

**Position Paper:**  
**Overriding Principles for a Revised Know Your Customer Framework**

**Status and overview of this paper**

1. In December 2000, Commissions in the Bailiwicks of Guernsey and Jersey and in the Isle of Man (“Island Regulators”)<sup>1</sup> issued a joint consultation paper entitled: Overriding principles for a revised know your customer framework (“the joint consultation paper”), addressing issues where recommendations were made in respect of the Islands’ anti-money laundering regimes.
2. Recommendations made largely concerned the account opening process and therefore the matters discussed in this Position Paper (“Paper”) (and in the joint consultation paper) have highlighted verification of identity issues. This Paper does not address the important role of continuing account monitoring and ongoing due diligence over the life of a client relationship. The absence of discussion on such matters should not be read to mean that Island Regulators do not consider such matters to be important. On the contrary they are considered to be extremely important and will be subject to enhanced guidance when each Island’s various Guidance Notes are amended. However such matters are not examined in detail in this Paper.
3. Having carefully considered the responses to the joint consultation paper, Island Regulators have reached the conclusions set out in this Paper. They now intend to start the process of drafting proposed amendments to anti-money laundering laws and Guidance Notes in each jurisdiction. In this respect, each jurisdiction will consult its industry further on the drafting of amendments to the Guidance Notes which will be required so as to implement the conclusions set out in this Paper.
4. For the avoidance of doubt, this Paper does not amend the Guidance Notes or “all crimes” anti-money laundering legislation nor should it be considered to be formal guidance issued by Island Regulators. However, Island Regulators expect financial services businesses (“FSBs”)<sup>2</sup> to move towards implementing the changes to anti-money laundering practices detailed in this Paper. Island Regulators will address any difficulties in this process on a case-by-case basis. As noted above, detailed Guidance Notes will be drafted with the assistance of finance sector anti-money laundering steering groups.
5. The Isle of Man Insurance and Pensions Authority, although not party to the joint

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<sup>1</sup> Guernsey Financial Services Commission  
Isle of Man Financial Supervision Commission  
Jersey Financial Services Commission

<sup>2</sup> In the Channel Islands, financial services businesses (FSBs) are all persons subject to all crimes anti-money laundering legislation . In the Isle of Man this term refers to licence applicants and licence holders of the Commission.

consultation paper, is fully supportive of the highest standards in the international fight against money laundering. In this respect it will be consulting independently with its market on proposals for further changes to its Guidance Notes.

## Background

6. Island Regulators issued the joint consultation paper in response to:
  - a) positive evaluations conducted in 1999 by the Offshore Group of Banking Supervisors (OGBS) and in 2000 by the Financial Action Task Force (“FATF”) as part of its review of non-cooperative countries and territories; and
  - b) a commitment to remove opportunities for arbitrage between the Crown Dependencies in areas related to financial crime and money laundering.
7. Approximately 60 responses were received in each jurisdiction. This included a response from the Isle of Man IPA which was not party to the original document, but which did circulate copies to life insurance licence holders in the Isle of Man for comment.
8. Briefly, the overriding principles proposed were:
  - a) a requirement to know and verify the identity of all customers and, if different, the principals behind those customers;
  - b) a requirement to hold copy documentary evidence used to verify identity of customers, and, where different, the principals behind those customers;
  - c) a restriction on those who might be relied upon to introduce business where an accepting person<sup>3</sup> is able to rely on verification of identity conducted by another person;
  - d) a common list of jurisdictions considered to have equivalent anti-money laundering legislation (“*equivalent jurisdictions*”<sup>4</sup>);
  - e) implementation of a “progressive programme” to verify the identity of current customers which were taken on before the introduction of all crimes anti-money laundering legislation in each jurisdiction; and
  - f) re-examination of the identification exemption for relationships opened using the “postal concession”<sup>5</sup>.

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<sup>3</sup> Accepting person refers to a person that has been requested to establish a relationship with an applicant for business. Person includes natural persons and any bodies of persons corporate or unincorporate.

<sup>4</sup> Italicised words used in this Paper are defined at appendix 1.

<sup>5</sup> In summary, products opened by post, telephone, or electronic transfer which do not offer third party transmission facilities (and which cannot be transferred to an account offering such transmission facilities), where funds originate

