HANDBOOK FOR LEGAL PROFESSIONALS, ACCOUNTANTS AND ESTATE AGENTS ON COUNTERING FINANCIAL CRIME AND TERRORIST FINANCING

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PART 1 – REGULATORY REQUIREMENTS AND GUIDANCE NOTES

CHAPTER 1 – INTRODUCTION

Sections in this Chapter

1. INTRODUCTION

1. The laundering of criminal proceeds and the financing of terrorism through the financial and business systems of the world is vital to the success of criminal and terrorist operations. To this end, criminals and terrorists seek to exploit the facilities of the world's businesses in order to benefit from such proceeds or financing. Increased integration of the world's financial systems and the removal of barriers to the free movement of capital have enhanced the ease with which criminal proceeds can be laundered or terrorist funds transferred and have added to the complexity of audit trails. The future of the Bailiwick of Guernsey (Guernsey) as a well-respected international financial centre depends on its ability to prevent the abuse of its financial and prescribed business sectors. Descriptions of money laundering and terrorist financing are provided in Appendix A to this Handbook.

1.1 Background and Scope

2. The Guernsey authorities are committed to ensuring that money launderers, terrorists, those financing terrorism and other criminals, cannot launder the proceeds of crime through Guernsey, or otherwise use Guernsey's business sector. The Guernsey Financial Services Commission (the Commission) endorses the Financial Action Task Force on Money Laundering's (FATF's) Forty Recommendations on Money Laundering and the IX Special Recommendations on Terrorist Financing. The Handbook for Legal Professionals, Accountants and Estate Agents on Countering Financial Crime and Terrorist Financing (the Handbook) is a statement of the standards expected by the Commission of all prescribed businesses in Guernsey to ensure Guernsey's compliance with the FATF's standards.

3. The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 as amended (the Regulations) define a prescribed business as being legal and accountancy services and estate agency when undertaking a specified range of activities and where such a business is not a financial services business. Sections 1.6, 1.7 and 1.8 of this Handbook provide information and guidance on the specific range of activities and on when and how legal professionals, accountants and estate agents are subject to the AML/CFT framework.

1.2 Purpose of the Handbook

4. The Handbook has been issued by the Commission and, together with Statements issued by the Commission, contains the rules and guidance referred to in Regulation 3(2) of the Regulations, section 12(7) of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as amended, and section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007.

5. The Handbook is issued to assist prescribed businesses to comply with the requirements of the relevant legislation concerning money laundering, terrorist financing and related offences to prevent the Bailiwick's business operations from being used in the laundering of money or the financing of terrorism. The Criminal

Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as amended and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as amended states that the Guernsey courts shall take account of rules made and guidance given by the Commission in determining whether or not a person has complied with the Regulations.

6. The Guernsey AML/CFT framework includes the following legislation, which is referred to in the Handbook as the relevant enactments:

- The Money Laundering (Disclosure of Information) (Guernsey) Law, 1995;
- The Money Laundering (Disclosure of Information) (Alderney) Law, 1998 as amended;
- The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as amended;
- The Drug Trafficking (Bailiwick of Guernsey) Law, 2000 as amended;
- The Money Laundering (Disclosure of Information) (Sark) Law, 2001 as amended;
- The Terrorism (United Nations Measures) (Channel Islands) Order 2001;
- The Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002;
- The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as amended;
- The Disclosure (Bailiwick of Guernsey) Law, 2007;
- The Disclosure (Bailiwick of Guernsey) Regulations, 2007;
- The Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007 as amended;
- The Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2007 as amended;
- The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008 as amended;

and such other enactments relating to money laundering and terrorist financing as may be enacted or made from time to time in respect of the Bailiwick or any part thereof.

7. The Regulations include requirements relating to:

- risk assessment and mitigation;
- undertaking client due diligence (CDD);
- monitoring client activity and ongoing CDD;
- reporting suspected money laundering and terrorist financing activity;
- staff screening and training;

- record keeping; and
- ensuring compliance, corporate responsibility and related requirements.

8. For any prescribed business the primary consequences of any significant failure to meet the standards required by the Regulations, the Handbook and the relevant enactments will be legal ones.

1.3 Contents of the Handbook

9. The Handbook is divided into three parts. The text in Part 1 applies to all Guernsey prescribed businesses. Part 2 provides material for a number of specific industry sectors, which supplements the generic text contained in Part 1. Part 3 contains appendices and a glossary of terms.

10. The full text of the Regulations is set out in Appendix E. That text is definitive. Any paraphrasing of that text within Part 1 or 2 of the Handbook represents the Commission's own explanation of the Regulations and is for the purposes of information and assistance only. That paraphrasing does not detract from the legal effect of the Regulations or from their enforceability by the courts. In case of doubt you are advised to seek legal advice.

11. Part 1 of the Handbook takes a two-level approach:

- Level one (**Commission Rules**) sets out how the Commission requires prescribed businesses to meet the Regulations. Failure to meet the requirements of the Rules is not only subject to sanctions as set out in the Regulations but may also lead to prescribed businesses failing to meet the Regulations (which are legally enforceable and a contravention of which can result in prosecution). Additionally, compliance with the Commission Rules must be taken into account by the courts when considering compliance with the Regulations.
- Level two (**Guidance**) presents ways of complying with the Regulations and the Commission Rules. A prescribed business may adopt other appropriate and effective measures to those set out in Guidance, including policies, procedures and controls established by the group Head Office of the prescribed business, so long as it can demonstrate that such measures also achieve compliance with the Regulations and the Commission Rules.

12. When obligations in the Regulations are explained or paraphrased in the Handbook, and where the Commission's Rules are set out in the Handbook, the term **must** is used, indicating that these provisions are **mandatory** and subject to the possibility of prosecution (in the case of a contravention of the Regulations) as well as any other applicable sanctions.

13. Information on the Regulations and, where appropriate, the text of the most relevant Regulations are shown in a box on a white background at the front of each chapter.

14. The text of the Commission Rules is presented in shaded boxes throughout each

chapter of the Handbook for ease of reference.

15. In other cases, i.e. Guidance, the Handbook uses the terms should or may to indicate ways in which the requirements of the Regulations and the Commission Rules may be satisfied, but allowing for alternative means of meeting the requirements. References to "must", "should" and "may" in the text must therefore be construed accordingly.

16. The Commission will from time to time update the Handbook to reflect new legislation, changes to international standards and good practice and the Regulations.

17. The Handbook is not intended to provide an exhaustive list of appropriate and effective policies, procedures and controls to counter money laundering and the financing of terrorism. The structure of the Handbook is such that it permits a prescribed business to adopt a risk-based approach appropriate to its particular circumstances. The prescribed business should give consideration to additional measures that may be necessary to prevent its exploitation and that of its services/ products and delivery channels by persons seeking to carry out money laundering or terrorist financing.

1.4 Risk-Based Approach

18. A risk-based approach is a systematic approach to risk management and involves:

- risk identification and assessment – taking account of the client and the business relationship or occasional transaction and of the product/service/delivery channel to identify the money laundering and terrorist financing risk to the prescribed business;
- risk mitigation – applying appropriate and effective policies, procedures and controls to manage and mitigate the risks identified;
- risk monitoring – monitoring the effective operation of a prescribed business' policies, procedures and controls; and
- policies, procedures and controls – having documented policies, procedures and controls to ensure accountability to the board and senior management.

19. It is important to understand that different types of prescribed business – whether in terms of products/services or delivery channel or typical clients, can differ materially. An approach to preventing money laundering and terrorist financing that is appropriate in one sector may be inappropriate in another.

20. A prescribed business should be able to take such an approach to the risk of being used for the purposes of money laundering and terrorist financing and to ensure that its policies, procedures and controls are appropriately designed and implemented and are effectively operated to reduce the risk of the prescribed business being used in connection with money laundering or terrorist financing.

1.5 General Application of the Regulations and the Handbook

21. The Regulations and this Handbook have been drafted in a manner which takes into account the fact that not all the requirements of the FATF Recommendations are relevant to prescribed businesses. The Handbook also recognises not only the differences between prescribed businesses and Guernsey's finance sector but also the links between some of the individual firms, particularly in the area of property transactions in some of the islands in Guernsey. Taking such an approach to the drafting of the Regulations and this Handbook helps to prevent the application of unnecessary and bureaucratic standards.

22. Whilst the requirements of the Regulations and the Handbook which provide for the undertaking of a risk-based approach, corporate governance, CDD, suspicion reporting, training and record keeping apply equally to all firms, there are other requirements of the Regulations and the Handbook which may not be as relevant to some particular areas of business and where their application will be dependant not only upon the assessed risk of the business itself but also upon the nature of the prescribed business - legal, accountancy or estate agency.

23. The Commission is also aware that a large proportion of the occasional transactions and business relationships undertaken by prescribed businesses are established on a face-to-face basis. The Regulations and the Handbook recognise that certain types of occasional transactions or business relationships, for example those established on a face-to-face basis, may present a lower risk of money laundering or terrorist financing. Regulation 6 and Chapter 6 of the Handbook provide for simplified or reduced CDD measures to be undertaken in low risk relationships where specified criteria are met.

24. Where businesses choose to outsource or subcontract work to non-regulated entities, they should bear in mind that they remain subject to the obligation to maintain appropriate risk management procedures to prevent money laundering or terrorist financing activity. In that context, they should consider whether the subcontracting increases the risk that they will be involved in or used for money laundering or terrorist financing, in which case appropriate and effective controls to address that risk should be put in place.

25. The following sections of this Chapter provide more information on how the Regulations and the Rules in the Handbook apply to particular areas of prescribed businesses.

1.6 Application of the Regulations and the Handbook to Legal Professionals

26. The Regulations and this Handbook apply to lawyers, notaries and other independent legal professionals (lawyers) who are not financial services businesses but, by way of business, provide key legal or notarial services to other persons. The Regulations and this Handbook do not apply to independent legal professionals employed by a public authority or undertakings which do not, by way of business, provide legal

services to third parties (such as financial services businesses).

27. More specifically, the Regulations and this Handbook apply to legal professionals when, on behalf of or for a client, they prepare for or carry out transactions in relation to the following activities defined by the FATF.

    (a) the acquisition or disposal of real property or any interest therein;

    (b) the management of client money, securities or other assets;

    (c) the management of bank, savings or securities accounts;

    (d) the organisation of contributions for the creation, operation management or administration of companies; or

    (e) the creation, operation or management or administration of legal persons or arrangements, and the acquisition or disposal of business entities.

28. It should be noted that "management" means running something, or controlling or taking charge of it, so there is an element of active intervention with a power to make decisions in respect of the asset in question. Although the management of a bank account is wider than simply opening a client account, the fact that a legal professional opens a client account for the funds of his client does not necessarily mean that he is not managing them. In some cases it may be the nature of the services that are to be provided under the contract for services that are decisive rather than what the legal professional actually does with the asset in question.

29. A significant number of legal firms who have in the past provided services in respect of (d) and (e) above made arrangements for those services to be carried out by related fiduciary entities, which are regulated under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, as amended. Additionally, a number of legal firms are licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, to carry out the services identified in (b) and (c) above. If you are uncertain whether the Regulations and this Handbook apply to your work, you are advised to seek legal advice on the individual circumstances of your practice.

30. This Handbook comes into force for legal professionals on 7 November 2008.

31. Information on legal professional privilege is provided in Chapter 8 which deals with the reporting of suspicion and section 11.1.1 of this Handbook which provides information on features or activities of the legal profession which may give rise to suspicion.

1.7 Application of the Regulations and the Handbook to Accountants

32. The Regulations and this Handbook apply to any person who is not a financial services business but, by way of business, provides accountancy services. The

Regulations and the Handbook do not cover accountants providing services privately on an unremunerated basis.

33. More specifically, the Regulations and this Handbook apply to accountants when, on behalf of or for a client, they prepare for or carry out transactions in relation to the following activities defined by the FATF -

    (a) the acquisition or disposal of real property or any interest therein;

    (b) the management of client money, securities or other assets;

    (c) the management of bank, savings or securities accounts;

    (d) the organisation of contributions for the creation, operation management or administration of companies; or

    (e) the creation, operation or management or administration of legal persons or arrangements, and the acquisition or disposal of business entities.

34. It should be noted that "management" means running something, or controlling or taking charge of it, so there is an element of active intervention with a power to make decisions in respect of the asset in question. Although the management of a bank account is wider than simply opening a client account, the fact that an accountant has simply opened a client account for the funds of his client does not necessarily mean of itself that he is not managing them. In some cases it may therefore be the nature of the services that are to be provided under the contract for services that are decisive rather than what the accountant actually does with the asset in question.

35. A significant number of accountancy firms who have in the past provided services in respect of (d) and (e) above made arrangements for those services to be carried out by related fiduciary entities, which are regulated under the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000, as amended. Additionally, a number of accountancy firms are licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended, to carry out the services identified in (b) and (c) above. If you are uncertain whether the Regulations and this Handbook apply to your work, you are advised to seek legal advice on the individual circumstances of your practice.

36. This Handbook comes into force for accountants on 7 November 2008.

37. Those involved in the provision of management consultancy services or interim management should be particularly alert to the possibility that they could be within the scope of the AML/CFT regime to the extent they supply any of the defined services when acting under a contract for services in the course of business. If you are uncertain whether the Regulations and this Handbook apply to your work, you are advised to seek legal advice on the individual circumstances of your practice.

38. Section 11.2.1 of this Handbook provides information on features or activities of

accountancy practices which may give rise to suspicion.

1.8 Application of the Regulations and the Handbook to Estate Agents.

39. The Regulations and the Handbook apply to the business of estate agents when they are involved in transactions for a client concerning the buying and selling of real estate.

