



**CONSULTATION DOCUMENT ON  
AMENDMENTS TO THE  
BAILIWICK'S FRAMEWORK FOR  
COUNTERING MONEY  
LAUNDERING AND TERRORIST  
FINANCING**

## **Introduction**

1. The proposals in this document seek to meet the recommendations on money laundering (revised in 2003) and the special recommendations on terrorist financing (extended since their issue in 2001 by the publication of guidance and interpretative notes) issued by the Financial Action Task Force on Money Laundering (the FATF).
2. The proposals cover changes to the following laws and guidance:-
  - amendments to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the Proceeds of Crime Law)
  - an amendment to the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002
  - replacing the Criminal Justice (Proceeds of Crime) Regulations, 2002 (the 2002 Regulations) with the Criminal Justice (Proceeds of Crime) Regulations, 2007 (the 2007 Regulations)
  - replacing the Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism (issued by the Guernsey Financial Services Commission) with the Handbook on Countering Financial Crime and the Financing of Terrorism (the Handbook)
  - amendments to:
    - the Protection of Investors (Bailiwick of Guernsey) Law, 1987
    - the Banking Supervision (Bailiwick of Guernsey) Law, 1994
    - the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000
    - the Insurance Business (Bailiwick of Guernsey) Law, 2002
    - the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002

These five laws are described as “the regulatory laws” in this consultation document

  - the introduction of a new Bailiwick-wide law on the registration of those financial services businesses specified in the Schedule to the Proceeds of Crime Law, as amended by the 2002 Regulations, which are not regulated under the regulatory laws.
3. Comments are being sought by the Commission on the changes, which are described below. The draft 2007 Regulations and the Handbook are attached.

## **Regulated Financial Services Businesses**

4. Section 49 of the Proceeds of Crime Law allows for regulations to be made in respect of requirements on financial services businesses for the purposes of forestalling, preventing and detecting money laundering.
5. Section 49 of the Proceeds of Crime law requires the regulations to prescribe the guidance – issued by the Commission – which the Court shall take into account in determining compliance with the regulations. The FATF requires a large

number of the elements of a jurisdiction's AML/CFT framework to be enforceable. Meeting this FATF requirement will mean amending the regulatory laws so that there is a clear legal pathway for the Commission to enforce breaches of the rules. In this connection, we propose to amend the minimum criteria for licensing in each regulatory law to make it explicit that in considering the fitness and propriety of controllers, partners, directors and managers of financial services businesses and the integrity and skill with which financial services businesses carry on their activities regard will be had to compliance with any rules, instructions and guidance issued by the Commission. Potential amendments to the minimum criteria for licensing to include these features and to achieve greater consistency across the regulatory laws are the subject of a separate consultation paper issued on 18 April 2007, which is available on the Commission's website. The Commission's enforcement powers – proposed changes to which will also form part of the separate consultation – could then be used in appropriate circumstances in respect of breaches of the rules.

### **Regulations and Handbook**

6. The proposed 2007 Regulations have been drafted to lay down the general framework for the AML/CFT standards to be adopted by financial services businesses.
7. We propose to replace the existing Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism with the Handbook. The draft document has been renamed as a Handbook as it contains more than guidance. The FATF requires a significant amount of the standards for financial services businesses to be required either by law or regulation or by other enforceable means – guidance is usually not enforceable. Hence, it is proposed to establish rules for a number of elements in the Handbook. The overall approach of the draft Handbook is a combination of Commission rules, which will be subject to regulatory sanction, and guidance which will present ways of complying with the 2007 Regulations and the rules.
8. The 2007 Regulations and the Handbook effectively require financial services businesses to adopt a risk based approach to their policies, procedures and controls in relation to AML/CFT taking into account its customers, products and services and the provision of those services. They provide that financial services businesses should take risk into account when determining the extent of their customer due diligence measures. The Regulations and the Handbook allow financial services businesses to reduce or simplify the measures they take for low risk customers. This approach should avoid disproportionate demands on financial services businesses and on low risk customers (for example, locally resident retail customers who have a relationship which is understood by the financial services business). Conversely, the Regulations and the Handbook require financial services businesses to carry out enhanced customer due diligence for high risk categories of customer, product or transaction. The Regulations and the Handbook also contain provisions for the ongoing monitoring of business relationships – high risk customers, products and transactions are subject to a higher level and frequency of monitoring. This risk based approach is not contained in the 2002 Regulations or our current Guidance Notes but is the central philosophy of the 2007 Regulations and the Handbook.