9. Generally, the pan-Island approach was welcomed by respondents to the joint consultation paper, as was the proposal to produce a joint list of *equivalent jurisdictions*. A number of common concerns were also identified in consultation responses.
- a) Many were critical of the “paper chase” that would result from the requirement to hold copy documentation for all customers (and principals where different) at each location offering products, and questioned the value of obtaining such documentation from other parties, particularly where it might now be out of date (e.g. passports).
  - b) Many thought that accepting persons should be entitled to continue to rely upon an undertaking to provide identification documentation on demand, on the basis that such undertakings would be provided only by regulated persons in *equivalent jurisdictions*. They also considered that receipt of identification documentation at the start of a business relationship placed an effective obligation on the accepting institution to re-verify identity, and evidenced mistrust of anti-money laundering procedures adopted in FATF countries and in the Crown Dependencies.
  - c) Many were also concerned that the Islands should not move ahead of anti-money laundering procedures in place in FATF countries (identifying an adverse economic impact in doing so). Reference was often made to Luxembourg, the Republic of Ireland, Switzerland and the United Kingdom (“UK”).
  - d) The proposal to require accepting persons to verify the identity of principals of applicants for business<sup>6</sup> (including trust beneficiaries) and to hold copy documentation for such principals attracted some support but many practical and legal difficulties were highlighted, e.g. obtaining such information from “secrecy” jurisdictions (and in all probability any jurisdiction with confidentiality and data protection requirements), and constructive trust issues. Others questioned the value in verifying the identity of discretionary beneficiaries (particularly where they were members of the settlor’s family).
  - e) A number thought that proposals in respect of “pooled” and client accounts would inevitably lead to their undesirable use as a means of circumventing the general requirement to hold copies of identification documentation.
  - f) Responses to the proposal for a “progressive programme” were polarised. A number of respondents remarked that they had already

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from a specified institution.

<sup>6</sup> A person or persons seeking to form a business relationship, or to carry out a one-off transaction, with a person who is carrying on any financial services business.

started a programme to verify the identity of customers pre-dating each jurisdiction's "all crimes" anti-money laundering legislation (indeed some had already completed such a process), but most opposed the proposal. Those opposing the proposal did so because:

- i) few other jurisdictions had applied identification requirements to accounts pre-dating anti-money laundering legislation (and some had introduced "grand-fathering" provisions to specifically exclude existing accounts from verification);
  - ii) they believed that the absence of such documentation presented little risk to their business and would amount to no more than a "box-ticking" exercise;
  - iii) difficulties were anticipated in dealing with long established customers, and those who were not prepared to provide the documentation requested;
  - iv) they were uncertain as to the procedures to be followed where the identity of existing customers could not be verified; and
  - v) they considered the cost and resourcing implications of the proposals to be unreasonable.
- g) Those in the Channel Islands commenting on the re-examination of the "postal concession" were reluctant to remove the concession whilst it was still available in the UK and Republic of Ireland. Those in the Isle of Man highlighted the inequity of the concession's availability in the Channel Islands and UK, but not in the Isle of Man.
10. As discussed above, many respondents commented on the need to be able to compete on equal terms with other jurisdictions. As a result, Island Regulators have considered (and will continue to consider) the deliberations of the FATF, Basel Committee on Banking Supervision/OGBS Working Group on Cross-Border Banking ("the Cross Border Group"), the UK Joint Money Laundering Steering Group, the European Union's ("EU") revised anti-money laundering directive, and the IAIS anti-money laundering guidance notes for insurance supervisors and insurance entities, and believe that proposals set out in this Paper are broadly in line with international standards and discussions, whilst recognising that efforts will also be required in other jurisdictions if Island businesses are to be able to compete on equal terms.

The FATF is currently engaged in a review of its 40 Recommendations. It will issue options papers later in 2002 and expects to conclude its review in 2003. Island Regulators do not expect this review to fundamentally alter the customer identification principles set out in this Paper. Other matters arising from the FATF's review will be taken into account in the drafting of amendments to anti-money laundering laws and Guidance Notes in each jurisdiction.

The requirements of the United States' USA PATRIOT Act of 2001 (e.g. the requirement that US banks be in a position to identify underlying customers of banks for which they act as correspondent) serve to emphasise the need for the Islands to continue to develop anti-money laundering systems that meet global requirements.

11. Since February 2001, Island Regulators have held a series of joint meetings to consider the above and to prepare a position paper reflecting current thinking.

### **Revised overriding principles**

Headings in **bold type** below follow those used in the joint consultation paper.

#### 12. **Knowing client identity**

In the joint consultation paper, respondents were asked to comment on:

- a) the proposal that, in addition to being required to know the identity of all (underlying) customers, accepting persons should be in possession of a copy of identification documentation;
  - b) the proposal that certain persons described in the joint consultation paper should be considered to be the underlying principals for a number of common business relationships; and
  - c) what percentage should be considered to be appropriate for the de minimis provisions for companies.
13. Clarification was requested on the definition of identity of natural persons. In the case of natural persons, Island Regulators consider identity to comprise name (and any former names), residential address, date of birth, place of birth, and nationality. The essential elements of customer identification are currently under review by the Cross Border Group.
  14. As a general principle, Island Regulators consider that the identity of an applicant for business and any underlying principals should be established and verified before a relationship is established, and certified copies (or originals for utility bills and the like) of all relevant documentation pertaining to identity should be held by an accepting person ("documentary evidence"). Some exceptions to this principle will be considered and addressed at the time that the Guidance Notes are updated, for example:
    - one-off transactions (where the amount of the transaction or series of linked transactions does not exceed an agreed monetary amount)<sup>7</sup>; and

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<sup>7</sup> The Guernsey Financial Services Commission discourages its registered insurance intermediaries from taking advantage of the exemption for small one-off transactions where such transactions involve single premium

- policies of insurance with no surrender value (however, strict guidance will be required for cancelled policies where premiums are returned).