40. It should be noted that the FATF Recommendations specifically require CDD (e.g. identification and verification) of clients to be undertaken in respect of both the purchasers and the vendors of real property.

41. Due to the nature of business undertaken by estate agents the requirements of the Regulations and the Handbook will, in some areas, be less than the requirements for the legal and accountancy professions. For example, a significant proportion of estate agency business will be undertaken on an occasional transaction basis rather than where a business relationship has been established - ongoing monitoring is only necessary where a business relationship has been established and a number of linked transactions undertaken. Additionally, it is likely that a high proportion of deposits made to estate agents will emanate from local banks or banks operating from Jersey, the Isle of Man, the UK or a range of other jurisdictions specified by the Commission - thereby satisfying the request for verification of identity.

42. This Handbook comes into force for estate agents on 5 December 2008.

43. Section 11.3.1 of this Handbook provides information on features or activities of estate agency business which may give rise to suspicion.

CHAPTER 2 – CORPORATE GOVERNANCE

Key Regulations

Sections in this Chapter

REGULATIONS

The requirements of the Regulations to which the rules and guidance in this chapter particularly relate are:

- Regulation 12, which provides for the appointment of a money laundering reporting officer and the reporting of suspicion. See Chapter 8.
- Regulation 15, which makes provisions in relation to the review of compliance. See below.

Regulation 15

15. A prescribed business must, in addition to complying with the preceding requirements of these Regulations -

(a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of forestalling, preventing and detecting money laundering and terrorist financing,

(b) establish and maintain an effective policy, for which responsibility must be taken by the board, for the review of its compliance with the requirements of these Regulations and such policy shall include provision as to the extent and frequency of such reviews,

(c) ensure that a review of its compliance with these Regulations is discussed and minuted at a meeting of the board at appropriate intervals, and in considering what is appropriate a prescribed business must have regard to the risk taking into account -

(i) the size, nature and complexity of the prescribed business,

(ii) its clients, products and services, and

(iii) the ways in which it provides those products and services,

(d) on, or within 14 days following 5 December in each year send to the Commission a certificate, in such form as is approved by the Commission for the purpose, signed on behalf of the business certifying, in respect of the period of 12 months ending on the 5 December in question (or throughout the period commencing upon first registration of the business under regulation 16 and the 5 December in question) -

(i) that it has, complied with the requirements of-

(A) these Regulations,

(B) the Handbook, and

(C) any instructions, or notice, issued by the Commission under the Law, and

(ii) the number of full time (or full time equivalent) members of staff (including executive directors and partners) employed by, or forming, the business, and

(e) have regard to the provisions of the Handbook.

2. CORPORATE GOVERNANCE

A prescribed business must comply with the Rules in addition to the Regulations. The Rules are boxed and shaded for ease of reference. A prescribed business should note that the Court must take account of the Rules and Guidance issued by the Commission in considering compliance with the Regulations.

2.1 Objectives

44. Corporate governance refers to the manner in which boards of directors and senior management oversee the prescribed business. This chapter, together with the Regulations, provides the framework for oversight of the policies, procedures and controls of a prescribed business to counter money laundering and terrorist financing.

2.2 Corporate Governance

45. References in this chapter to "the Board" must be read as meaning the senior management i.e. those charged with the management of the prescribed business where the business is not a company, but is, for example, a firm i.e. a partnership.

2.3 Board Responsibility for Oversight of Compliance

46. The Board has effective responsibility for compliance with the Regulations and the Handbook and references to compliance in this Handbook generally, are to be taken as references to compliance with the Regulations and the Handbook. In particular the Board must take responsibility for the policy on reviewing compliance and must consider the appropriateness and effectiveness of compliance and the review of compliance at appropriate intervals.

47. A prescribed business must also ensure that there are appropriate and effective policies, procedures and controls in place which provide for the Board to meet its obligations relating to compliance review, in particular the Board must:

- ensure that the compliance review policy takes into account the size, nature and complexity of the business and includes a requirement for sample testing of the effectiveness and adequacy of the policies, procedures and controls;
- consider whether it would be appropriate to maintain a separate audit function to assess the adequacy and effectiveness of the area of compliance;
- ensure that when a review of compliance is discussed by the Board at appropriate intervals the necessary action is taken to remedy any identified deficiencies;
- provide adequate resources either from within the prescribed business, within the group, or externally to ensure that the AML/CFT policies, procedures and controls of the prescribed business are subject to regular monitoring and testing as required by the Regulations;
- provide adequate resources to enable the MLRO to perform his duties; and

- take appropriate measures to keep abreast of and guard against the use of technological developments and new methodologies in money laundering and terrorist financing schemes.

48. The Board may delegate some or all of its duties but must retain responsibility for the review of overall compliance with AML/CFT requirements as required by Regulation 15.

2.3.1 Liaison with the Commission

49. The Board of a prescribed business must ensure that the Commission is advised of any material failure to comply with the provisions of the Regulations and the rules in the Handbook and of any serious breaches of the policies, procedures or controls of the prescribed business.

2.3.2 Outsourcing

50. Whether a prescribed business carries out a function itself, or outsources the function to a third party (either in Guernsey or overseas, or within its group or externally) the prescribed business remains responsible for compliance with the Regulations in Guernsey and the requirements of the Handbook. A prescribed business cannot contract out of its statutory and regulatory responsibilities to prevent and detect money laundering and terrorist financing.

51. Where a prescribed business wishes to outsource functions, it should make an assessment of any potential money laundering and financing of terrorism risk, maintain a record of the assessment, where necessary monitor the perceived risk, and ensure that relevant policies, procedures and controls are and continue to be in place at the outsourced business.

52. Where a prescribed business is considering the outsourcing of compliance functions and/or providing the MLRO with additional support from third parties, from elsewhere within the group or externally, then the business should:

- consider and adhere to the Commission's policy on outsourcing;
- ensure that roles, responsibilities and respective duties are clearly defined and documented; and
- ensure that the MLRO, any deputy MLRO, other third parties and all employees understand the roles, responsibilities and respective duties of all parties.

2.4 The Money Laundering Reporting Officer

53. In larger prescribed businesses, because of their size, nature and complexity, the appointment of one or more appropriately qualified persons as permanent deputy MLROs may be necessary.

54. The MLRO and any deputy MLROs that are appointed must:

- be employed by the prescribed business;
- be resident in Guernsey;
- be the main point of contact with the Financial Intelligence Service (FIS) in the handling of disclosures;
- have sufficient resources to perform his duties;
- have access to the CDD records;
- be available on a day to day basis (see section 2.4.1);
- receive full cooperation from all staff;
- report directly to the Board;
- have regular contact with the Board to ensure that the Board is able to satisfy itself that all statutory obligations and provisions in the Handbook are being met and that the prescribed business is taking sufficiently robust measures to protect itself against the potential risk of being used for money laundering and terrorist financing; and
- be fully aware of both his obligations and those of the prescribed business under the Regulations, the relevant enactments and the Handbook.

2.4.1 Nominated officer

55. In order to meet the requirements of Regulation 12(b), prescribed businesses must nominate another person to receive disclosures in the absence of the MLRO and must communicate the name of the nominated officer to the employees.

CHAPTER 3 – A RISK-BASED APPROACH

Key Regulations

Sections in this Chapter

REGULATIONS

The requirements of the Regulations to which the rules and guidance in this chapter particularly relate are:

- Regulation 3, which provides for a prescribed business to identify and assess the risks of money laundering and terrorist financing and to ensure that its policies, procedures and controls are effective and appropriate to the assessed risk. See below.
- Regulation 15, which makes provisions in relation to the review of compliance. See Chapter 2.

Regulation 3

3. (1) A prescribed business must -

(a) carry out a suitable and sufficient business risk assessment -

(i) as soon as reasonably practicable after these Regulations come into force, or

(ii) in the case of a prescribed business which only becomes such on or after the date these Regulations come into force, as soon as reasonably practicable after it becomes such a business,

(b) regularly review its business risk assessment so as to keep it up to date and, where, as a result of that review, changes to the business risk assessment are required, it must make those changes,

(c) prior to the establishment of a business relationship or the carrying out of an occasional transaction, undertake a risk assessment of that proposed business relationship or occasional transaction,

(d) regularly review any risk assessment carried out under subparagraph (c) so as to keep it up to date and, where changes to that risk assessment are required, it must make those changes, and

(e) ensure that its policies, procedures and controls on forestalling, preventing and detecting money laundering and terrorist financing are appropriate and effective, having regard to the assessed risk.

(2) A prescribed business must have regard to -

(a) any relevant rules and guidance in the Handbook, and

(b) any notice issued by the Commission under the Law,

in determining, for the purposes of these Regulations, what constitutes a high or low risk.

3. A RISK-BASED APPROACH

A prescribed business must comply with the Rules in addition to the Regulations. The Rules are boxed and shaded for ease of reference. A prescribed business should note that the Court must take account of the Rules and Guidance issued by the Commission in considering compliance with the Regulations.

3.1 Objectives

56. The Board and senior management of any business are responsible for managing the business effectively. They are in the best position to evaluate all potential risks. The Board and senior management of a business are accustomed to applying proportionate risk-based policies across different aspects of their business.

57. This chapter, together with the Regulations, is designed to assist a prescribed business to take such an approach to the risk of its products and services being used for the purposes of money laundering and terrorist financing and to ensure that its policies, procedures and controls are appropriately designed and implemented and are effectively operated to reduce the risk of the prescribed business being used in connection with money laundering and terrorist financing.

58. In order to meet the requirements of Regulation 3 a prescribed business must have regard to any relevant rules and guidance in assessing the risk of a business relationship or occasional transaction particularly in respect of higher risk relationships or transactions.

3.2 Benefits of a Risk-Based Approach

59. No system of checks will detect and prevent all money laundering or terrorist financing. A risk-based approach will, however, serve to balance the cost burden placed on individual businesses and on their clients with a realistic assessment of the threat of the business being used in connection with money laundering or terrorist financing. It focuses the effort where it is needed and has most impact.

60. To assist the overall objective to prevent the abuse of the prescribed sector, a risk-based approach:

- recognises that the money laundering/terrorist financing threat to a prescribed business varies across its clients, countries/territories, products/services and delivery channels;
- allows the Board and senior management to differentiate between their clients in a way that matches the risk in their particular business;
- allows the Board and senior management to apply their own approach to the policies, procedures and controls of the prescribed business in particular circumstances;
- helps to produce a more cost-effective system;

- promotes the prioritisation of effort and activity by reference to the likelihood of money laundering or terrorist financing taking place;
- reflects experience and proportionality through the tailoring of effort and activity to risk; and
- allows a prescribed business to apply the Handbook sensibly and to consider all relevant factors.

61. A risk-based approach takes a number of discrete steps in assessing the most cost-effective and proportionate way to manage the money laundering and terrorist financing risks facing a prescribed business by:

- identifying and assessing the money laundering and terrorist financing risks presented by the particular clients, products/services, delivery channels and geographical areas of operation of the prescribed business;
- managing and mitigating the assessed risks by the application of appropriate and effective policies, procedures and controls;
- monitoring and improving the effective operation of the policies, procedures and controls; and
- documenting, as appropriate, the policies, procedures and controls to ensure accountability to the Board and senior management.

3.3 Identifying and Assessing the Risks

62. A risk-based approach starts with the identification and assessment of the risk that has to be managed. In the context of the Handbook a risk-based approach requires a prescribed business to assess the risks of how it might be involved in money laundering or terrorist financing taking into account its clients, products and services and the ways in which it provides those services.

63. A prescribed business should ask itself what is the threat of it being used for money laundering or terrorist financing. For example:

- What risk is posed/mitigated by the clients of the prescribed business, taking into account:
  - their wealth;
  - their influence;
  - their geographical origin;
  - the complexity of their transaction structures;
  - the complexity of legal persons and legal arrangements;
  - whether they were introduced to the prescribed business; and
  - any unwillingness of clients who are not individuals to give the names of their underlying owners and principals.

- What risk is posed/mitigated by the products/services offered by the prescribed business. For example:
  - whether the value of a transaction is particularly high;
  - whether payments to third parties are allowed.

3.4 Business Risk Assessment – Management and Mitigation

64. In order to ensure its policies, procedures and controls on anti-money laundering and terrorist financing are appropriate and effective, having regard to the assessed risk, a prescribed business must ask itself what measures it can adopt, and to what extent, to manage and mitigate the identified risks cost-effectively.

65. These measures may, for example, include:

- varying the CDD procedures in respect of clients appropriate to their assessed money laundering and terrorist financing risk;
- requiring the quality of evidence – documentary/electronic/third party assurance – to be of a certain standard;
- obtaining additional client or business relationship information where this is appropriate to their assessed money laundering or terrorist financing risk, for example, identifying and understanding where a client's funds and wealth come from;
- monitoring ongoing CDD, existing client accounts and ongoing business relationships.

66. The responses to the questions set out in section 3.3, or to similar questions, will be a useful framework for the process whereby a prescribed business, having assessed the risk to its business, is able to tailor its policies, procedures and controls on the countering of money laundering and terrorist financing.

3.5 Relationship Risk Assessment – Management and Mitigation

67. The general policy of each prescribed business towards the identification and assessment of risk in its client base should be documented and approved at Board level.

68. For a prescribed business to consider the extent of its potential exposure to the risk of money laundering and terrorist financing it must assess the risk of any proposed business relationship or occasional transaction. Based on this assessment, the prescribed business must decide whether or not to accept each business relationship and whether or not to accept any instructions to carry out any occasional transactions.

69. In addition, the assessment will allow a prescribed business to determine, on a risk basis, the extent of identification information (and other CDD information) that

must be obtained, how that information will be verified, and the extent to which the resulting business relationship will be monitored.

