidence arising from ML and/or FT risk, do you consider it appropriate that firms will not be required to have internal audit functions to test the effectiveness of AML and CFT policies, procedures and controls?

Do you foresee any difficulties incorporating the role of an FCCO, and the requirements for that role, into your business?

If yes, what changes do you feel could be made to the FCCO role as currently drafted to ease these difficulties?

Do you have any comments on the change of role and title to Financial Crime Reporting Officer?

## 8. GFSC - Beneficial Ownership

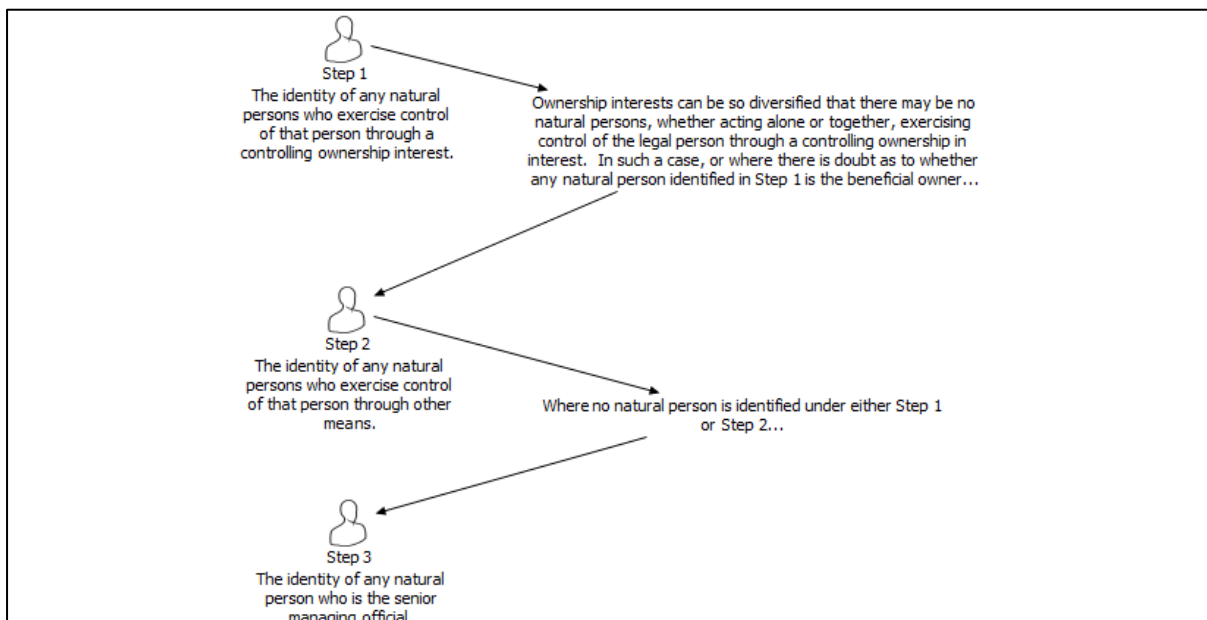
It is crucial that firms have a full picture of their customers, including those natural persons with ownership or control over the customers' affairs, in order to fully assess and mitigate risk and understand the purpose and rationale of the business relationship or occasional transaction.

The concept of beneficial ownership has been revised within Schedule 3 and the revised Handbook to align with the FATF 2012 Recommendations. In this respect the definition of beneficial owner in the context of legal persons must be distinguished from the concepts of legal ownership and control. On one hand, legal ownership means the natural or legal persons who, according to applicable law, own the legal person. On the other hand, control refers to the ability to make relevant decisions within the legal person, e.g. by owning a controlling block of shares.

An essential element of the revised definition of beneficial owner is that it extends beyond legal ownership and control and focusses on ultimate (actual) ownership and control. In other words, the definition identifies the natural (not legal) persons who actually own and take advantage of the capital or assets of the legal person, as well as on those who really exert effective control over it (whether or not they occupy formal positions within that legal person), rather than just the (natural or legal) persons who are legally (on paper) entitled to do so.