Exceptions to this general principle are under review at the current time by the FATF. Island Regulators will wish to ensure that applicants for business are not able to benefit from such exceptions where a relationship is intentionally structured so as to avoid identification requirements.

15. Know your customer/ customer due diligence

Respondents to the joint consultation paper also requested clarification on requirements in relation to establishing source of wealth and source of funds. Island Regulators believe that an accepting person will wish to establish a profile for an applicant for business to enable it to satisfy its obligations under “all crimes” anti-money laundering legislation. This is commonly referred to as “know your customer” or “customer due diligence”.

An accepting person should always understand why an applicant for business has requested a particular product or service, that person’s expected activity, and the source of funds for the transaction in question. Where the type of product or service being offered makes it appropriate to do so, or where the product or service is not consistent with information held on the applicant, an accepting person should also establish the source of wealth of the person applying for the product or service. The information required to establish a profile, and the means by which it is obtained, will depend, inter alia, on product and applicant for business.

16. Who should be considered a principal?

As a general principle, Island Regulators consider that an accepting person should identify the beneficial owners of, those who have control of, and those with a beneficial interest in any relationship established (referred to in this Paper as “principals”).

Where this Paper proposes a concession which limits application of this important principle, then an accepting person should always carefully assess whether an applicant for business has structured itself so as to avoid the identification of underlying principals. Where it considers that an intended relationship has been so structured, then it must not apply a concession.

Each concession will be available only in controlled circumstances.

Often, an accepting person will need to place reliance on another person to name the underlying principals behind a relationship, for example, the directors of a private company to name the shareholders of that company, and a trustee to

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transactions for life policies.

name the settlor and beneficiaries for a trust. In considering whether or not to enter into a relationship, and as part of its ongoing assessment of that relationship, an accepting person should be satisfied that all principals have been named.

Notwithstanding the need to monitor activity on a relationship which falls outside a regular pattern, and the need to hold evidence of identity of principals, an accepting person is not expected to seek information (as a matter of course) to enable it to assess whether or not the recipient of a payment or transfer of assets has a right to it (unless it already has some legal requirement to do so).

17. Specifically, the following should be considered principals for the purposes of verifying identity:

- a) Deposits placed by banks with other banks in a “fiduciary” capacity (most commonly with Swiss banks) and pooled client accounts opened by professional intermediaries<sup>8</sup>.

Professional intermediaries frequently hold funds on behalf of their clients in “client accounts” opened with other financial services businesses. Similarly banks (typically branches or subsidiaries of Swiss banks) receive deposits placed on a fiduciary basis held in pooled accounts. Where such accounts are held in general “omnibus” accounts, holding the funds of many clients, and where the intermediary (or, where a bank is placing a fiduciary deposit, the bank) is both regulated and operating in the Bailiwick of Guernsey, Isle of Man, Bailiwick of Jersey, or an *equivalent jurisdiction*, an accepting person is not required to look through this arrangement, i.e. it is not required to obtain documentary evidence of identity for the underlying clients, so long as it has assessed and is satisfied with the customer due diligence procedures in place at the professional intermediary (or bank). An accepting person may treat the professional intermediary (or bank) (i.e. the bank placing the deposit on a fiduciary basis) as the principal to be identified.

Pooled accounts must not be abused. The primary motive for the use of pooled accounts must not be for the circumvention of know your customer or customer verification disciplines. In addition, trust companies should ensure that any such use is compatible with relevant trust deeds, and applicable legislation and Codes of Practice.

Where a professional intermediary is not regulated, is not operating in the Bailiwick of Guernsey, Isle of Man, Bailiwick of Jersey or an *equivalent jurisdiction*, or is assessed as having inadequate due diligence procedures in place, then the accepting person is required to verify the identity of the underlying clients for whom the professional intermediary is acting.

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<sup>8</sup> Including regulated lawyers, stockbrokers, and trust companies.

b) Non-pooled client accounts opened by professional intermediaries

When an accepting person has knowledge or reason to believe that a client account opened by a professional intermediary is on behalf of a single client (including a joint account), then that client is the principal to be identified. Where a client is not a natural person, then guidance set out in c) to l) below should also be followed.

c) The establishment of a trust relationship by a trustee

When establishing a trust relationship, the trustee should identify the settlor(s) (including any person settling assets into the trust), any protector(s)<sup>9</sup>, and the beneficiary(ies) since they are to be regarded as principals. Beneficiaries should be identified as far as possible when defined. It is recognised that it may not be possible to identify the beneficiaries of trusts precisely at the outset. Practical issues are likely to arise from the identification of potential beneficiaries and these, together with the issue of the timing of the verification of identity, will be addressed following further consultation in the redrafting of the Guidance Notes.