70. When assessing the risk of a proposed business relationship or occasional transaction a prescribed business must take into consideration information on three areas:

- the identity of the client, beneficial owners and underlying principals;
- the purpose and intended nature of the business relationship or occasional transaction, including the possibility of legal persons and legal arrangements forming part of the business relationship or occasional transaction; and
- the type, volume and value of activity that can be expected within the business relationship.

71. A prescribed business must have documented procedures which will allow it to demonstrate how the assessment of each business relationship or occasional transaction has been reached, and which take into account the nature and complexity of its operation.

72. Such procedures may provide for standardised profiles to be used where the prescribed business has satisfied itself, on reasonable grounds, that such an approach effectively assesses the risk for each particular business relationship or occasional transaction. However, a prescribed business with a diverse client base or where a wide range of products and services are available must develop a more structured and rigorous system to show that judgement has been exercised on an individual basis rather than on a generic or categorised basis.

73. The extent and manner of the assessment will be dependant upon the nature of the proposed business relationship or occasional transaction. For example, the information available on the purpose and intended nature of the business relationship will vary according to the sector, the nature of the relationship and the role of the prescribed business within the relationship.

3.5.1 Business from Sensitive Sources Notices, instructions, etc.

74. From time to time the Commission issues Business from Sensitive Sources Notices, Advisory Notices, instructions, and Warnings which highlight potential risks arising from particular sources of business. A prescribed business must ensure that it visits the Commission's website and apprises itself of the available information on a regular basis. Additionally, this information, which is updated as necessary, together with sanctions legislation applicable in the Bailiwick, must be taken into consideration when creating a relationship risk profile.

75. Care must be taken when dealing with clients, beneficial owners and underlying principals from countries or territories which are associated with the production, processing and trafficking of illegal drugs. Prescribed businesses must also exercise a higher degree of awareness of the potential problems associated with taking on politically sensitive and other clients from countries or territories where bribery and

corruption are widely considered to be prevalent.

76. Countries or territories that do not or insufficiently apply the FATF Recommendations and other high risk countries or territories are dealt with in section 5.4 of the Handbook.

3.5.2 Inherent risks

77. A prescribed business must have regard to the attractiveness to money launderers of the availability of complex products and services that operate within reputable and secure wealth management environments that are familiar with high value transactions. The following factors contribute to the increased vulnerability of wealth management:

- wealthy customers and powerful customers – such customers may be reluctant or unwilling to provide adequate documents, details and explanations;
- multiple accounts and complex accounts – customers often have many accounts in more than one jurisdiction, either within the same firm or group, or with different firms;
- movement of funds – the transmission of funds and other assets by private customers often involve high value transactions, requiring rapid transfers to be made across accounts in different countries and regions of the world.

78. In order to counter the perceived and actual risks of such relationships, a financial services business must ensure it recognises, manages and mitigates the potential risks arising from relationships with high net worth customers.

3.5.3 Profile indicators

79. This paragraph provides examples of low risk indicators for clients and for products and services which a prescribed business may consider when preparing a profile.

(a) Clients – Low Risk Indicators

- clients who are actively employed with a regular source of income which is consistent with the employment being undertaken;
- clients with private wealth, where the source is identified as legitimate; and
- clients represented by those whose appointment is subject to court approval or ratification (such as executors).

(b) Products and services – Low Risk Indicators

- products where the provider does not permit third party investment or repayment and the ability to make or receive payments to or from third parties is restricted.

80. This paragraph provides examples of high risk indicators for clients and for products

and services which a prescribed business may consider when preparing a profile.

(a) Clients – High Risk Indicators

- complex ownership structures, which can make it easier to conceal underlying beneficial owners and beneficiaries;
- structures where there is no apparent legitimate economic or other rationale;
- an individual who is a Politically Exposed Person (PEP) and/or association with a location which carries a higher exposure to the possibility of corruption;
- an individual who may be regarded as a commercially exposed person because of his or her position as a senior executive of a well known commercial enterprise;
- clients based in, or conducting business in or through, a Non Cooperative Country or Territory (NCCT) or a country or territory with known higher levels of corruption or organised crime, or involved in illegal drug production/ processing/distribution, or associated with terrorism;
- clients engaging in business activities which themselves are regarded as sensitive including internet gaming, gambling (internet or otherwise), pornography, arms trading or the provision of military security services;
- clients based in, or conducting business in or through, a country or territory which does not or insufficiently applies the FATF Recommendations;
- involvement of an introducer from a country or territory which does not have an adequate AML/CFT infrastructure;
- requests to adopt undue levels of secrecy with a transaction; and
- business relationships or occasional transactions where the source of wealth and source of funds cannot be easily verified or where the audit trail has been deliberately broken and/or unnecessarily layered.

(b) Products and Services – High Risk Indicators

- complex structures of legal persons and/or legal arrangements;
- hold mail or retained mail arrangements;
- significant and/or frequent cash transactions; and
- inappropriate delegation of authority.

81. A prescribed business must ensure that where, in a particular client/product/ service/delivery channel combination, any one aspect of the business relationship or occasional transaction is considered to carry a high risk of money laundering or terrorist financing, the overall risk of the business relationship or occasional transaction is treated as high risk.

3.6 Monitoring the Effectiveness of Policies, Procedures and Controls

82. The prescribed business' compliance review policy must make provision for a review of the following elements to ensure their appropriateness and effectiveness:

- the procedures surrounding the products/services offered by the prescribed business;
- the CDD requirements in place for establishing a new business relationship or undertaking an occasional transaction;
- staff screening and training; and
- monitoring compliance arrangements.

3.7 Documentation

83. Documentation of the results achieved by taking the steps set out in sections 3.3 to 3.6 will assist the prescribed business to demonstrate:

- how it identifies and assesses the risks of being used for money laundering or terrorist financing;
- how it agrees and implements appropriate and effective policies, procedures and controls to manage and mitigate the risk;
- how it monitors and improves the effectiveness of its policies, procedures and controls; and
- how it ensures accountability of the Board and senior management on the operation of its policies, procedures and controls process.

CHAPTER 4 – CLIENT DUE DILIGENCE

Key Regulations

Sections in this Chapter

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REGULATIONS

The requirements of the Regulations to which the rules and guidance in this chapter particularly relate are:

- Regulation 3, which provides for a prescribed business to identify and assess the risks of money laundering and terrorist financing and to ensure that its policies, procedures and controls are effective and appropriate to the assessed risk. See Chapter 3.
- Regulation 4, which provides for the required client due diligence measures, when they should be applied and to whom they should be applied. See below.
- Regulation 7, which provides for the timing of identification and verification of identity. See below.
- Regulation 8, which makes provisions in relation to anonymous accounts. See below.
- Regulation 9, which provides for the non-compliance with client due diligence measures. See below.
- Regulation 10, which provides for the client due diligence measures to be undertaken in introduced business relationships. See below.
- Regulation 15, which makes provisions in relation to the review of compliance. See Chapter 2.

Regulation 4

4. (1) A prescribed business shall, subject to the following provisions of these Regulations, ensure that the steps in paragraph (3) are carried out -

(a) when carrying out the activities described in paragraphs (2)(a) and (b), and

(b) in the circumstances described in paragraphs (2)(c) and (d).

(2) The activities and circumstances referred to in paragraph (1) are -

(a) establishing a business relationship,

(b) carrying out an occasional transaction,

(c) where the prescribed business knows or suspects or has reasonable grounds for knowing or suspecting -

(i) that, notwithstanding any exemptions or thresholds pursuant to these Regulations, any party to a business relationship is engaged in money laundering or terrorist financing, or

(ii) that it is carrying out a transaction on behalf of a person, including a beneficial owner or underlying principal, who is engaged in money

laundering or terrorist financing, and

(d) where the prescribed business has doubts about the veracity or adequacy of previously obtained identification data.

(3) The steps referred to in paragraph (1) are that -

(a) the client shall be identified and his identity verified using identification data,

(b) any person purporting to act on behalf of the client shall be identified and his identity and his authority to so act shall be verified,

(c) the beneficial owner and underlying principal shall be identified and reasonable measures shall be taken to verify such identity using identification data and such measures shall include, in the case of a legal person or legal arrangement, measures to understand the ownership and control structure of the client,

(d) a determination shall be made as to whether the client is acting on behalf of another person and, if the client is so acting, reasonable measures shall be taken to obtain sufficient identification data to identify and verify the identity of that other person,

(e) information shall be obtained on the purpose and intended nature of each business relationship, and

(f) a determination shall be made as to whether the client, beneficial owner and any underlying principal is a politically exposed person.

(4) A prescribed business must have regard to any relevant rules and guidance in the Handbook in determining, for the purposes of this regulation and regulation 5, what constitutes reasonable measures.

Regulation 7

7. (1) Identification and verification of the identity of any person or legal arrangement pursuant to regulations 4 to 6 must, subject to paragraph (2) and regulation 4(1)(b), be carried out before or during the course of establishing a business relationship or before carrying out an occasional transaction.

(2) Verification of the identity of the client and of any beneficial owners and underlying principals may be completed following the establishment of a business relationship provided that -

(a) it is completed as soon as reasonably practicable thereafter,

(b) the need to do so is essential not to interrupt the normal conduct of business, and

(c) appropriate and effective policies, procedures and controls are in place which operate so as to manage risk.

Regulation 8

8. A prescribed business must, in relation to all clients-

(a) not set up anonymous accounts or accounts in fictitious names, and

(b) maintain accounts in a manner which facilitates the meeting of the requirements of these Regulations.

Regulation 9

9. Where a prescribed business cannot comply with any of regulations 4(3)(a) to (d) it must -

(a) in the case of an existing business relationship, terminate that business relationship,

(b) in the case of a proposed business relationship or occasional transaction, not enter into that business relationship or carry out that occasional transaction with the client, and

(c) consider whether a disclosure must be made pursuant to Part I of the Disclosure Law or section 12 of the Terrorism Law.

Regulation 10

10. (1) In the circumstances set out in paragraph (2), a prescribed business may accept a written confirmation of identity and other matters from an introducer in relation to the requirements of regulation 4(3)(a) to (e) provided that -

(a) the prescribed business also requires copies of identification data and any other relevant documentation to be made available by the introducer to the prescribed business upon request and without delay, and

(b) the introducer, subject to limited exceptions provided for in chapter 4 of the Handbook, keeps such identification data and documents.

(2) The circumstances referred to in paragraph (1) are that the introducer -

(a) is an appendix C business, or

(b) is either an overseas branch, or a member, of the same group of bodies corporate as, the prescribed business with which it is entering into the business relationship ("**receiving prescribed business**"), and -

(i) the ultimate parent body corporate of the group of bodies corporate of

which both the introducer and the receiving prescribed business are members, falls within subparagraph (a), and

(ii) the introducer and the receiving prescribed business are subject to effective policies, procedures and controls on countering money laundering and terrorist financing of that group of bodies corporate.

(3) Notwithstanding paragraph (1), where reliance is placed upon the introducer the responsibility for complying with the relevant provisions of regulation 4 remains with the receiving prescribed business.

4. CLIENT DUE DILIGENCE

A prescribed business must comply with the Rules in addition to the Regulations. The Rules are boxed and shaded for ease of reference. A prescribed business should note that the Court must take account of the Rules and Guidance issued by the Commission in considering compliance with the Regulations.

4.1 Objectives

84. This chapter sets out the rules and provides guidance in respect of the CDD procedures to be undertaken by a prescribed business in order to meet the CDD requirements of the Regulations in circumstances where the risk of a particular business relationship or occasional transaction has been assessed as normal.

85. Where the risk of a particular business relationship or occasional transaction has been assessed as higher than normal (described in this handbook as high risk), the CDD requirements described in this chapter must be read in conjunction with the enhanced CDD requirements described in Chapter 5 which deals with high risk relationships.

86. Where the risk of a particular business relationship or occasional transaction has been assessed as lower than normal (described in this handbook as low risk), the CDD requirements described in this chapter should be read in conjunction with the requirements of Chapter 6 which provides for circumstances in which reduced or simplified CDD policies, procedures and controls may be applied.

4.2 Client Due Diligence – Policies, Procedures and Controls

87. Sound CDD procedures are vital for all prescribed businesses because they:

- constitute an essential part of risk management, for example, by providing the basis for identifying, assessing, mitigating and managing risk;
- help to protect the prescribed business and the integrity of the business sector in which it operates by reducing the likelihood of a prescribed business becoming a vehicle for, or a victim of, financial crime and terrorist financing;
- help the prescribed business, at the time the CDD is carried out, to take comfort that the clients and other parties included in a business relationship are who they say they are, and that it is appropriate to provide them with the product or service requested; and
- help the prescribed business to identify, during the course of a continuing business relationship, factors which are unusual and which may lead to knowing or suspecting or having reasonable grounds for knowing or suspecting that persons involved in a business relationship may be carrying out money laundering or terrorist financing.

4.3 Obligation to Identify and Verify Identity

88. Establishing that any client, beneficial owner or underlying principal is the person that he claims to be is a combination of being satisfied that:

- a person exists – on the basis of appropriate identification data; and
- the client, beneficial owner or underlying principal, is that person – by verifying from identification data, satisfactory confirmatory evidence of appropriate components of their identity.

89. A prescribed business must have client take-on policies, procedures and controls in place which provide scope to identify and verify identity to a depth appropriate to the assessed risk of the business relationship and occasional transaction. This risk-based approach also applies to the identification and verification of the authority of persons purporting to act on behalf of a client.