In order to achieve this, Schedule 3 introduces three-steps to identifying the beneficial owner or controller of a legal person. Figure 1 below provides a visual representation of this approach whereby should a firm fail to identify a beneficial owner after Step 1, it moves to Step 2. Should that test fail to identify a beneficial owner only then would the firm move to Step 3.

With regard to the beneficial ownership of legal arrangements, the rules and guidance in the revised Handbook are similar to the current regime requiring a firm to identify, and where relevant verify the identity of, key parties to the arrangement, e.g. the settlor(s), trustee(s), beneficiaries and any other persons otherwise exercising control of the arrangement.



**Figure 1. – Identifying the Beneficial Owner of a Legal Person**

Do you foresee any difficulties in the practical application of the new method of understanding the beneficial ownership of legal persons and legal arrangements?

If yes, what changes do you feel could be made to the Handbook as currently drafted to ease these difficulties?

## 9. GFSC - Collective Investment Schemes

The revised Handbook contains new rules and guidance clarifying the due diligence obligations upon the various firms which provide services to collective investment schemes authorised or registered by the Commission. These new sections cover the various types of relationships which exist with CISs, e.g. as a designated manager/custodian of a CIS; where the CIS is a customer; or where a customer is a CIS which is traded on a stock exchange.

Each CIS authorised or registered by the Commission must nominate a business licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended (“POI Law”) to be responsible for ensuring that the CIS’s investors are subject to the full remit of Schedule 3 and the revised Handbook. This includes ensuring that investors are appropriately risk assessed and that CDD (including ACDD and ECDD as applicable) is undertaken for each investor in the CIS (subject to certain provisions, e.g. where the CIS is traded on a stock exchange as set out in section 4.7.3. of the revised Handbook).

The current FSB Handbook is relatively silent on the obligations upon the various firms providing services to Guernsey CISs. The additional rules and guidance, which reflect what the Commission understands from its supervision to occur in practice, are aimed at providing greater clarity of each party’s obligations but still retain an element of flexibility where investor CDD may be the responsibility of a firm licensed under the POI Law other than the designated manager.

In considering the best approach to take, the Commission studied the regimes in a number of jurisdictions including those jurisdictions where CISs are considered to be financial services business directly subject to AML and CFT requirements. It also engaged with industry experts in Guernsey on the subject.

It is considered that the proposed course of action provides for the mitigation of the ML and FT risks associated with investors in a proportionate manner which will require few changes across the sector, other than formalising the current practices in rules and guidance.

Is your firm licensed under the POI Law to provide services to CISs authorised or registered by the Commission, or do you otherwise provide services to such CISs?

If yes, do you feel the formalising of the requirement for one service provider to be responsible for investor CDD will adversely affect the operation of the CISs to which you provide services?

Do you consider there are other ways of ensuring that investors are appropriately identified, verified and risk assessed in accordance with the requirements of Schedule 3 and the revised Handbook?

## 10. GFSC - Enhanced and Additional Customer Due Diligence

Both the IMF and MONEYVAL assessments of the Bailiwick’s AML and CFT framework concluded that ECDD measures should be extended to a wider range of customers, including customers of private banking services, non-resident customers and legal persons and legal arrangements that are personal asset holding vehicles.

Schedule 3 to the Law has therefore been revised to introduce the concept of ACDD. ACDD forms part of the wider measures required to be taken to mitigate the specific risks associated with those types of customer identified by the FATF, the IMF and MONEYVAL to pose a higher risk of ML and FT.

The requirement to undertake ACDD is distinct from the process of firms assessing the level of risk posed by a customer and should therefore be considered separately to ECDD. The revised requirements will make it mandatory to apply ACDD to specific categories of customer, regardless of their risk rating; however it does not automatically follow that these types of customers should be classified as high risk, or that ECDD is required to be undertaken.