No payments or transfers of assets may be made by the trustee to (or on behalf of) any beneficiary unless the identity of that beneficiary has been verified.

d) Trustee as applicant for business

When entering into a business relationship with a trustee, an accepting person should identify the trustee, the settlor(s) of the trust (including any person settling assets into the trust), any protector(s), and the beneficiary(ies) since they are to be regarded as principals.

Beneficiaries should be identified as far as possible when defined. It is recognised that it may not be possible to identify the beneficiaries of trusts precisely at the outset. Practical issues are likely to arise from the identification of potential beneficiaries and these, together with the issue of the timing of the verification of identity, will be addressed following further consultation in the redrafting of the Guidance Notes.

Verification of identity of beneficiaries should be carried out by an accepting person before any distribution from the property of the trust to (or on behalf of) any of the beneficiaries disclosed by the trustee<sup>10</sup>. No

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<sup>9</sup> Any person able to exercise significant influence over the trustee.

<sup>10</sup> It is the responsibility of the trustee to: (i) advise that payment is to an individual for which certified copy documentation is already held by the accepting person; or (ii) to provide such documentation at the time that a distribution is requested.



payments or transfers of assets may be made by the accepting person to (or on behalf of) any beneficiary disclosed by the trustee unless the identity of that beneficiary has been verified.

The verification of identity of other principals should be carried out at the time that the business relationship is established.

e) Companies not listed on a recognised stock exchange

The principal requirement for such companies is to look behind the corporate entity to identify the ultimate beneficial owners and those who have direct or indirect control over the business and the company's assets. What constitutes control for this purpose will depend on the nature of the company, and may rest in those who are mandated to manage funds, accounts or investments without requiring further authorisation, and who would be in a position to over-ride internal procedures and control mechanisms.

In accordance with the above, the company itself, beneficial owner(s) owning 10% or more of the company, and any other person with control over the company's assets (which will often include directors and account signatories) should be considered to be principals to be identified. Where the owner is another corporate entity or trust, the objective is to undertake reasonable measures to look behind that company or vehicle and verify the identity of the principals as set out in this Paper.

f) Companies listed on a recognised stock exchange

Where a company is listed on a recognised stock exchange or is a subsidiary of such a company ("recognised" to be defined in the Guidance Notes), then the company itself may be considered to be the principal to be identified. An accepting person should, however, consider whether there is effective control of a listed company by an individual or small group of individuals. If this is the case then those controllers should also be considered to be principals.

g) Partnerships (including limited partnerships)

Along with the partnership itself, those partners with a beneficial interest in the partnership of greater than 10%, and those persons exercising control or significant influence over the partnership's assets (such as the senior/managing partner and account signatories) should be treated as principals to be identified.

h) Investment funds

Where an open- or closed-ended investment company, unit trust, or limited partnership is an applicant for business, then, so long as the fund itself (or its manager, trustee, general partner, or administrator if responsible for the fund's customer due diligence) is regulated<sup>11</sup>, operates in the Bailiwick of Guernsey, Isle of Man, Bailiwick of Jersey, or from an *equivalent jurisdiction*<sup>12</sup>, and the accepting person has assessed and is satisfied with the customer due diligence procedures in place, then the accepting person should consider the following to be principals:

- the fund itself;
- its directors or any controlling board where it is a company;
- its trustee where it is a unit trust;
- its managing (general) partner where it is a limited partnership; and
- any other person who has control over the relationship, e.g. fund administrator or manager.

Where a fund does not meet these particular criteria, then in addition to the above, investors (unit holders, shareholders, or limited partners) should also be considered to be principals in line with d) above if a unit trust, e) or f) above if a company, and g) if a limited partnership.

For managers, trustees, or general partners of an investment fund, the fund's principals should be considered to be the fund's investors (i.e. shareholders, unitholders or limited partners). Until such time as legislation is amended to provide managers, trustees, and general partners with the power to determine beneficial ownership of shares, units, or partnership interests (where this differs to legal ownership), managers, trustees, and general partners should exercise best efforts to do so.

In this context, exchange based trading for investment funds has grown recently and this has resulted in securities depositaries becoming increasingly significant. In these instances, fund investors' holdings may be registered in the nominee company of an exchange trading system, clearing house or securities depository. In general these systems provide mechanisms for supplying information on registered ownership, which may differ from beneficial ownership. As noted in the preceding paragraph, until such time as legislation is amended to provide managers, trustees, and general partners with the power to determine beneficial ownership of shares, units, or partnership interests (where this differs to legal ownership), managers, trustees, and general partners should exercise best efforts to do so.