9. Another feature of the Regulations and the Handbook not contained in the Guidance Notes is the inclusion of explicit responsibilities for the Board of a financial services business, in particular by requiring a review of compliance to be discussed at a board meeting at appropriate intervals. These provisions seek to establish a way of ensuring financial services businesses take their responsibilities seriously rather than simply identifying all of their customers as low risk.
10. Another major area where the Handbook is different to the Guidance Notes is that of introduced business and intermediary business. A number of relationships which are currently treated as introduced business relationships in the 2002 Regulations and in the Guidance Notes can be considered as intermediary relationships in the 2007 Regulations and the Handbook. The fundamental difference between the two types of relationship is that in intermediary relationships the intermediary may be treated as the customer of the Guernsey financial services business, while in introduced relationships the introducer must provide a certificate or summary sheet to the financial services business on the customer being introduced (i.e. the person being treated as the customer is different in the two relationships). The 2007 Regulations and the Handbook contain a revised approach which seeks to allow intermediary relationships to be established for a range of transactions and activities and for these relationships to be treated as low risk relationships.

### **Other Financial Services Businesses**

11. The FATF also expects an AML/CFT framework to be in place for other financial services businesses (OFSBs) – financial services businesses not regulated under the regulatory laws, such as bureaux de change. For AML/CFT purposes the FATF expects such businesses to be licensed or registered, appropriately regulated, and subject to supervision or oversight, having regard to the risk of money laundering or terrorist financing. The licensing/registration framework for persons providing a money or value transfer service, or a money or currency changing service, is given particular attention by the FATF, with an entire Special Recommendation on Terrorist Financing devoted to such persons.
12. The OFSBs required to comply with the 2002 Regulations are referred to in Regulation 9 of the 2002 Regulations. Currently, these Regulations require each OFSB to notify the following information to the Commission:
  - (i) its legal name and any trading names;
  - (ii) its place and date of incorporation/establishment;
  - (iii) its business address(es);
  - (iv) the name and addresses of directors, partners, senior officers, beneficial owners and any other person(s) who control(s) the business;
  - (v) the name of the person designated to be the reporting officer;
  - (vi) a statement of whether or not the persons listed under (iv) and (v) above have been subject to a criminal conviction (at any time) and, if they have, details of the criminal conviction and the circumstances surrounding it; and

(vii) the details of the type(s) of financial business carried out.

It is an offence under the Regulations not to provide the information before commencing business and not to notify the Commission of changes to it.

13. The Commission does not consider a licensing system for OFSBs to be appropriate – such a system would be disproportionate. Few disclosures are made to the Financial Intelligence Service by OFSBs. Instead, the Commission recommends that OFSBs should be required to register with it. The information to be provided would be the same as that currently required to be notified. The Commission would publish a list of registered entities and the details of the financial services business (as described at paragraph 12(vii) above), which they carry out. As a licensing system is not proposed, the Commission would be able to refuse to register an applicant for registration only if:

- the full information had not been provided;
- it appeared to the Commission that any information provided was false or misleading;
- the applicant failed to pay a registration fee of £600; or
- the Commission was aware that the Court was, or may be, taking action to wind up or grant an injunction against an OFSB (see paragraph 18) or to disqualify any controller, partner, director or manager of an OFSB (see paragraph 19).

14. Any refusal by the Commission to register an applicant would be subject to appeal by the applicant. Sixty-four OFSBs have notified information to the Commission under the 2002 Regulations. No application fee would be required for such firms to be registered under the 2007 Regulations. Registered firms would pay an annual fee of £600, commencing with payments for the 2008 calendar year.