Based upon the Commission’s supervisory experience, it has seen some of these measures being applied within a significant number of firms without those firms necessarily considering it formally as an additional measure which it must undertake because of a regulatory requirement.

In considering the measures to adopt to meet the IMF and MONEYVAL recommendations, the Commission and P&R studied the approach taken by Jersey to address an identical recommendation made by the IMF. The rules and guidance proposed in the revised Handbook apply very similar measures to those which already exist in Jersey.

## 11. GFSC - Politically Exposed Persons

In accordance with the FATF 2012 Recommendations, the definition of a PEP has been broadened within Schedule 3 to include two new categories, namely domestic PEPs and IOPEPs.

The definition of a foreign PEP remains unchanged, as does the manner in which foreign PEPs must be subject to mandatory ECDD measures. This reflects the risks inherent in the positions held by such individuals and the opportunity for those positions to be abused for the purposes of ML, FT or predicate criminality, such as bribery and corruption.

In contrast, while firms must be able to identify domestic PEPs, there is acknowledgement that the risks posed by such persons is reduced. As such, the treatment of domestic PEPs is based on the firm's assessment of risk, with only those persons deemed by the firm to pose a high risk of ML and/or FT being subject to ECDD measures consistent with those for foreign PEPs.

With regard to IOPEPs, their treatment should be consistent with domestic PEPs, with the firm able to undertake a full risk assessment of the relationship and apply ECDD measures consistent with foreign PEPs only where it is considered that the individual poses a high risk of ML and/or FT.

Examples of IOPEPs include members of senior management or individuals who have been entrusted with equivalent functions i.e. directors, councillors and members of the board, or equivalent functions, of international organisations. Examples of international organisations include the UN, World Bank and NATO.

Do you consider the policies, procedures and controls required for domestic PEPs and IOPEPs are sufficiently risk based and appropriately mitigate the risk posed by those persons?

If no, what changes do you consider are required to the proposed wording of Chapter 8?

Related to the treatment of PEPs, the Commission regularly receives comment from industry related to the treatment of PEPs where that PEP's personal assets are not connected with, or form part of, the business relationship or occasional transaction. Examples of this are where the customer of a firm is a sovereign wealth fund or a state pension scheme (or similar), where the boards or committees of the customer are made up of PEPs who have no assets involved in the relationship and who hold such positions only by virtue of their political post.

In light of this feedback and having considered the ML and FT risk in such circumstances, additional paragraphs of guidance have been proposed within chapter 8 of the revised Handbook (paragraphs 8.10.2.(7)-(9)) which clarify the Commission's expectations on the treatment of such persons.

Based on evidence arising from ML and/or FT risk, do you consider the proposed guidance on the treatment of PEPs connected with business relationships or occasional transactions with no vested interest in the customer appropriate?

If no, what changes do you consider are required to the proposed guidance?



## 12. GFSC – Reliance on Others

### 12.1. Intermediaries

Following its review in 2014, MONEYVAL recommended that the rules allowing intermediary provisions to apply to investors in CISs authorised or registered by the Commission should not be available where there are a very limited number of investors because the identity of underlying beneficial owners of those CISs may not be ascertainable.

Chapter 6 of the current FSB Handbook contains a specific section on intermediary relationships. In order to address MONEYVAL's concerns, it is proposed that the intermediary provisions be removed from Schedule 3 and there is therefore no specific section in the revised Handbook on intermediary relationships. However, the Commission has considered each of the products and services covered under the current arrangement and specific rules and guidance have been included within the revised Handbook to cover those products and services for which an FSB in the Bailiwick could treat an Appendix C business, acting for another, as its customer.

Within the revised Handbook the two main financial products and services where such relationships arise, namely the treatment of investments into Guernsey authorised or registered CISs and the operating of pooled accounts, have been incorporated into Chapter 4, Customer Due Diligence, at section 4.7.2. and Chapter 7, Legal Persons and Legal Arrangements, at section 7.15. respectively.