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<sup>11</sup> Subject to prudential supervision by a regulatory authority discharging functions corresponding with those of Island Regulators. Prudential supervision involves monitoring the adequacy of management, financial resources, and internal systems and controls.

<sup>12</sup> Where an investment company is established under laws outside of the Bailiwick of Guernsey, Isle of Man, Bailiwick of Jersey, or an *equivalent jurisdiction*, then the fund may be considered to be operating in the jurisdiction in which its manager, trustee, or general partner is domiciled.

i) Clubs, societies, charities, church bodies, associations, institutes and other similar bodies

Along with the organisation itself (through its constitutional or other documents of organisation or establishment), principals should be considered to be those persons exercising control or significant influence over the organisation's assets. This will often include members of the governing body or committee plus executives and account signatories.

j) Central government and local authorities

Along with the government or authority itself, principals should be considered to be those persons exercising control or significant influence over the organisation's assets.

k) Retirement benefit schemes

Where an occupational pension scheme, employee benefit trust or share option plan is an applicant for business, then so long as the scheme itself (or its manager, trustee, or administrator if responsible for the scheme's customer due diligence) is regulated, operates in the Bailiwick of Guernsey, Isle of Man, Bailiwick of Jersey, or from an *equivalent jurisdiction*<sup>13</sup>, and the accepting person has assessed and is satisfied with the customer due diligence procedures in place, then an accepting person should consider the "sponsoring" employer, the trustee, and any other person who has control over the relationship, e.g. administrator or scheme manager as principals to be identified.

Where a scheme does not meet these particular criteria, or where it is a private or personal pension scheme, a retirement annuity trust scheme, or a SSAS, then each scheme member should also be considered to be a principal.

For persons managing or acting as trustee to occupational schemes, e.g. group personal pension schemes, the "sponsoring" employer should be considered as the principal to be identified so long as the accepting person has assessed and is satisfied with the procedures in place at the "sponsoring employer" to ensure that only bona fide employees are permitted entry to the scheme. For non-occupational schemes, the manager or trustee should verify the identity of each member itself.

l) Mutuals, friendly societies, co-operatives and provident societies

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<sup>13</sup> Where a scheme is established under laws outside of the Bailiwick of Guernsey, Isle of Man, Bailiwick of Jersey, or an *equivalent jurisdiction*, then the scheme may be considered to be operating in the jurisdiction in which its manager or trustee is domiciled.

Where these entities are the applicant for business then, along with the organisation itself (through its constitutional or other documents of organisation or establishment), principals should be considered to be those persons exercising control or significant influence over the organisation's assets. This will often include board members plus executives and account signatories.

18. **Reliable/ eligible introductions**

In the joint consultation paper, respondents were asked to comment on whether only regulated financial services businesses operating in *equivalent jurisdictions* and certain group companies should be relied upon to have verified the identity of an applicant for business and/or underlying principals, and on whether accepting persons should also hold copy identification documentation.

Interpretation of the term “reliable/eligible introductions” caused some confusion amongst respondents, since what is understood by the term varies between the three jurisdictions. Island Regulators consider that difficulties that have arisen from these differences are best addressed by:

- clarifying what is meant by an introduction;
- setting out who may be relied upon to have verified the identity of principals for business relationships (now to be known as an *acceptable or group introducer*); and
- requiring an accepting person to obtain original or certified copies of all relevant documentary evidence for all applicants for business and underlying principals<sup>14</sup>.

19. Introductions should be considered in their widest sense, covering both referred business and business where the applicant is acting other than on its own behalf (e.g. as agent, nominee, or trustee).

20. Who can be relied upon to have verified identity?

Island Regulators consider that it is acceptable to rely upon another party to have verified the identity of an applicant for business and/or principals only in certain controlled circumstances. Even in these circumstances, ultimate responsibility for obtaining satisfactory evidence of identity continues to rest with the accepting person. Reliance may be placed on:

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<sup>14</sup> Documents should always be obtained to avoid the possibility that they may not be available on request. For example, an acceptable introducer might no longer operate in the same jurisdiction as the accepting person, might no longer trade, or have destroyed evidence of identity on the basis that its relationship with the applicant for business has been terminated (and the time required to retain the documents under statutory record-keeping requirements has expired).

- (a) an *acceptable introducer*; and
- (b) a *group introducer*.

Where an introducer is not an *acceptable or group introducer*, then reliance cannot be placed on it to have verified identity. Such an introducer may act only as a *suitable certifier* (where it meets the required criteria) or as a conduit for the passing of relevant documentary evidence, which itself must have been certified as a true copy of an original document by a *suitable certifier*. In such cases the document used by the applicant for business to evidence identity must always be current at the time of making the application.