90. The policies, procedures and controls must:

- be risk-based to differentiate between what is expected in low risk situations and what is expected in high risk situations and what is expected in situations which are neither high nor low risk;
- impose the least necessary burden on clients, beneficial owners and underlying principals consistent with meeting the requirements of the Regulations and Rules;
- not constrain access to services, for example, by those without driving licences or passports; and
- deal sensibly and sensitively with special groups for whom special processes may be appropriate, for example, the elderly and students studying overseas.

91. Prescribed businesses must judge, on a risk-based approach, how much identification and verification information to ask for, what to verify, and how to verify, in order to be satisfied as to the identity of a client, beneficial owner or underlying principal.

92. For clients that are legal persons or legal arrangements, the prescribed business must:

(i) verify the legal status of the legal person or legal arrangement; and

(ii) obtain information concerning the client's name, the names of trustees (for trusts), legal form, address, directors (for legal persons), and provisions regulating the power to bind the legal person or arrangement.

93. Where the individual (or business relationship to which he is connected) presents a high risk, a prescribed business must consider whether additional verification checks are necessary – see Chapter 5 on high risk relationships.

4.4 Identification and Verification of Clients who are Individuals

94. Sections 4.4 to 4.8 of this chapter provide rules and guidance on how to meet the identification and verification of identity requirements of Regulation 4.

95. Identification and verification of identity of a personal client is a two-part process. The client first identifies himself to the prescribed business, by supplying a range of personal information. Generally, this information will be provided on some type of application form and the information requested may be used for business purposes over and above verifying the identity of the client. The second part – the verification – consists of the prescribed business verifying some or all of this information through the use of identification data.

96. For business relationships or occasional transactions which have been identified as low risk see Chapter 6.

4.4.1 Identification data for individuals

97. A prescribed business must, subject to section 6.2.1, collect relevant identification data on an individual, which includes:

- legal name, any former names (such as maiden name) and any other names used;
- principal residential address;
- date and place of birth;
- nationality;
- any occupation, public position held and, where appropriate, the name of the employer; and
- an official personal identification number or other unique identifier contained in an unexpired official document (for example, passport, identification card, residence permit, social security records, driving licence) that bears a photograph of the client.

4.4.2 Verification of identity – the individual

98. The legal name, address, date and place of birth, nationality and official personal identification number of the individual must be verified.

99. In order to verify the legal name, address, date and place of birth, nationality and official personal identification number of the individual, the following documents are considered to be the best possible, in descending order of acceptability:

- current passport (providing photographic evidence of identity);
- current national identity card (providing photographic evidence of identity);
- armed forces identity card.

100. The examples quoted above are not the only possibilities. In particular countries or territories there may be other documents of an equivalent nature which may be produced as satisfactory evidence of identity of the individual.

4.4.3 Verification of identity – the address

101. The following are considered to be suitable to verify the residential address of individuals:

- a bank/credit card statement or utility bill;
- correspondence from an independent source such as a central or local government department or agency (in Guernsey and Jersey this will include States departments, and parish authorities);
- commercial or electronic databases;
- a letter of introduction from an Appendix C business (see the definition in Appendix C to the Handbook) with which the individual has an existing business relationship and which confirms residential address;
- written communication from an Appendix C business (see the definition in Appendix C to the Handbook) in connection with a product or service purchased by the individual;
- lawyer's confirmation of property purchase, or legal document recognising title to property (low risk relationships and transactions only);
- a personal visit to the residential address; and
- an electoral roll.

102. For Guernsey residents and overseas residents who may encounter difficulties in providing evidence of their residential address, additional documents are listed in sections 4.4.4 and 4.5.3 respectively.

103. Identification data does not have to be in paper form. As well as documentary forms of verification, external electronic databases and other sources such as the internet, information published by government departments and law enforcement authorities, and subscription databases are accessible directly by prescribed businesses. The evidential value of electronic checks should depend on the assessed risk of the business relationship or occasional transaction.

104. Where a prescribed business is not familiar with the form of the evidence of identification data, it should take reasonable measures to satisfy itself that the evidence is genuine.

105. All key documents (or parts thereof) must be understood by an employee of the prescribed business, and must be translated into English at the reasonable request of the FIS or the Commission.

106. Where establishing a face-to-face business relationship with or undertaking an

occasional transaction for a client who is an individual, reduced or simplified CDD may be carried out as set out in Regulation 6 – see Chapter 6.

4.4.4 Guarding against the financial exclusion of Guernsey residents

107. Certain individuals may encounter difficulties in providing evidence of their Guernsey residential address using the sources identified above. Examples of such individuals include:

- seasonal workers who do not have a permanent residential address in Guernsey;
- individuals living in Guernsey in accommodation provided by their employer, with family (for example, in the case of minors), or in care homes, who may not pay directly for utility services; or
- Guernsey students living in university, college, school, or shared accommodation, who may not pay directly for utility services.

108. Where an individual has a valid reason for being unable to produce the requested documentation, and who would otherwise be excluded from accessing services and products, identification procedures should provide for alternative means of verifying an individual's Guernsey residential address. The following are examples of alternative methods of verifying identity:

- a letter from the head of the household at which the individual resides confirming that the applicant lives at that Guernsey address, setting out the relationship between the applicant and the head of the household, together with evidence that the head of the household resides at the address;
- a letter from the residential home or care home confirming residence of the applicant;
- a certificate of lawful residence or a Housing Licence;
- a letter from a director or manager of the Guernsey employer that confirms residence at a stated Guernsey address, and indicates the expected duration of employment. In the case of a seasonal worker, the worker's residential address in his country of origin should also be obtained and, if possible, also verified; or
- in the case of a Guernsey student, a letter from a Guernsey resident parent or a copy of the acceptance letter for a place at the college/university. The student's residential address in Guernsey should also be obtained and, if possible, also verified.

4.5 Non Face-to-Face Individual Clients

109. In order to meet the requirements of Regulation 5 a prescribed business must take adequate measures to manage and mitigate the specific risks of non face-to-face business relationships or occasional transactions, i.e. where the client is not a

Guernsey resident who is physically present when establishing a relationship or undertaking a transaction.

110. See Sections 6.2.1 and 6.2.2 for information on the provisions applicable to face-to-face individuals who meet the criteria for reduced or simplified CDD measures to be applied.

4.5.1 Adequate measures

111. A prescribed business must ensure that it takes adequate measures which include one or more of the following:

- requiring additional documents to complement those which are required for face-to-face clients;
- development of independent contact with the client and other third parties responsible for the source of funds or company registrations, etc.;
- third party introduction; or
- requiring the first payment to be carried out through an account in the client's name with a bank situated in a country or territory listed in Appendix C to the Handbook.

4.5.2 Suitable certifiers

112. Use of a certifier guards against the risk that identification data provided does not correspond to the individual whose identity is to be verified. For certification to be effective, the certifier will need to have met the individual (where certifying evidence of identity containing a photograph) and have seen the original documentation.

113. The following is a list of examples of acceptable persons to certify evidence of identity – this list is not intended to be exhaustive:

- a member of the judiciary, a senior civil servant, or a serving police or customs officer;
- an officer of an embassy, consulate or high commission of the country or territory of issue of documentary evidence of identity;
- a lawyer or notary public who is a member of a recognised professional body;
- an actuary who is a member of a recognised professional body;
- an accountant who is a member of a recognised professional body;
- a member of the Institute of Chartered Secretaries and Administrators; or
- a director or officer of an Appendix C business (see definition in Appendix C to the Handbook) or of a prescribed business subject to group/parent policy where the Head Office is situated in a country or territory listed in Appendix C to the Handbook.

114. A prescribed business must give consideration to the suitability of a certifier based on the assessed risk of the business relationship or occasional transaction, together with the level of reliance being placed on the certified documents. The prescribed business must exercise caution when considering certified copy documents, especially where such documents originate from a country or territory perceived by the prescribed business to represent a high risk, or from unregulated entities in any country or territory.

115. Where certified copy documents are accepted, the prescribed business must satisfy itself, where possible, that the certifier is appropriate, for example, by satisfying itself that the certifier is not closely related to the person whose identity is being certified.

116. A suitable certifier must certify that he has seen original documentation verifying identity and residential address.

117. The certifier must also sign and date the copy identification data and provide adequate information so that contact can be made with the certifier in the event of a query.

4.5.3 Verification of residential address of overseas residents

118. In respect of both face-to-face and non face-to-face business, there may be occasions when an individual resident abroad is unable to provide evidence of his residential address using the means set out in section 4.4.3. Examples of such individuals include residents of countries without postal deliveries and no street addresses, who rely on post office boxes or employers for delivery of mail.

119. Where an individual has a valid reason for being unable to produce more usual documentation to verify residential address, and who would otherwise be excluded from establishing a business relationship with the prescribed business, satisfactory verification of address may be established by:

- a letter from a director or officer of a reputable overseas employer that confirms residence at a stated overseas address (or provides detailed directions to locate a place of residence); or
- any of the means provided in sections 4.4.3 and 6.2.2 without regard to any restrictions imposed on such documents.

4.6 Identification and Verification of Clients who are not Individuals

120. The identification and verification requirements in respect of clients who are not individuals are different from those for individuals, as beneficial owners and underlying principals must also be identified. Although a client who is not an individual has a legal status which can be verified, each client also involves a number of individuals, whether as beneficial owners (or equivalent), directors (or equivalent) or underlying principals, who have the power to direct movement of the

client's funds or assets.

121. As identified in the following paragraphs, certain information about the client must be obtained as a minimum requirement. In addition, on the basis of the assessed money laundering and terrorist financing risk of the particular client/product/service combination, a prescribed business must consider how the identity of the client and of specific individuals must be verified, and what additional information in respect of the entity must be obtained.

4.6.1 Legal bodies

122. Legal body refers to bodies corporate, foundations, partnerships, associations or other bodies which are not natural persons or legal arrangements. Trust relationships and other legal arrangements are dealt with separately – see sections 4.6.2 to 4.6.3.

123. Where a legal body is either regulated by the Commission or quoted on a regulated market or is a subsidiary of such, then a prescribed business may consider the legal body to be the principal to be identified and verified - see section 6.2.3.

124. Where a legal body which is not regulated by the Commission or registered on a regulated market is the client, beneficial owner or underlying principal a prescribed business must:

- identify and verify the identity of the legal body. The identity includes name, any official identification number, date and country or territory of incorporation if applicable;
- identify and verify any registered office address and principal place of business (where different from registered office) where the risk presented by the legal body is other than low;
- identify and verify the individuals ultimately holding a 25% or more interest in the capital or net assets of the legal body;
- identify and verify the individuals, including beneficial owners, underlying principals, directors, authorised signatories or equivalent, with ultimate effective control over the capital or assets of the legal body; and
- verify the legal status of the legal body.

125. When seeking to identify and verify the identity of beneficial owners, underlying principals, the directors and authorised signatories or equivalent in accordance with this section, reference should be made to the identification and verification requirements for personal clients – see sections 4.3, 4.4 and 4.5. It may be appropriate to consider directors with ultimate effective control as being those who have authority to operate an account or to give the prescribed business instructions concerning the use or transfer of funds or assets.

126. One or more of the following examples are considered suitable to verify the legal status of the legal body:

- a copy of the Certificate of Incorporation (or equivalent) if applicable;
- a company registry search, if applicable, including confirmation that the legal body has not been, and is not in the process of being, dissolved, struck off, wound up or terminated;
- a copy of the latest audited financial statements;
- a copy of the Memorandum and Articles of Association;
- a copy of the Directors' Register;
- a copy of the Shareholders' Register;
- independent information sources, including electronic sources, for example, business information services;
- a copy of the Board Resolution authorising the opening of the account and recording account signatories; and
- a personal visit to the principal place of business.

127. Where the documents provided are copies of the originals the prescribed business must ensure they are certified by the company secretary, director, manager or equivalent officer.

128. Where the legal body (or any beneficial owner or underlying principal connected with the legal body) presents a high risk, a prescribed business must consider whether additional verification checks are appropriate, for example, obtaining additional information or documentation.

129. A general threshold of 25% is deemed to indicate effective control or ownership. Individuals having ultimate effective control over a legal body will often include directors or equivalent. In the case of partnerships, associations, clubs, societies, charities, church bodies, institutes, mutual and friendly societies, cooperative and provident societies, this will often include members of the governing body or committee plus executives. In the case of foundations, this will include members of the governing council of a foundation and any supervisors.

130. Powers of attorney and similar third party mandates must be given particular attention if there is no evident reason for granting them. In addition, an unnecessarily wide-ranging scope to the mandate must also be given particular attention. In any case, a prescribed business must obtain a copy of the power of attorney (or other authority or mandate) that provides the individuals representing the legal body with the right to act on its behalf and verification must be undertaken on the holders of the powers of attorney as well as the client. A prescribed business must also ascertain the reason for the granting of the power of attorney.

4.6.2 Legal arrangements

131. There is a wide variety of trusts and other legal arrangements ranging from large, nationally and internationally active organisations subject to a high degree of public

scrutiny and transparency, through to trusts set up under testamentary arrangements and trusts established for wealth management purposes.

132. Trusts do not have separate legal personality and therefore form business relationships through their trustees. It is the trustee of the trust who will enter into a business relationship on behalf of the trust and should be considered along with the trust as the client.

4.6.3 Obligations of prescribed businesses dealing with trusts

133. A prescribed business entering a relationship with a client which is a trust must:

- verify the legal status and the name and date of establishment of the trust;
- verify the identity of the trustees of the trust unless they are themselves subject either to the Handbook or are operating from an Appendix C jurisdiction and are regulated and supervised for compliance with the FATF Recommendations;
- require the trustee of the trust to identify and notify it of the names of the underlying principals and beneficial owners, i.e.:
  - the settlor(s) (the initial settlor(s) and any persons subsequently settling funds into the trust);
  - any protector(s) or trustee(s); and
  - any beneficiary with a vested interest or who is, to the best of the trustee's knowledge, likely to benefit from the trust,

  and either itself verify the identity of those persons or request the trustee to provide identification data on them, by way of a certificate or summary sheet (see Appendix B); and
- understand the nature of the trust structure and the nature and purpose of activities undertaken by the structure sufficient to monitor such activities and to fully understand the business relationship.