To address MONEYVAL's concerns that the current intermediary provisions could be abused by a small number of underlying investors colluding to control, on an anonymous basis, a CIS as their own personal asset holding company, two additional requirements have been incorporated within the revised Handbook. These require firstly that the Guernsey licensee responsible for investor CDD must identify any natural person ultimately holding a controlling ownership interest in a CIS, and secondly that the Appendix C business being treated as the customer by the Guernsey licensee must provide, amongst other things, confirmation that it will supply upon request identity information on its customers which are invested in the CIS.

In formulating the revised requirements, the Commission has considered the arrangements, or proposed arrangements, in a number of jurisdictions including Jersey, the Isle of Man and the UK, together with proposed European guidance issued jointly by the European Securities and Markets Authority, the European Banking Authority and the European Insurance and Occupational Pensions Authority.

Do you have any current intermediary relationships that will be affected by the proposed changes, including where a natural person holds (or has the potential to hold based on the number of investors in the CIS) a controlling ownership interest in the CIS through an intermediary arrangement?

If yes, do you foresee any issues with the requirements of the revised Handbook as currently drafted?

Do you use the current intermediary provisions for any other products and services not included in the revised Handbook?

If yes, based on evidence arising from ML and/or FT risk, do you consider it appropriate that those requirements are carried across to the revised Handbook?

Do you have any other comments about the replacement intermediary provisions in the revised Handbook as currently drafted?

## 12.2. Appendix C

Appendix C to the Handbook sets out the list of jurisdictions which the Commission considers require financial services businesses to have in place standards to combat ML and FT consistent with the FATF Recommendations and where such businesses are supervised for compliance with those standards. It does not represent a list of countries or territories deemed to be low risk and business emanating from or connected with those jurisdictions must not be deemed to be low risk simply on the basis of such a connection.

A Guernsey specified business may place reliance on a regulated financial services business from a jurisdiction on Appendix C for the purposes of using the introducer and intermediary provisions as part of their CDD measures, if certain criteria are met.

Within the revised Handbook, the Commission does not propose changing the purpose of Appendix C. There has however been additional clarification to the definition of an Appendix C business in Schedule 3 on the criteria for selection for the list.

Based on evidence of ML and/or FT risk, do you consider that the list of jurisdictions in Appendix C and the associated provisions in respect of the selection criteria remain appropriate?

If no, please describe any changes you consider to be necessary and the reasons for them, based upon ML and TF risks.

## 13. GFSC - Enhancements to the AML and CFT Framework

In addition to the specific aspects covered previously in this Consultation Paper where material changes have been made to the revised Handbook, there are a number of areas where only minor changes have been made, either to clarify rules or to provide more guidance in respect of the Commission's expectations.

These changes include a range of measures aimed at making the revised Handbook more user friendly and easier to navigate, as well as tweaking some rules and guidance to better adopt a risk based approach and provide firms with greater flexibility in their approach to applying AML and CFT measures to effectively manage and mitigate their ML and FT risks.

As part of these changes the Commission has reformatted and reorganised the Handbook to improve the user experience. This includes restructuring the Handbook into a more logical order to mirror, as far as possible, the lifecycle of a business relationship or occasional transaction, and the use of hyperlinks for better navigation when using the Handbook electronically. It will also be issued in a printer-friendly format.

With regard to the content of the rules and guidance within the revised Handbook, the Commission has sought to limit changes to the rules and guidance to those changes necessary to meet international standards and the IMF and MONEYVAL recommendations and which, as far as possible, are on a par with comparable jurisdictions.

In addition, throughout this project the Commission has also been mindful of changes that could be made to assist firms where difficulties have been identified historically, including areas such as the application of CDD measures. Although proposed changes to the following areas appear small in the context of the wider revisions, the Commission would encourage firms to consider whether these changes would achieve a benefit. This includes the aforementioned guidance for customers which are sovereign wealth funds and state pension schemes.