21. What is relevant documentary evidence?

Where reliance has been placed on an *acceptable or group introducer* to have verified the identity of an applicant for business (or underlying principals), that party may provide either:

- a) a copy of documentary evidence held on its file which it had used (historically) to verify the identity of its applicant for business or underlying principals. This may have been obtained some time previously and might now have expired (but was current at the time that identity was verified). Such a copy document may be accepted as long as no aspect of the client's identity on that verification document has changed in any way and is still correct and applicable; or
- b) originals or copies of documents obtained specifically in relation to that particular application for business.

All copy documentary evidence passed to the accepting person should be certified by the *acceptable or group introducer* as being a true copy of either an original or copy document held on its file.

Copy documentary evidence may be provided and/or stored on an electronic medium so long as it is always immediately available on that medium to the accepting person. Where evidence is held on a central group server, then it need not be certified as being a true copy of either an original or copy document held.

22. Where an accepting person is not satisfied that documentary evidence provided to it meets the requirements of "all crimes" anti-money laundering legislation (and guidance issued thereunder), then it should itself verify the identity of the applicant for business or underlying principals. Where documentation provided by an *acceptable or group introducer* is in line with requirements in the accepting person's jurisdiction but where the accepting person's standards exceed these requirements, an accepting person may still wish to verify identity itself. This will be a matter of judgement for the accepting person.

23. **Equivalent jurisdictions**

In the joint consultation paper, respondents were asked to comment on the proposed method for selecting jurisdictions deemed to host regulated persons operating under equivalent “all crimes” anti-money laundering legislation<sup>15</sup>. Whilst operating within agreed parameters, earlier proposals envisaged allowing each jurisdiction to draw up its own list of *equivalent jurisdictions*. As a result of responses to the joint consultation paper however, Island Regulators have agreed instead to a harmonised list of *equivalent jurisdictions* initially drawn from FATF or EU membership.

24. Thus, Guernsey has reinstated Gibraltar to its list of *equivalent/jurisdictions* in Appendix C to the Guidance Notes. The Isle of Man Financial Supervision Commission has recognised Canada and Japan and removed Turkey from its list of jurisdictions in Appendix D of the Guidance Notes. Jersey has removed Turkey from its list in Appendix D to the Guidance Notes.

25. No Commission is prepared, at this time, to recognise the equivalence of Argentina, Aruba, Austria, Brazil, Mexico, or the Netherlands Antilles (all of which are FATF members or included within the membership of a FATF member).

26. **Business relationships existing at the date of the introduction of “all crimes” legislation**

In the joint consultation paper, respondents were asked to comment on proposals for a programme to review customer files pre-dating “all crimes” anti-money laundering legislation.

27. Why establish such a programme?

As discussed above, many respondents to the joint consultation paper considered that proposals to review relationships in existence at the time of the introduction of “all crimes” anti-money laundering legislation were of limited value in the fight against economic crime. Island Regulators believe, however, that there are a number of compelling reasons for establishing such a programme:

- a) Knowing and verifying the identity of applicants for business or, where different, principals is an essential part of any effective know your customer regime, and assists in identifying and managing risk, avoiding breaches of United Nations and other sanctions, in reporting suspicious transactions, and in identifying any potential links with terrorist funding.

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<sup>15</sup> The joint consultation paper proposed that this selection should be restricted to FATF Members, jurisdictions covered by the EU’s anti-money laundering directive, and the Crown Dependencies.

- b) The Islands were criticised by OGBS and FATF in separate reports for failing to have measures in place to verify identity of all customers, irrespective of the date of the commencement of the business relationship.
- c) Since these reports, FATF has again stated that failure to verify identity of all clients does provide potential for established accounts to be misused.
- d) Identification is a vital part of the audit trail for law enforcement when conducting investigations, which can falter because the identity of an applicant was not verified previously.

28. Basis for the programme

Having taken account of comments received on the joint consultation paper, Island Regulators consider that all FSBs should undertake a “progressive programme”. The programme should focus primarily on the extent of evidence of customer identity already held for relationships pre-dating “all crimes” anti-money laundering legislation, and whether that documentary evidence is sufficient to satisfactorily verify the identity of that customer (and underlying principals as defined in this Paper). Where evidence of identity held is deemed to be deficient by an FSB, then it should take steps to obtain documentary evidence sufficient to verify identity.

The programme should also be extended to include not only those relationships in existence at the time of the introduction of “all crimes” anti-money laundering legislation but also those relationships established after the introduction of “all crimes” anti-money laundering legislation, where the identity of underlying principals (as previously defined in this Paper) is not held on file (or has not been verified).