134. Verification of the identity of beneficiaries and persons known to be likely to benefit must, where possible, be undertaken before or during the course of establishing a business relationship. Where it is not possible to do so, the reasons must be documented and verification must be undertaken prior to any distribution of trust assets to (or on behalf of) that beneficiary in accordance with the requirements of Regulation 7.

135. When identifying and verifying the identity of trustees, beneficiaries and others in accordance with this section, prescribed businesses must act in accordance with the identification and verification requirements for personal clients and legal bodies – see sections 4.4 and 4.6.1.

136. Where the business relationship (or any underlying principal) is a high risk relationship, a prescribed business must consider what additional verification checks are appropriate – see Chapter 5 on high risk relationships.

4.7 Acquisition of a Business or Block of Clients

137. There are circumstances where a prescribed business may acquire a business with established business relationships or a block of clients, for example, by way of asset purchase.

138. Before taking on this type of business, in order to avoid breaching the Regulations, a prescribed business should undertake enquiries on the vendor sufficient to establish the level and the appropriateness of identification data held in relation to the clients and the business relationships of the business to be acquired.

139. Where deficiencies in the identification data held are identified (either at the time of transfer or subsequently), the accepting prescribed business must determine and implement a programme to remedy any such deficiencies.

4.8 Client Due Diligence Procedures for Introduced Business Relationships

140. Regulation 10 provides for the circumstances in which a prescribed business may place reliance on another regulated entity acting as an introducer to have verified the identity of the client, beneficial owners and any underlying principals.

141. An introduced business relationship is where either a financial services business or a prescribed business is acting on behalf of one or more third parties who are also its clients and establishes a business relationship on their behalf with a prescribed business.

142. Introducer relationships may be business relationships on behalf of a single third party or on behalf of more than one third party, including a pool of such persons.

143. When establishing an introducer relationship a prescribed business must satisfy itself that the introducer:

- has appropriate risk-grading procedures in place to differentiate between the CDD requirements for high and low risk relationships; and
- conducts appropriate and effective CDD procedures in respect of its clients including enhanced CDD measures for PEP and other high risk relationships.

144. In the circumstances set out in Regulation 10, a prescribed business relying upon a third party must immediately obtain written confirmation of identity from the introducer, by way of a certificate or summary sheet(s), detailing elements (a) – (d) of the CDD process (see below).

145. A prescribed business must take adequate steps to be satisfied that the introducer will supply, upon request without delay, certified copies or originals of the identification data and other evidence it has collected under the CDD process.

146. The CDD process referred to above in accordance with Regulation 4(3) includes the following elements:

(a) identifying the client by name and verifying that client's identity using identification data;
(b) identifying any beneficial owner and underlying principal, (in the case of a trust, the beneficiaries as beneficial owners and the settlors, trustees and the protector as underlying principals) and taking reasonable measures to verify the identity of any beneficial owner or underlying principal by name such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and legal arrangements this includes financial institutions taking reasonable measures to understand the ownership and control structure of the client;

(c) determining whether the client is acting on behalf of another person and taking reasonable steps to obtain sufficient identification data to identify and verify the identity of that other person; and

(d) obtaining information on the purpose and intended nature of the business relationship.

147. A prescribed business must recognise that introduced business by its very nature, for example, relying on a third party, has the capacity to be high risk and a prescribed business must use a risk-based approach when deciding whether it is appropriate to rely on a certificate or summary sheet from an introducer in accordance with Regulation 10 or whether it considers it necessary to do more.

148. A prescribed business must have a programme of testing to ensure that introducers are able to fulfil the requirement that certified copies or originals of the identification data will be provided upon request and without delay. This will involve prescribed businesses adopting ongoing procedures to ensure they have the means to obtain that identification data and documentation.

149. In accordance with the Regulations the ultimate responsibility for client identification and verification will remain, as always, with the prescribed business relying on the introducer.

150. A template certificate which may be used by prescribed businesses for introduced business is contained within Appendix B.

4.8.1 Group introducers

151. Where a client is introduced by one part of a prescribed group to another, it is not necessary for his identity to be re-verified, provided that:

- the requirements of Regulation 10 are satisfied;
- as a minimum, the prescribed business receives a written confirmation from the group introducer in accordance with the requirements for introduced business

as detailed in section 4.8 above;

- the prescribed business takes adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to CDD requirements will be made available upon request without delay. This requirement would be satisfied if the prescribed business has access to the information electronically on the group's database.

152. Group introduced business must not be regarded as intrinsically low risk. As identified in section 4.8 a prescribed business must use a risk-based approach when deciding whether it is appropriate to rely on a certificate or summary sheet from a group introducer or whether it considers it necessary to do more bearing in mind that, ultimately, the responsibility for client identification and verification will remain, as always, with the prescribed business relying on the introducer.

4.9 Timing of Identification and Verification of Identity

153. Regulation 7 prescribes the timing for identification and verification of identity.

154. When the circumstances are such that verification of identity of clients, beneficial owners and underlying principals may be completed following the establishment of the business relationship or after carrying out the occasional transaction, a prescribed business must have appropriate and effective policies, procedures and controls in place so as to manage the risk which must include:

- establishing that it is not a high risk relationship;
- monitoring by senior management of these business relationships to ensure verification of identity is completed as soon as reasonably practicable;
- ensuring funds received are not passed to third parties; and
- establishing procedures to limit the number, types and/or amount of transactions that can be undertaken.

155. An example of where an occasional transaction may be carried out prior to the verification of the identity of a client would be in respect of property auctions where the identity of the purchaser is not known until the bid has been accepted by the auctioneer.

156. A prescribed business should be aware that there may be occasions where the circumstances are such that the business relationship has been established or the occasional transaction has been carried out and the identification and verification procedures cannot be completed. In such circumstances a prescribed business should refer to section 4.10 of the Handbook.

4.9.1 Occasional transactions

157. If identity is known, verification of identity is not required in the case of occasional transactions (whether single or linked), below the threshold in the Regulations, unless at any time it appears that two or more transactions, which appear to have

been small one-off transactions, are in fact linked and constitute a significant one-off transaction.

4.10 Failure to Complete Client Due Diligence Procedures

158. When a prescribed business has been unable, within a reasonable time frame, to complete CDD procedures in accordance with the requirements of the Regulations and the Handbook it must assess the circumstances and ensure that the appropriate action is undertaken as required by Regulation 9.

159. A prescribed business must ensure that where funds have already been received they are, wherever possible, returned to the source from which they came and not returned to a third party.

CHAPTER 5 – HIGH RISK RELATIONSHIPS

Key Regulations

Sections in this Chapter

REGULATIONS

The requirements of the Regulations to which the rules and guidance in this chapter particularly relate are:

- Regulation 3, which provides for a prescribed business to identify and assess the risks of money laundering and terrorist financing and to ensure that its policies, procedures and controls are effective and appropriate to the assessed risk. See Chapter 3.
- Regulation 4, which provides for the required client due diligence measures, when they should be applied and to whom they should be applied. See Chapter 4.
- Regulation 5, which provides for enhanced client due diligence measures in respect of business relationships and occasional transactions which are identified as high risk. See below.
- Regulation 8, which makes provisions in relation to anonymous accounts. See Chapter 4.
- Regulation 15, which makes provisions in relation to the review of compliance. See Chapter 2.

Regulation 5

5. (1) Where a prescribed business is required to carry out client due diligence, it must also carry out enhanced client due diligence in relation to the following business relationships or occasional transactions -

(a) a business relationship or occasional transaction in which the client or any beneficial owner or underlying principal is a politically exposed person,

(b) a business relationship or an occasional transaction -

(i) where the client is established or situated in a country or territory that does not apply, or insufficiently applies, the Financial Action Task Force Recommendations on Money Laundering, or

(ii) which the prescribed business considers to be a high risk relationship, taking into account any notices or warnings issued from time to time by the Commission, and

(c) a business relationship or an occasional transaction which has been assessed as a high risk relationship under regulation 3(1)(c).

(2) In paragraph (1) -

(a) "**enhanced client due diligence**" means

(i) obtaining senior management approval for establishing a business relationship or undertaking an occasional transaction,

(ii) obtaining senior management approval for, in the case of an existing business relationship with a politically exposed person, continuing that relationship,

(iii) taking reasonable measures to establish the source of any funds and of the wealth of the client and beneficial owner and underlying principal,

(iv) carrying out more frequent and more extensive ongoing monitoring in accordance with regulation 11, and

(v) taking one or more of the following steps as would be appropriate to the particular business relationship or occasional transaction –

(A) obtaining additional identification data,

(B) verifying additional aspects of the client's identity, and

(C) obtaining additional information to understand the purpose and intended nature of each business relationship.

(b) "**politically exposed person**" means -

(i) a person who has, or has had at any time, a prominent public function or who has been elected or appointed to such a function in a country or territory other than the Bailiwick including, without limitation -

(A) heads of state or heads of government,

(B) senior politicians and other important officials of political parties,

(C) senior government officials,

(D) senior members of the judiciary,

(E) senior military officers, and

(F) senior executives of state owned body corporates,

(ii) an immediate family member of such a person including, without limitation, a spouse, partner, parent, child, sibling, parent-in-law or grandchild of such a person and in this subparagraph "**partner**" means a person who is considered by the law of the country or territory in which the prescribed public function is held as being equivalent to a spouse, or

(iii) a close associate of such a person, including, without limitation -

(A) a person who is widely known to maintain a close business relationship

with such a person, or

(B) a person who is in a position to conduct substantial financial transactions on behalf of such a person.

(3) Where the client was not a Guernsey resident who was physically present when a prescribed business carried out an activity set out in regulation 4(2)(a) or (b), a prescribed business must take adequate measures to compensate for the specific risk arising as a result -

(a) when carrying out client due diligence, and

(b) where the activity was establishing a business relationship, when carrying out monitoring of that relationship pursuant to regulation 11.

5. HIGH RISK RELATIONSHIPS

A prescribed business must comply with the Rules in addition to the Regulations. The Rules are boxed and shaded for ease of reference. A prescribed business should note that the Court must take account of the Rules and Guidance issued by the Commission in considering compliance with the Regulations.

5.1 Objectives

160. This chapter provides for the treatment of business relationships and occasional transactions which have been assessed as high risk and should be read in conjunction with Chapter 3 of the Handbook, which provides guidance on the assessment of risk and with Chapter 4 which provides for the standard CDD requirements.

5.2 Enhanced Policies, Procedures and Controls

161. Where a prescribed business has assessed, taking into account the high risk indicators provided in Chapter 3, that the business relationship or occasional transaction is a high risk relationship – whether because of the nature of the client, the business relationship, or its location, or because of the delivery channel or the product/service features available – the prescribed business must ensure that its policies, procedures and controls require enhanced CDD measures to be undertaken as required in Regulation 5.

5.3 Politically Exposed Persons

162. As required by Regulation 4 when carrying out CDD a determination must be made by the prescribed business as to whether the client, beneficial owner and any underlying principal is a PEP.

163. Where a prescribed business has determined that the business relationship or occasional transaction is one where the client or any beneficial owner or underlying principal is a PEP, the prescribed business must ensure that it has appropriate and effective policies, procedures and controls in place to ensure compliance with the enhanced due diligence requirements of Regulation 5.

164. In order to determine whether a client, beneficial owner or underlying principal is a PEP, a prescribed business may consider:

- assessing countries which pose the highest risk of corruption – one source of information is the Transparency International Corruption Perception Index;
- establishing who are the current and former holders of prominent public functions within those high risk countries and determining, as far as is reasonably practicable, whether or not clients, beneficial owners or underlying principals have any connections with such individuals – the UN, the European Parliament, the UK Foreign and Commonwealth Office, the Group of States Against Corruption may be useful information sources; and

- using commercially available databases.

Website addresses for the above authorities and other useful website links are provided in Appendix F.

5.3.1 Source of funds and source of wealth

165. The source of funds refers to the activity which generates the funds for a business relationship or occasional transaction. Source of wealth is distinct from source of funds, and describes the activities which have generated the total net worth of a person both within and outside a business relationship, i.e. those activities which have generated a client's net assets and property.

166. Understanding the client's source of funds and source of wealth are important aspects of CDD especially in relationships with PEPs.

167. A prescribed business must, in establishing the source of any funds or wealth, consider the risk implications of the source of the funds and wealth and the geographical sphere of the activities that have generated a client's source of funds and/or wealth.

5.4 Countries or Territories that Do Not or Insufficiently Apply the FATF Recommendations and other High Risk Countries or Territories

168. In addition to the enhanced CDD measures required by Regulation 5 for high risk relationships, prescribed businesses must, pursuant to Regulation 15(a), have appropriate and effective policies, procedures and controls in place to give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries or territories that do not or insufficiently apply the FATF Recommendations and from other countries or territories closely associated with illegal drug production/processing or trafficking, terrorism, terrorist financing and other organised crime.

169. Prescribed businesses must:

- ensure they are aware of concerns about weaknesses in the AML/CFT systems of other countries or territories;
- identify transactions which (in the context of business relationships and occasional transactions) have no apparent economic or visible lawful purpose and examining the background and purpose of such transactions; and
- record in writing the findings of such examinations in order to assist the Commission, the FIS and other domestic competent authorities.