One such example relates to the certification of documents and revisions to the requirements for certification. The biggest change is to clarify that there is no ‘Guernsey’ wording and that the wording provided need only be sufficient to achieve the objective of the certification. Other changes include tweaks to the information to be provided by the certifier, as well as the introduction of electronic certification to clarify the requirements where firms utilise digital systems to verify the identity of customers.

A second change relates to the greater integration of the acceptance of technology within CDD and compliance arrangements. Building upon the Annex added to the Handbook in 2015, the revised Handbook now makes clear that the use of technology is acceptable, provided that the firm is comfortable it understands the risks involved in using the technology and that the technology used achieves its stated objectives. This includes the removal of specific requirements around technology, for example the use of digital signatures, provided the alternatives used are equally as robust as digital signatures.

As a final example, measures have also been included within the revised Handbook related to the acceptance of online utility bills and bank statements, provided that additional controls are applied to mitigate the specific risks arising from the acceptance of such documents. The inclusion of these measures is aimed at providing flexibility to firms in accepting documents which are appropriate to the types of customers with which it has business relationships or occasional transactions.

#### 14. GFSC - Transitional Provisions

Both Schedule 3 and the revised Handbook include a section on transitional provisions to assist firms in moving towards compliance with the new requirements. With regard to the Handbook, the Commission has incorporated within a ‘Transitional Provisions’ chapter the key actions to be taken by firms to bring their policies, procedures and controls up to the new standard, together with the deadlines by which such controls must be introduced.

As noted within the P&R section of this Consultation Paper, it is proposed that Schedule 3 and the revised Handbook will be issued during the autumn of 2017 and will become effective three months later. This timeframe has been specifically chosen to coincide with the release of the Bailiwick’s NRA and will allow for firms to consider not only the requirements of Schedule 3 and revised Handbook, but also the content of the NRA when reviewing their risk assessments and those areas deemed to pose high and low risks of ML and FT by the Bailiwick Authorities.

Following the publication of Schedule 3 and the revised Handbook, firms will have at least three months to review and amend their business risk assessment and policies, procedures and controls in order to meet the revised requirements when they become effective, or soon thereafter. The only exception to this relates to firms’ existing business relationships at the time that Schedule 3 and the revised Handbook come in to force. In this respect, it is acknowledged that the three month transitional timeframe is too short a time to review all existing customer relationships and gather any additional information or documentation where this is considered necessary.

In light of the above, the Handbook provides a two-year window for existing business relationships to be reviewed and remediated. This includes ensuring that the ACDD requirements are met where required; identifying and appropriately risk assessing business relationships involving domestic PEPs and IOPEPs; and where the firm has been nominated in respect of an authorised or registered CIS, ensuring that the requirements of Schedule 3 and the revised Handbook are met in respect of the investors in that scheme.

In setting the deadlines by which existing customers must be reviewed, the Commission has sought to balance providing firms with a sufficient amount of time for customers to be reviewed, using a risk based approach, against the requirement to meet current international standards. With regard to the latter, the Commission is mindful that the Bailiwick is likely to be subject to its next MONEYVAL assessment in 2022 and it will need to be able to demonstrate at that time an effective AML and CFT regime.

In order to achieve these aims, the Commission requires that all existing high risk business relationships are subject to review within one year of Schedule 3 and the Handbook coming into force, with all remaining business relationships reviewed within a two year timeframe.

Do you foresee any difficulties in reviewing your existing business relationships within the timeframe provided by the revised Handbook?

#### 15. GFSC - Any Other Comments

Are there any areas within the Handbook that you find confusing or unclear, or where you feel that additional rules or guidance could be included?

Within section 8 of this Consultation Paper and sections 4.5. and 4.7. of the revised Handbook we have included diagrams to visualise certain technical aspects. Do you consider it would be beneficial to include diagrams or flow-charts such as these throughout the Handbook?

Do you consider there to be the potential for any specific disadvantages to your business arising from the Handbook as it is currently drafted?

Do you have any other comments about the draft Handbook that you would like to raise as part of this consultation?