- 29. The programme should be based on risk prioritisation, and all higher risk relationships for which a deficiency in verification documentation exists should be addressed and completed as a matter of priority<sup>16</sup>.
- 30. Other relationships should be reviewed for any deficiency in verification documentation following the occurrence of a “trigger” event<sup>17</sup>. This should run concurrently with a review of higher risk relationships. If the FATF introduce a deadline by which time a full progressive review should be achieved in its member states, then Island Regulators will implement FATF’s requirements.
- 31. In carrying out the programme, FSBs may also identify gaps in their customer due diligence/know your customer information. Where this occurs, FSBs should

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<sup>16</sup> Appendix 2 provides guidance on determining the risk profile of customers.

<sup>17</sup> Appendix 2 provides guidance on what might be appropriate trigger events. Events occurring within two years of the establishment of a relationship need not be considered to be “trigger events”.

take steps to obtain further information as considered appropriate to ensure that records remain up to date and relevant.

32. Scope of programme

The following relationships may be excluded from the scope of the progressive programme:

- a) small exempted one-off transactions as defined in the relevant law of each jurisdiction;
- b) FSBs falling within the following definitions where the FSB is the customer itself and acting on its own behalf with no underlying principal:
  - i) Guernsey: a person regulated by the Commission or who has applied for a licence under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 or is an authorised FSB subject to anti-money laundering measures in an equivalent jurisdiction;
  - ii) Isle of Man: where the FSB is regulated by the Commission and is a person in Appendix M(b) or where the FSB is an insurance company authorised under the Insurance Act 1986; or
  - iii) Jersey: a regulated FSB which is bound by the Money Laundering (Jersey) Order 1999 or is in an equivalent jurisdiction;
- c) relationships properly established on the basis of any “postal concession” available in the three jurisdictions under legislation or Guidance Notes issued by Commissions at that time; and
- d) all insurance policies where there is no surrender value.

33. Where an FSB has previously relied upon another person to have verified identity for introductions then it should re-verify identity itself, except where that person is an *acceptable or group introducer*, where it should obtain suitably certified copy documentation from that third party (or suitably certified documents directly from its customer where this is not possible).

34. Verification of address for the purposes of the progressive programme

FSBs should be satisfied that the address they hold is the current residential address of the applicant for business. Any subsequent notification of a change of address is deemed acceptable if it is supported by a written confirmation from the applicant for business where the applicant for business’s signature on that letter can be verified. In any event monies or assets should not be paid to the



applicant for business without the current address being independently verified by one of the methods set out in appendix 3 or in paragraph 35.

35. Where an FSB has sent regular correspondence to the address that they hold for a customer and has reasonable grounds for supposing that it has been received (e.g. mail has not been returned “gone away” or “return to sender”), then an FSB may consider that this provides a suitable basis for verification of a customer’s address.

36. Where historical correspondence is relied upon to provide a suitable basis for verification, “care of” addresses, “hold all mail”, and any obvious or suspected non-residential addresses are not acceptable.

37. Verification of identity (except address) for the purposes of the progressive programme

Where it is necessary to verify the identity of a customer (excluding address), this should be done in accordance with the existing Guidance Notes.

38. Inability to verify identity

It is recognised that FSBs may, in some circumstances, be unable to obtain satisfactory documentary evidence of identity, despite several attempts and having exercised best efforts. FSBs are expected to ascertain as far as possible why they are having difficulty in obtaining this information. Solutions should be sought to remove any obstacles identified.

39. Where there is evidence of deliberate obstruction or a lack of co-operation by a customer or, where different, the underlying principal, FSBs should request an explanation from the customer or underlying principal. Where a customer’s behaviour or explanation for failing to provide documentation leads an FSB to form a suspicion that the motive for the customer’s refusal to co-operate is that he is dealing with the proceeds of crime or financing terrorism, an FSB should make a disclosure to law enforcement as usual. Where there is no suspicion, an FSB may still wish to reassess its business relationship, terminating it if appropriate. If such a relationship is continued then Island Regulators consider that it should be subject to enhanced monitoring of transactions.

40. In cases where there is no evidence of deliberate obstruction/non-co-operation by the customer or, where different, the underlying principal, but an FSB has been unable to satisfactorily verify identity, Island Regulators consider that all such relationships should also be subject to enhanced monitoring of transactions.

41. Supervisory overview

When undertaking a “progressive programme”, FSBs will not be routinely required to submit any initial risk assessment or project plan to their regulator, but

should be ready to do so if requested (e.g. at the time of a compliance or on-site visit).

42. Progress with the “progressive programme” will be considered as part of regular supervisory visits to FSBs.

43. **Exemptions for certain postal, telephonic and electronic business**

In the joint consultation paper, comment was invited on whether FSBs should continue to benefit from exemptions for certain postal, telephonic and electronic business in the Channel Islands and in the Isle of Man in respect of insurance business, and whether the exemption should be available in the Isle of Man in respect of non-insurance business.

44. This class of business relationship is set out in:

- a) Paragraphs 54 to 56 of the Guernsey Guidance Notes;
- b) Section 3.07 of the Isle of Man Guidance Notes; or
- c) Sections 4.86 – 4.90, 5.93 – 5.101, 6.59 – 6.64 and 7.52 – 7.60 of the Jersey Guidance Notes.