15. It should be an offence to provide false or misleading information to the Commission and, subject to the risk based approach in paragraph 17 below, for an OFSB carrying out financial services business not to register with the Commission.

16. The Commission proposes to take a risk based approach on the registration of OFSBs. Where financial business is carried out by a person on an occasional or very limited basis such that there is a limited risk of money laundering or terrorist financing, the Commission proposes that there should be no need to register with it. Financial services business is carried out on an occasional or very limited basis where it fulfils all of the following criteria:

- (a) the institution's total turnover in respect of financial services business does not exceed £50,000 per annum;
- (b) the financial services business is limited in respect of transactions exceeding £1,000 to one per customer, whether the transaction is carried out in a single operation, or a series of operations which appear to be linked;

- (c) financial services business does not exceed 5% of the institution's total turnover;
- (d) financial services business is ancillary and directly related to the institution's main activity;
- (e) the institution's main business is not that of an OFSB; and
- (f) financial services business is provided only to customers of the main activity and is not offered to the public.

We expect this provision to take a number of OFSBs included in the notification framework in paragraph 12 out of the proposed registration framework.

17. As part of the enforceability expected by the FATF, OFSBs are also expected to be subject to AML/CFT standards embodied in law or regulation or other enforceable means. This means that there should be sanctions which can be imposed for breaches of the regulations made under the Proceeds of Crime Law and the rules contained in the Commission's Handbook. As a consequence, the Commission proposes that, where there are breaches of the rules, it should have the ability to impose conditions on the registration of an OFSB in order to seek to ensure that the OFSB complies with the rules (for example, a condition might prevent the OFSB from undertaking some or all financial services business until such time as significant failings had been remedied). Any proposed imposition of a condition would be subject to appeal by the OFSB to the Court. Breach of a condition would be an offence. In addition, the Commission should have the ability to appoint inspectors, potentially at the cost of the OFSB, on matters to do with compliance with the Regulations or rules. An OFSB would be able to appeal to the Court against any appointment of inspectors. Four of the regulatory laws provide that no sum in respect of the costs, fees and expenses of an investigation by inspectors may be recovered by the Commission where the Court is satisfied that the sum is not reasonable in amount, not reasonably incurred or where the Commission has acted unreasonably, frivolously or vexatiously in incurring the sum. The Commission proposes that a similar approach should be adopted in respect of any inspectors appointed in respect of OFSBs. The Commission should also be able to suspend or revoke an OFSB's registration where there are breaches of the rules. Any proposed suspension or revocation would be subject to appeal by the OFSB to the Court.
  
18. As a separate but allied issue to the FATF's recommendations and special recommendations, it is important that the Guernsey authorities are able, where necessary, to prevent OFSBs from operating in the Bailiwick. As a consequence, the necessary legislation should provide that the Commission, or with the leave of the Court any other person, may apply to the Court to wind up the OSFB or to grant an injunction preventing the OSFB from carrying out business in the Bailiwick where this appears to be necessary:-
  - (a) to protect the public, in the Bailiwick or elsewhere, against the effects of dishonesty, incompetence or malpractice; or
  - (b) to counter financial crime and the financing of terrorism in the Bailiwick or elsewhere; or
  - (c) to maintain confidence in the finance sector in the Bailiwick; or
  - (d) to protect or to enhance the reputation of the Bailiwick.

19. The Commission also proposes that, based on Schedule 3 to the Companies (Guernsey) Law, 1994 and section 67A of that law, controllers, partners, directors and managers of OFSBs, should be required to be fit and proper. The Commission does not intend to routinely consider the fitness and propriety of any of these individuals at the application stage, or at any other time, as a registration rather than a licensing system is proposed. Nevertheless, it is possible that the Commission or another person may become aware of a potential lack of fitness and propriety. Accordingly, we propose that, following application by the Commission, or any other person with the leave of the Court, the Court may disqualify any such person employed by the OFSB from performing any function, any specified function or any specified description of function where that person is considered by the Court to be other than fit and proper.

### **Consultation**

20. Comments on this consultation document and the attached draft 2007 Regulations and Handbook should be provided by the close of business on 11 June to:

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