170. When determining which countries or territories these policies, procedures and controls should apply to, a prescribed business must consider:

- Business from Sensitive Sources Notices and instructions issued from time to time by the Commission;
- findings of reports issued by the FATF, FATF-style regional bodies, FATF associate members such as Moneyval and Asia Pacific Group, the Offshore Group of Banking Supervisors, Transparency International, the International Monetary Fund and the World Bank;
- situations where the country or territory has been the subject of an AML/CFT assessment; and
- its own experience or the experience of other group entities (where part of a multinational group), which may have indicated weaknesses or trends in other countries or territories.

CHAPTER 6 – LOW RISK RELATIONSHIPS

Key Regulations

Sections in this Chapter

REGULATIONS

The requirements of the Regulations to which the rules and guidance in this chapter particularly relate are:

- Regulation 3, which provides for a prescribed business to identify and assess the risks of money laundering and terrorist financing and to ensure that its policies, procedures and controls are effective and appropriate to the assessed risk. See Chapter 3.
- Regulation 4, which provides for the required client due diligence measures, when they should be applied and to whom they should be applied. See Chapter 4.
- Regulation 6, which provides for reduced or simplified client due diligence measures to be applied to business relationships which have been identified as being low risk relationships. See below.
- Regulation 15, which makes provisions in relation to the review of compliance. See Chapter 2.

Regulation 6

6. (1) Where a prescribed business is required to carry out client due diligence in relation to a business relationship or occasional transaction which has been assessed as a low risk relationship pursuant to regulation 3(1)(c), it may, subject to the following provisions of this regulation apply reduced or simplified client due diligence measures.

(2) The discretion in paragraph (1) may only be exercised -

(a) in accordance with the requirements set out in chapter 6 of the Handbook, and

(b) provided that the client and every beneficial owner and underlying principal is established or situated in the Bailiwick or a country or territory listed in Appendix C to the Handbook.

(3) For the avoidance of doubt, simplified or reduced client due diligence shall not be applied -

(a) where the prescribed business knows or suspects or has reasonable grounds for knowing or suspecting that any party to a business relationship or any beneficial owner or underlying principal is engaged in money laundering or terrorist financing, or

(b) in relation to business relationships or occasional transactions where the risk is other than low.

6. LOW RISK RELATIONSHIPS

A prescribed business must comply with the Rules in addition to the Regulations. The Rules are boxed and shaded for ease of reference. A prescribed business should note that the Court must take account of the Rules and Guidance issued by the Commission in considering compliance with the Regulations.

6.1 Objectives

171. This chapter provides for the treatment of relationships and occasional transactions which have been assessed pursuant to Regulation 3 as low risk and should be read in conjunction with Chapter 3 of the Handbook, which provides guidance on the assessment of risk and with Chapter 4 which provides for the standard CDD requirements.

6.2 Simplified or Reduced CDD Measures

172. The general rule is that business relationships and occasional transactions are subject to the full range of CDD measures as identified in Chapter 4 of the Handbook, including the requirement to identify and verify the identity of the client, beneficial owners and any underlying principals. Nevertheless, there are circumstances where the risk of money laundering or terrorist financing has been assessed as being low (for example, a locally resident client purchasing a low risk product where the purpose and intended nature of the business relationship or occasional transaction is clearly understood by the prescribed business and where no aspect of the business relationship or occasional transaction is considered to carry a high risk of money laundering or terrorist financing), or where information on the identity of the client, beneficial owners and underlying principals is publicly available, or where adequate checks and controls exist elsewhere in national systems.

173. In such circumstances a prescribed business may consider applying simplified or reduced CDD measures when identifying and verifying the identity of the client, beneficial owners and underlying principals.

174. A prescribed business must ensure that when it becomes aware of circumstances which affect the assessed risk of the business relationship or occasional transaction, a review of the CDD documentation and information held is undertaken to determine whether it remains appropriate to the revised risk of the business relationship or occasional transaction.

175. Where a prescribed business has taken a decision to apply reduced or simplified CDD measures, documentary evidence must be retained which reflects the reason for the decision.

176. The possibility of applying simplified or reduced CDD measures does not remove from the prescribed business its responsibility for ensuring that the level of CDD required is proportionate to the risk. Where a prescribed business has reason to believe that any aspect of the relationship or occasional transaction could be

other than low (for example, by virtue of the country or territory or value of the relationship) then simplified or reduced CDD measures must not be applied – see Chapter 3 on the risk-based approach.

6.2.1 Identification data for face-to-face individuals

177. Where establishing a face-to-face business relationship with or undertaking an occasional transaction for an individual customer who is a Guernsey resident who is physically present and the requirements for the application of simplified or reduced CDD measures, as set out above are met, a prescribed business must obtain at a minimum the following information in relation to an individual client:

- legal name, any former names (such as maiden name) and any other names used;
- principal residential address; and
- date, place of birth and nationality.

6.2.2 Verification of identity for face-to-face individuals

178. Subject to section 6.3, the legal name and either the principal residential address or the date and place of birth of the individual must be verified.

179. In order to verify the legal name and either the principal residential address or date and place of birth, the following documents are considered to be the best possible, in descending order of acceptability:

- current passport (providing photographic evidence of identity);
- current national identity card (providing photographic evidence of identity);
- armed forces identity card;
- current driving licence incorporating photographic evidence of identity;
- birth certificate in conjunction with a verification document listed in section 4.4.3.

6.2.3 Legal bodies registered on a regulated market

180. In order for a prescribed business to consider the legal body as the principal to be identified, it must:

- obtain documentation which confirms the legal body is either regulated by the Commission or quoted on a regulated market (or is a wholly owned subsidiary of such a legal body); and
- identify and verify authorised signatories who have authority to operate an account or to give the prescribed business instructions concerning the use or transfer of funds or assets.

6.2.4 Appendix C business

181. When the client has been identified as an Appendix C business (see the definition in Appendix C to the Handbook), and the purpose and intended nature of the relationship is understood, verification of the identity of the Appendix C business is not required. However, if the Appendix C business is acting for underlying principals then those underlying principals must be identified and their identity verified in accordance with the requirements of the Handbook.

182. Where a person authorised to act on behalf of a legal body or legal arrangement is acting in the course of employment by an Appendix C business (see the definition in Appendix C to the Handbook), it is not necessary to identify and verify the identity of such persons. One such example would be a director (or equivalent) of a Guernsey fiduciary which is acting as trustee.

6.3 Receipt of Funds as Verification of Identity

183. Where the client, beneficial owner and any underlying principal have been identified and the product or service is such that the relationship or occasional transaction is considered to be a low risk relationship then the receipt of funds may be considered to provide a satisfactory means of verifying identity where:

- all initial and future funds are received from an Appendix C business (see the definition in Appendix C to the Handbook);
- all initial and future funds come from an account in the sole or joint name of the client or underlying principal;
- payments may only be paid to an account in the client's name or in respect of real estate transactions to an account in the name of the vendor of the property or in the name of the legal professional acting on behalf of the purchaser.
- no changes are made to the product or service that enable funds to be received from or paid to third parties; and
- no cash withdrawals are permitted other than by the client or underlying principal on a face-to-face basis where identity can be confirmed and in the case of significant cash transactions, reasons for cash withdrawal are verified.

184. A prescribed business must retain documentary evidence to demonstrate the reasonableness of its conclusion that the relationship being established or the occasional transaction being undertaken presents a low risk of money laundering and terrorist financing.

185. A prescribed business must ensure that, once a relationship has been established, should any of the above conditions no longer be met then verification of identity is carried out in accordance with Chapter 4 of the Handbook.

186. Should a prescribed business have reason to suspect the motives behind a particular

transaction or believe that the business is being structured to avoid the standard identification requirements, it must ensure that receipt of funds is not used to verify the identity of the client, beneficial owner or underlying principal.

CHAPTER 7 – MONITORING TRANSACTIONS AND ACTIVITY

Key Regulations

Sections in this Chapter

REGULATIONS

The requirements of the Regulations to which the rules and guidance in this chapter particularly relate are:

- Regulation 11, which provides for the monitoring of transactions and other activity and also for conducting ongoing due diligence. See below.
- Regulation 15, which makes provisions in relation to the review of compliance. See Chapter 2.

Regulation 11

11. (1) A prescribed business shall perform ongoing and effective monitoring of any existing business relationship, which shall include-

(a) reviewing identification data to ensure it is kept up to date and relevant in particular for high risk relationships or clients in respect of whom there is a high risk,

(b) scrutiny of any transactions or other activity, paying particular attention to all -

(i) complex transactions,

(ii) transactions which are both large and unusual, and

(iii) unusual patterns of transactions,

which have no apparent economic purpose or no apparent lawful purpose, and

(c) ensuring that the way in which identification data is recorded and stored is such as to facilitate the ongoing monitoring of each business relationship.

(2) The extent of any monitoring carried out under this regulation and the frequency at which it is carried out shall be determined on a risk sensitive basis including whether or not the business relationship is a high risk relationship.

7. MONITORING TRANSACTIONS AND ACTIVITY

A prescribed business must comply with the Rules in addition to the Regulations. The Rules are boxed and shaded for ease of reference. A prescribed business should note that the Court must take account of the Rules and Guidance issued by the Commission in considering compliance with the Regulations.

7.1 Objectives

187. This chapter deals with the requirement for a prescribed business to monitor business relationships and to apply scrutiny of unusual, complex or high risk transactions or activity so that money laundering or terrorist financing may be identified and prevented. This may involve requesting additional client due diligence information.

7.2 Monitoring Business Relationships and Recognising Suspicious Transactions and Activity

188. An unusual transaction or activity may be in a form that is inconsistent with the expected pattern of activity within a particular business relationship, or with the normal business activities for the type of product or service that is being delivered. This may indicate money laundering or terrorist financing activity where the transaction or activity has no apparent economic or visible lawful purpose.

189. Monitoring of the activity of a business relationship must be carried out on the basis of a risk-based approach, with high risk relationships being subjected to an appropriate frequency of scrutiny, which must be greater than may be appropriate for low risk relationships.

190. Transactions and activity to or from jurisdictions specified in the Business from Sensitive Sources Notices and instructions issued by the Commission, must be subject to a greater level of caution and scrutiny.

191. Scrutiny of transactions and activity must be undertaken throughout the course of the business relationship to ensure that the transactions and activity being conducted are consistent with the prescribed business' knowledge of the client, their business, source of funds and source of wealth.

192. A prescribed business must consider the possibility for legal persons and legal arrangements to be used as vehicles for money laundering and terrorist financing.

193. A prescribed business when monitoring complex, unusual and large transactions or unusual patterns of transactions must examine the background and purpose of such transactions and record such findings in writing.

194. The provision of sufficient and appropriate information and training for staff enables them to recognise potential money laundering and terrorist financing transactions

and other activity. Staff screening and training are covered in Chapter 9.

195. Reporting of knowledge, suspicion or reasonable grounds for suspicion of money laundering and terrorist financing is addressed in Chapter 8.

7.3 Computerised/Manual Monitoring Methods and Procedures

196. Ongoing monitoring of business relationships, including the transactions and other activity carried out as part of that relationship, either through manual procedures or computerised systems, is one of the most important aspects of effective ongoing CDD procedures. A prescribed business can usually only determine when it might have reasonable grounds for knowing or suspecting that money laundering or terrorist financing is occurring if they have the means of assessing when a transaction or activity falls outside their expectations for a particular business relationship. The type of monitoring procedures introduced will depend on a number of factors, including the size and nature of the prescribed business and the complexity and volume of the transactions or activity.

197. Exception procedures and reports can provide a simple but effective means of monitoring all transactions to or from and activity involving:

- particular geographical locations;
- particular products/services/accounts; or
- any transaction or activity that falls outside of predetermined parameters within a given time frame.

198. Prescribed businesses should tailor the parameters to the nature and level of their transactions and activity and to the assessed risk of the business relationships that are being monitored.

199. The ongoing nature of the advice and services provided by the legal profession means that automated transaction monitoring systems alone are generally inappropriate and that the individuals working with the client are in a better position to identify and detect changes in the type of work or the nature of the client's activities, particularly given that the legal professional's knowledge of the client and its business is developed through a longer term relationship.

200. Some services provided by the accountancy profession are transacted on a one-off basis, without a continuing relationship with the client. However, many of the professional services do put them in a relatively good position to encounter and recognise suspicious activities carried out by their clients or by their client's business associates, through their inside knowledge of and access to the client's records and management processes, as well as through close working relationships with senior managers and owners.

201. It is recognised that within the estate agency sector the requirement for monitoring will be much less than that required by the legal or accountancy professions. This is

due to the majority of transactions undertaken by the estate agents being occasional transactions rather than through established business relationships.

7.4. Ongoing Client Due Diligence

202. The requirement to conduct ongoing CDD ensures that a prescribed business is aware of any changes in the development of the business relationship. The extent of the ongoing CDD measures must be determined on a risk sensitive basis but a prescribed business must bear in mind that as the business relationship develops the risk of money laundering or terrorist financing may change.

203. It should be noted that it is not necessary to re-verify or obtain current documentation unless an assessment has been made that the identification data held is not adequate for the assessed risk of the business relationship.

204. In order to reduce the burden on clients in low risk business relationships, trigger events, for example, the opening of a new account or the purchase of a further product, may present a convenient opportunity to review the CDD information held.

CHAPTER 8 – REPORTING SUSPICION

Additional legislation

Key Regulations

Sections in this Chapter

ADDITIONAL LEGISLATION

In addition to the Regulations, rules and guidance in the Handbook there are four other pieces of legislation which have specific requirements with regard to the reporting and disclosure of suspicions.