45. Channel Islands’ regulators will consider what the UK and Republic of Ireland have done about their equivalent concessions before removing the concession. In the UK, HM Treasury has announced its intention to review the application of Regulation 8 (postal concession) when the 2<sup>nd</sup> Money Laundering Directive is implemented in that jurisdiction.

46. The Isle of Man Financial Supervision Commission has resolved that there will be no “postal concession” for non-insurance business.

## Appendix 1- glossary of terms

### **Equivalent jurisdiction**

An Appendix C jurisdiction in the Bailiwick of Guernsey, an Appendix D jurisdiction in the Isle of Man, and an Appendix D jurisdiction in the Bailiwick of Jersey.

### **Group introducer**

A group introducer refers business to an accepting person, or acts as an agent, nominee, or trustee. It is part of the same group as the accepting person, and is subject to consolidated supervision by a regulator in the Bailiwick of Guernsey, Isle of Man, Bailiwick of Jersey or an *equivalent jurisdiction*.

### **Acceptable introducer**

An acceptable introducer refers business to an accepting person, or acts as an agent, nominee, or trustee. It operates in the Bailiwick of Guernsey, Isle of Man, Bailiwick of Jersey or an *equivalent jurisdiction*, is regulated, and will have been assessed by an accepting person as having satisfactory customer due diligence procedures in place. It certifies that the documentary evidence provided to an accepting person is a true copy of either an original or copy document held on its file.

### **Suitable certifier**

A suitable certifier will be:

- an embassy, consulate or high commission of the country of issue of documentary evidence of identity;
- a member of the judiciary, a senior civil servant, or a serving police or customs officer;
- a lawyer or notary public;
- an actuary;
- an accountant holding a recognised professional qualification; or
- a director, officer, or manager of a regulated financial services business operating in an *equivalent jurisdiction*.

A suitable certifier will certify that he or she has seen original documentation, and that the copy document provided (which he or she certifies) is a complete and accurate copy of that original. The certifier will also sign and date the copy document, printing his or her name clearly in capitals underneath and indicate his or her position or capacity.

## **Appendix 2– risk profiling and trigger events.**

### **Risk profiling** (paragraph 29)

Each FSB will be best placed to decide the risk profile of its own customer base. However, the following risk criteria (which are not set out in any particular order of importance nor should they be considered exhaustive), should be considered in isolation or in combination:

- a) turnover;
- b) geographical origin of customer;
- c) geographical sphere of customer’s activities;
- d) nature of activity (e.g. whether trading or identified as “sensitive” by an Island regulator);
- e) frequency of activity;
- f) type and complexity of account/business relationship;
- g) value of account/ business relationship;
- h) customer type, e.g. potentates/politically exposed persons;
- i) whether hold mail arrangements are in place;
- j) whether an account/business relationship is dormant;
- k) whether there is any form of delegated authority in place (e.g. power of attorney, “mixed” boards, and representative offices);
- l) company issuing bearer shares;
- m) cash withdrawals/placement activity in or outside the jurisdiction; and
- n) suspicion or knowledge of money laundering or other crime.

### **Trigger events** (paragraph 30)

Occurrences that might be considered to be trigger events include:

- a) a significant transaction (relative to a relationship);
- b) a material change in the operation of a business relationship;
- c) a transaction which is out of keeping with previous activity;

- d) a new product or account being established within an existing relationship;
- e) a change in an existing relationship which increases a risk profile (as above);
- f) the early redemption of a fixed term investment or insurance product;
- g) the assignment or transfer of ownership of any product;
- h) a non-regular “top-up” of an existing insurance product;
- i) the addition of or a change to a principal in any relationship;
- j) the roll-over of any fixed term product (taking into account the length of the roll-over period); and
- k) an insurance claim.

The above should not be considered an exhaustive list.

### **Appendix 3– verification of address**

FSBs regulated by the Isle of Man Financial Supervision Commission can follow existing guidance on address verification (Section 3.02(c) of the Isle of Man Financial Supervision Commission’s Guidance Notes). In Guernsey and Jersey, FSBs should consider:

- a) checking a register of electors;
- b) making a credit reference agency search;
- c) checking a local telephone directory;
- d) requesting sight of a recent rates, property tax or utility bill. Care must be taken that the document is an original and not a copy;
- e) an account statement from a recognised bank or recognised bank credit card. The statement should be the most recent available and an original, not a copy. Statements featuring a “care of” or accommodation address are not acceptable. Non-bank cards, such as store cards, are not acceptable;
- f) using one of the address validation/verification services on offer;
- g) making a record of a personal visit to the home of an applicant for business; or
- h) obtaining the most recent original mortgage statement from a recognised lender.