Prescribed businesses must comply with the relevant provisions of the Disclosure (Bailiwick of Guernsey) Law, 2007, the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, the Disclosure (Bailiwick of Guernsey) Regulations, 2007 and the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007. Prescribed businesses should note that the Court will take account of the Rules and also of the Guidance provided in the Handbook in considering compliance with the disclosure requirements of this legislation and the Regulations.

The requirements of the legislation to which the rules and guidance in this chapter particularly relate are:

Section 3 of the Disclosure (Bailiwick of Guernsey) Law, 2007. See below.

The Disclosure (Bailiwick of Guernsey) Regulations, 2007. See below.

Section 12 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002. See below.

The Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007. See below.

Section 3 of the Diclosure (Bailiwick of Guernsey) Law, 2007

Failure to disclose knowledge or suspicion etc. of money laundering - non financial services businesses.

3. (1) A person commits an offence if each of the following conditions is satisfied.

(2) The first condition is that he -

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in money laundering.

(3) The second condition is that the information or other matter -

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a non financial services business.

(4) The third condition is that he does not make the required disclosure as soon as is

practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter to a police officer.

(6) But a person does not commit an offence under this section if-

(a) he does not know or suspect that another person is engaged in money laundering and he has not been provided by his employer with any training required by regulations made under section 49A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

(b) if paragraph (a) does not apply, the person was in employment at the time in question and he disclosed the information or other matter to the appropriate person in accordance with any procedure established by his employer for the making of such disclosures,

(c) he has some other reasonable excuse for not disclosing the information or other matter, or

(d) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules or guidance which were at the time concerned -

(a) made or issued by the Commission under section 15 or any other enactment, and

(b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(8) Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

(b) by (or by a representative of) a person seeking legal advice from the adviser, or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(9) But subsection (8) does not apply to information or another matter which is communicated or given with a view to furthering a criminal purpose.

(10) A disclosure to a police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

The Disclosure (Bailiwick of Guernsey) Regulations, 2007

GUERNSEY STATUTORY INSTRUMENT
2007 No. 34

The Disclosure (Bailiwick of Guernsey) Regulations, 2007

Made	17th December, 2007
Coming into operation	17th December, 2007
Laid before the States	, 2008

THE HOME DEPARTMENT, in exercise of the powers conferred on it by section 11 of the Disclosure (Bailiwick of Guernsey) Law, 2007[a] and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Form and manner of disclosure.

1. (1) A person shall make a disclosure to a police officer under section 1, 2 or 3 of the Disclosure (Bailiwick of Guernsey) Law, 2007 (the "**Law of 2007**") -

(a) by using the form set out in the Schedule to these Regulations ("**the Form**"), and

(b) in compliance with the requirements indicated upon the Form.

(2) A completed Form, together with any accompanying information shall be -

(a) delivered by post, or hand, to the addressee,

(b) transmitted by electronic mail to the electronic address, or

(c) sent by facsimile transmission to the telephone number,

indicated upon the Form.

(3) Any information entered upon, or accompanying, the Form shall appear, or be supplied, in a legible format.

Request for additional information.

2. (1) A police officer may, by notice in writing served upon any person who has made

[a] Approved by the States of Deliberation on 30 May 2007.

a disclosure under section 1, 2 or 3 of the Law of 2007 ("**the initial disclosure**"), require that person to provide the officer (or any other specified officer) with such additional information relating to the initial disclosure as may be specified -

(a) within such period which, subject to paragraph (3), shall not be less than 7 days, and

(b) in such form and manner,

as may be specified.

(2) A police officer may by written notice extend the period specified under paragraph (1)(a) for such period of time as he may specify in writing.

(3) Where a relevant officer is satisfied that the provision of additional information is reasonably required as a matter of urgency he may, for the purposes of paragraph (1)(a) -

(a) specify, or

(b) authorise any other police officer to specify,

such reasonable period of less than 7 days within which the information must be provided, as he thinks fit.

(4) For the purposes of paragraph (3), "**a relevant officer**" means -

(a) a member of the salaried police force of the Island of Guernsey who holds the rank of inspector or above,

(b) a member of any police force which may be established by the States of Alderney who holds the rank of inspector or above, or

(c) a customs officer of the grade of senior investigation officer or above.

Offence of failure to provide additional information.

3. (1) Subject to regulation 4, a person who fails to provide additional information which he is required to provide under a notice given under regulation 2 -

(a) within the period specified, and

(b) in the form and manner specified,

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months

or to a fine not exceeding level 5 on the uniform scale or to both, or

(b) on conviction or indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Defence.

4. (1) A person does not commit an offence under regulation 3 if -

(a) he has a reasonable excuse for not disclosing the additional information or other matter, or

(b) he is a professional legal adviser and the additional information came to him in privileged circumstances.

(2) Information comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

(b) by (or by a representative of) a person seeking legal advice from the adviser, or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(3) But paragraph (2) does not apply to information which is communicated or given with a view to furthering a criminal purpose.

Interpretation.

5. (1) In these Regulations, unless the context requires otherwise -

"**Financial Intelligence Service**" means the service, known by that title, comprising those police officers and customs officers assigned to the service for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures which are more commonly known, or referred to, as suspicious transaction reports,

"**the Form**" means the form set out in the Schedule to these Regulations,

"**Law of 2007**" means the Disclosure (Bailiwick of Guernsey) Law, 2007,

"**specified**" means specified in writing,

and other expressions have the same meanings as in the Law of 2007.

(2) The Interpretation (Guernsey) Law, 1948[b] applies to the interpretation of

[b] Ordres en Couseil Vol. XIII, p. 355.

these Regulations.

(3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

6. These Regulations may be cited as the Disclosure (Bailiwick of Guernsey) Regulations, 2007 and shall come into force on the 17th December, 2007.

SCHEDULE

Regulations 1 and 5

FORM OF DISCLOSURE

DISCLOSURE

STRICTLY PRIVATE AND CONFIDENTIAL		
Your ref:	Our ref:	Date:

The Financial Intelligence Service, Hospital Lane, St Peter Port, Guernsey, GY1 2QN
Tel: 714081 Fax: 710466 E-mail: director@guernseyfis.org

Legislation under which this disclosure is made (*please tick one of the following*):

Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ☐

Disclosure (Bailiwick of Guernsey) Law, 2007 ☐

Subject's full name(s)			
Gender			
Date(s) of birth		Place(s) of birth	
Passport or ID number(s)			
Nationality(ies)			
Address(es)			

Telephone	Home:	Work:	Mobile:
Occupation/employer			
Associated company: *e.g. company registration number, date and place of incorporation, etc.*			
Account name			
Account/product number			
Date account/product opened			
Details of any intermediary			
Other relevant information: *e.g. additional details of identification and/or references taken, associated parties, addresses, telephone numbers, etc.*			

DISCLOSURE (CONTINUED)

Reasons for suspicion:

Current status of business relationship:

When submitting this report, please provide a covering letter which includes contact information and append any additional material that you may consider relevant and which may be of assistance to the recipient, i.e. bank statements, vouchers, international transfers, inter-account transfers, telegraphic transfers, details of associated accounts and products, etc.

Dated this 17th day of December, 2007

DEPUTY G H MAHY

Minister of the States Home Department
For and on behalf of the Department

Section 12 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002.

Failure to disclose knowledge or suspicion etc. of terrorist financing-non financial services businesses.

12. (1) A person commits an offence if each of the following conditions is satisfied.

(2) The first condition is that he -

(a) knows or suspects, or

(b) has reasonable grounds for knowing or suspecting,

that another person is engaged in terrorist financing.

(3) The second condition is that the information or other matter -

(a) on which his knowledge or suspicion is based, or

(b) which gives reasonable grounds for such knowledge or suspicion,

came to him in the course of the business of a non financial services business.

(4) The third condition is that he does not make the required disclosure as soon as is practicable after the information or other matter comes to him.

(5) The required disclosure is a disclosure of the information or other matter to a police officer.

(6) But a person does not commit an offence under this section if -

(a) he does not know or suspect that another person is engaged in terrorist financing and he has not been provided by his employer with any training required by regulations made under section 49A of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

(b) if paragraph (a) does not apply, the person was in employment at the time in question and he disclosed the information or other matter to the appropriate person in accordance with any procedure established by his employer for the making of such disclosures,

(c) he has some other reasonable excuse for not disclosing the information or other matter, or

(d) he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

(7) In deciding whether a person committed an offence under this section the court must consider whether he followed any relevant rules or guidance which were at the time concerned -

(a) made or issued by the Guernsey Financial Services Commission under section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007 or any other enactment, and

(b) published in a manner it approved as appropriate in its opinion to bring the rules or guidance to the attention of persons likely to be affected by it.

(8) Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

(b) by (or by a representative of) a person seeking legal advice from the adviser,

or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(9) But subsection (8) does not apply to information or another matter which is communicated or given with a view to furthering a criminal purpose.

(10) A disclosure to a police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

The Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007

GUERNSEY STATUTORY INSTRUMENT
2007 No.36

The Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007[a]

Made	17th December, 2007
Coming into operation	17th December, 2007
Laid before the States	, 2008

THE HOME DEPARTMENT, in exercise of the powers conferred on it by section 15C of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002[b] and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Form and manner of disclosure.

1. (1) A person shall make a disclosure to a police officer under section 12, 15 or 15A of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (the "**Law of 2002**") -

(a) by using the form set out in the Schedule to these Regulations ("**the Form**"), and

(b) in compliance with the requirements indicated upon the Form.

(2) A completed Form, together with any accompanying information shall be -

(a) delivered by post, or hand, to the addressee,

(b) transmitted by electronic mail to the electronic address, or

[a] Amended by Guernsey Statutory Instrument No. 27 of 2008 (The Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Regulations, 2008).
[b] Order in Council No. XVI of 2002 and No. XIII of 2006 and as amended by the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2007.

(c) sent by facsimile transmission to the telephone number,

indicated upon the Form.

(3) Any information entered upon, or accompanying, the Form shall appear, or be supplied, in a legible format.

Request for additional information.

2. (1) A police officer may, by notice in writing served upon any person who has made a disclosure under section 12, 15 or 15A of the Law of 2002 ("**the initial disclosure**"), require that person to provide the officer (or any other specified officer) with such additional information relating to the initial disclosure as may be specified -

(a) within such period which, subject to paragraph (3), shall not be less than 7 days, and

(b) in such form and manner,

as may be specified.

(2) A police officer may by written notice extend the period specified under paragraph (1)(a) for such period of time as he may specify in writing.

(3) Where a relevant officer is satisfied that the provision of additional information is reasonably required as a matter of urgency he may, for the purposes of paragraph (1)(a) -

(a) specify, or

(b) authorise any other police officer to specify,

such reasonable period of less than 7 days within which the information must be provided, as he thinks fit.

(4) For the purposes of paragraph (3), "**a relevant officer**" means -

(a) a member of the salaried police force of the Island of Guernsey who holds the rank of inspector or above,

(b) a member of any police force which may be established by the States of Alderney who holds the rank of inspector or above, or

(c) a customs officer of the grade of senior investigation officer or above.

Offence of failure to provide additional information.

3. (1) Subject to regulation 4, a person who fails to provide additional information which he is required to provide under a notice given under regulation 2 -

(a) within the period specified, and

(b) in the form and manner specified,

is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the uniform scale or to both, or

(b) on conviction or indictment, to imprisonment for a term not exceeding five years or to a fine or to both.

Defence.

4. (1) A person does not commit an offence under regulation 3 if -

(a) he has a reasonable excuse for not disclosing the additional information or other matter, or

(b) he is a professional legal adviser and the additional information came to him in privileged circumstances.

(2) Information comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client,

(b) by (or by a representative of) a person seeking legal advice from the adviser, or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

(3) But paragraph (2) does not apply to information which is communicated or given with a view to furthering a criminal purpose.

Interpretation.

5. (1) In these Regulations, unless the context requires otherwise -

"**Financial Intelligence Service**" means the service, known by that title, comprising those police officers and customs officers assigned to the service for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures which are more commonly known, or referred to, as suspicious transaction reports,

"**the Form**" means the form set out in the Schedule to these Regulations,

"**Law of 2002**" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2007,

"**specified**" means specified in writing,

and other expressions have the same meanings as in the Law of 2002.

(2) The Interpretation (Guernsey) Law, 1948[c] applies to the interpretation of these Regulations.

(3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation and commencement.

6. These Regulations may be cited as the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007 and shall come into force on the 17th December, 2007.

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[c] Ordres en Conseil Vol. XIII, p. 355.

SCHEDULE

Regulations 1 and 5

FORM OF DISCLOSURE

DISCLOSURE

STRICTLY PRIVATE AND CONFIDENTIAL		
Your ref:	Our ref:	Date:

The Financial Intelligence Service, Hospital Lane, St Peter Port, Guernsey, GY1 2QN
Tel: 714081 Fax: 710466 E-mail: director@guernseyfis.org

Legislation under which this disclosure is made (*please tick one of the following*):

Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ☐

Disclosure (Bailiwick of Guernsey) Law, 2007 ☐

Subject's full name(s)			
Gender			
Date(s) of birth		Place(s) of birth	
Passport or ID number(s)			

Nationality(ies)			
Address(es)			
Telephone	Home:	Work:	Mobile:
Occupation/employer			
Associated company: *e.g. company registration number, date and place of incorporation, etc.*			
Account name			
Account/product number			
Date account/product opened			
Details of any intermediary			
Other relevant information: *e.g. additional details of identification and/or references taken, associated parties, addresses, telephone numbers, etc.*			

DISCLOSURE (CONTINUED)

Reasons for suspicion:

Current status of business relationship:

When submitting this report, please provide a covering letter which includes contact information and append any additional material that you may consider relevant and which may be of assistance to the recipient, i.e. bank statements, vouchers, international transfers, inter-account transfers, telegraphic transfers, details of associated accounts and products, etc.

Dated this 17th day of December, 2007

DEPUTY G H MAHY

Minister of the States Home Department
For and on behalf of the Department

REGULATIONS

The requirements of the Regulations to which the rules and guidance in this chapter particularly relate are:

- Regulation 12, which provides for the reporting and disclosing of suspicion. See below.
- Regulation 15, which makes provisions in relation to the review of compliance. See Chapter 2.

Regulation 12

12. A prescribed business shall -

(a) appoint a person of at least management level as the money laundering reporting officer and provide the name and title of that person to the Commission and the Financial Intelligence Service as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment,

(b) nominate another person (a "**nominated officer**") to carry out the functions of the money laundering reporting officer in his absence, and ensure that any relevant employee is aware of the name of that nominated officer,

(c) ensure that where a relevant employee, other than the money laundering reporting officer, is required to make a disclosure under Part I of the Disclosure Law or section 12 of the Terrorism Law, that this is done by way of a report to the money laundering reporting officer, or, in his absence, to a nominated officer,

(d) ensure that the money laundering reporting officer, or in his absence a nominated officer, in determining whether or not he is required to make a disclosure under Part I of the Disclosure Law or section 12 of the Terrorism Law, takes into account all relevant information,

(e) ensure that the money laundering reporting officer, or, in his absence, a nominated officer, is given prompt access to any other information which may be of assistance to him in considering any report, and

(f) ensure that it establishes and maintains such other appropriate and effective procedures and controls as are necessary to ensure compliance with requirements to make disclosures under Part I of the Disclosure Law and sections 12 of the Terrorism Law.

8. REPORTING SUSPICION

A prescribed business must comply with the Rules in addition to the Regulations. The Rules are boxed and shaded for ease of reference. A prescribed business should note that the Court must take account of the Rules and Guidance issued by the Commission in considering compliance with the Regulations.

8.1 Objectives

205. This chapter outlines the statutory provisions concerning disclosure of information, the policies, procedures and controls necessary for reporting and disclosing suspicion and the provision of information on the reporting and the disclosing of suspicion.

206. References in this chapter to a transaction or activity include an attempted or proposed transaction or activity.

207. References in this chapter to any suspicion are references to suspicion of either money laundering or terrorist financing.

8.2 Obligation to Report

208. A suspicion may be based upon a transaction or activity which is inconsistent with a client's known legitimate business, activities or lifestyle or with the normal business for that type of product/service.

209. It follows that an important precondition of recognition of a suspicious transaction or activity is for the prescribed business to know enough about the business relationship to recognise that a transaction or activity is unusual. Such knowledge would arise mainly from complying with the monitoring and ongoing client due diligence requirements in Regulation 11 – see Chapter 7. Suspicion need not only be based on transactions or activities within the business relationship, but also on information from other sources, including the media, intermediaries, or the client himself.

210. A prescribed business must establish appropriate and effective policies, procedures and controls in order to facilitate compliance with the reporting requirements of the Regulations and the relevant enactments to ensure that:

- each suspicion is reported to the MLRO regardless of the amount involved and regardless of whether, amongst other things, it is thought to involve tax matters in a manner sufficient to satisfy the statutory obligations of the employee;
- the MLRO promptly considers each such internal suspicion report and determines whether it results in there being knowledge or suspicion or reasonable grounds for knowing or suspecting that someone is engaged in money laundering or terrorist financing;
- where the MLRO has determined that an internal suspicion report does result in

there being such knowledge or suspicion or reasonable grounds for so knowing or suspecting that he discloses that suspicion of money laundering or terrorist financing to the FIS – see section 8.4; and

- where, during the CDD process, a prescribed business knows or suspects that someone is engaged in money laundering or terrorist financing a disclosure is made to the FIS.

211. The Board of a prescribed business and all relevant employees should appreciate and understand the significance of what is often referred to as the objective test of suspicion. It is a criminal offence for anyone employed by a prescribed business to fail to report where they have knowledge, suspicion or reasonable grounds for knowledge or suspicion that another person is laundering the proceeds of any criminal conduct or is carrying out terrorist financing.

212. What may constitute reasonable grounds for knowledge or suspicion will be determined from facts or circumstances from which an honest and reasonable person engaged in a prescribed business would have inferred knowledge or formed the suspicion that another was engaged in money laundering or terrorist financing.

213. A transaction or activity which appears unusual, is not necessarily suspicious. An unusual transaction or activity is, in the first instance, likely to be a basis for further enquiry, which may in turn require judgement as to whether it is suspicious. For example, an out of the ordinary transaction or activity within a business relationship should prompt the prescribed business to conduct enquiries about the transaction or activity – see section 8.7 on tipping off.

214. There may be a number of reasons why the prescribed business is not entirely happy with CDD information or where the prescribed business otherwise needs to ask questions. Enquiries of their client should be made where the prescribed business has queries, regardless of their level of suspicion, to either assist them in formulating a suspicion, or conversely to negate it, having due regard to the tipping off provisions.

215. Although a prescribed business is not expected to conduct the kind of investigation carried out by law enforcement agencies, it must act responsibly and ask questions to satisfy any gaps in the CDD or its understanding of a particular transaction or activity or proposed transaction or activity.

8.3 Internal Reporting

216. A prescribed business must have appropriate and effective internal reporting policies, procedures and controls to ensure that:

- all employees of the prescribed business know to whom within the prescribed business and in what format their suspicions must be reported;
- all suspicion reports are considered by the MLRO and where the MLRO makes a decision not to make a disclosure to the FIS, the reasons for the decision not

to disclose are documented and retained; and

- once a disclosure has been made to the FIS, the MLRO immediately informs the FIS where subsequent, relevant information or documentation is received.

8.4 Form and Manner of Disclosing to the FIS

217. Prior to making a disclosure to the FIS the prescribed business should consider all available options in respect of the business relationship or occasional transaction.

218. Reports of suspicion of money laundering (including drug money laundering) must be disclosed under the provisions of the Disclosure (Bailiwick of Guernsey) Law, 2007 and suspicions relating to terrorism must be disclosed under the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as amended. Both of these laws require that information contained in internal reports made to a MLRO is disclosed to the FIS where the MLRO knows or suspects or has reasonable grounds for knowing or suspecting as a result of the report, that a person is engaged in money laundering or terrorist financing.

219. Regulations made under the provisions of the Disclosure Law and of the Terrorism and Crime Law prescribe the manner and form of disclosure. A copy of the prescribed form is set out in Appendix D2. The disclosure may be delivered by post, fax or e-mail and its receipt will be acknowledged by the FIS in writing. The means of delivery is at the discretion of the prescribed business and subject to its security protocols. If a disclosure is sent by fax or e-mail there is no requirement to send a duplicate disclosure via post.

220. The prescribed business should provide as much information and documentation (for example, statements, contract notes, correspondence, minutes, transcripts, etc.) as possible to demonstrate why suspicion has been raised and to enable the FIS to fully understand the purpose and intended nature of the business relationship or occasional transaction.

221. When considering the provision of information to the FIS a prescribed business should be aware of the Money Laundering (Disclosure of Information) (Guernsey) Law, 1995, the Money Laundering (Disclosure of Information) (Alderney) Law, 1998 and the Money Laundering (Disclosure of Information) (Sark) Law, 2001 which state:

"No obligation of secrecy or confidence or other restriction on the disclosure of information to which any person may be subject, whether arising by statute, contract or otherwise, shall be regarded as being contravened by reason of disclosure by that person or by any of his officers, servants or agents to an officer of:

(a) any reasonable suspicion or belief that any money or other property is, or is derived from or represents, the proceeds of criminal activity;

(b) any information or document relating to:

(i) any such money or property;

(ii) any transaction concerning it;

(iii) the parties to any such transaction; and

(c) any fact or matter upon which any such suspicion or belief is based."

222. Where the MLRO considers that a disclosure should be made urgently (for example, where the client's relevant product is already part of a current investigation), initial notification to the FIS may be made by telephone.

223. In addition to the requirements of Regulation 14 for the keeping of records of internal reports a prescribed business must also maintain a register of all disclosures made to the FIS pursuant to this paragraph. Such register must contain details of:

- the date of the disclosure;
- the person who made the disclosure;
- the person(s) to whom the disclosure was forwarded; and
- a reference by which supporting evidence is identifiable.

224. To aid communication with the FIS, it may be useful for a prescribed business to cross reference their files with the reference number provided by the FIS.

225. The register of disclosures should be reviewed and updated periodically to reflect the current position of each disclosure and of the business relationship. The prescribed business should at the time of the review consider whether further communication with the FIS is appropriate.

226. A prescribed business must consider whether the nature of the particular suspicion which has been triggered is such that all the assets of the business relationship are potentially suspect. Where it is not possible to separate the assets which are suspicious from the legitimate funds, it will be necessary to carefully consider all future transactions or activities, and the nature of the continuing relationship and to implement an appropriate risk based strategy.

227. It is for each prescribed business (or group) to consider whether (in addition to any disclosure made in Guernsey) its vigilance policy should require the MLRO to report suspicions within the prescribed business (or group), for example, to the compliance department at Head Office. A report to Head Office, the parent or group does not remove the requirement also to disclose suspicions to the FIS.

8.5 Legal Professional Privilege

228. In accordance with section 3(6)(d) of the Disclosure Law a person does not

commit an offence for failing to report a suspicion of money laundering or terrorist financing where he is a professional legal adviser and the information or other matter came to him in privileged circumstances.

229. It should be noted, however, that items held with the intention of furthering a criminal purpose are not items subject to legal professional privilege.

230. Further information on this subject is provided in section 11.1.1 of this Handbook.

8.5.1 Recording and discussion with the MLRO

231. In accordance with Section 3(10) of the Disclosure Law a disclosure to a police officer does not contravene any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise.

232. Therefore, even where it is believed that the privilege reporting exemption applies, consideration must be given as to whether all matters involving knowledge or suspicion or reasonable grounds for having knowledge or suspicion of money laundering or terrorist financing should still be referred to the MLRO for advice. Discussion of a matter with the MLRO, where the purpose of the discussion is the obtaining of advice about making a disclosure, does not alter the applicability of the privilege reporting exemption. Given the complexity of these matters, and the need for considered and consistent treatment with adequate documentation of decisions made, a referral to a discussion with the MLRO is likely to be beneficial and is recommended. The MLRO may decide to seek further appropriate advice.

8.6 The Response of the FIS

233. The receipt of a disclosure will be promptly acknowledged in writing by the FIS.

234. If the disclosure does not refer to a specific transaction or activity that could constitute a money laundering or terrorist financing offence, the response from the FIS will simply acknowledge receipt of the disclosure.

235. If the disclosure does include reference to a specific transaction or activity that has led to the suspicion and ultimately a disclosure, the prescribed business should indicate whether or not it intends to carry out the transaction or activity, and if so request consent to continue with the particular transaction or activity. On receipt of such a request the FIS will consider whether or not it may give consent under the relevant provisions. Any consent given will be in writing and will specify the transaction or activity to which the consent relates. In urgent matters, consent may be given orally by the FIS, but will be followed by written confirmation.

236. In the event that consent is not given, the FIS will discuss with the prescribed business the implications and will offer what assistance it can in deciding the most appropriate course of action to be taken thereafter. Any such discussion with the FIS does not constitute legal advice. If deemed appropriate, legal advice should be sought by the prescribed business from its Advocate or other legal adviser.

237. Access to disclosures will be restricted to appropriate authorities and any information provided by the FIS emanating from such disclosures will normally be in a sanitised format and will not include the identity of the source. In the event of a prosecution, the source of the information will be protected as far as the law allows.

238. The FIS may, on occasions, seek additional information from the disclosing prescribed business. Such additional information includes financial and administrative information which may provide clarification of the grounds of suspicion and allow the person to whom the disclosure has been made to make a judgement as to how to proceed.

239. In addition, the FIS will, so far as is possible, supply on request and through planned initiatives information as to the current status of any investigations emanating from a disclosure as well as more general information regarding identified trends and indicators.

8.7 Communicating with Clients and Tipping Off

240. Once an internal suspicion report to a MLRO or a disclosure to the FIS has been made, where required under the Disclosure Law or Terrorism and Crime Law, it is a criminal offence for anyone to release information which is likely to prejudice an investigation such as the fact that a disclosure or related information is being provided to the FIS.

241. Reasonable enquiries of a client, conducted in a discreet manner, regarding the background to a transaction or activity which has given rise to the suspicion is prudent practice, forms an integral part of CDD and ongoing monitoring, and should not give rise to tipping off. For an offence to have been committed, tipping off would invariably have been undertaken knowing or suspecting a disclosure had been made and the offence would be committed where information was disclosed to, as opposed to requested from, a third party.

242. Policies, procedures and controls must enable a MLRO to consider whether it is appropriate to disclose a suspicion or to make a request for consent or whether in assessing the circumstances, it would in the first instance be more appropriate to obtain more information to assist him with this process. Such procedures must also provide for the MLRO to consider whether it would be more appropriate to decline to proceed with the requested act and to give due thought to the future of the business relationship as a whole.

243. There will be occasions where it is feasible for the prescribed business to agree a joint strategy with the FIS, but the FIS will not seek to influence what is ultimately a decision for the prescribed business.

8.8 Terminating a Business Relationship

244. Whether or not to terminate a business relationship is a commercial decision except

where required by legislation, for example, where the prescribed business cannot obtain required CDD information (see Chapter 4 and Regulation 9) or where continuing with the relationship would involve the prescribed business committing an offence under the relevant provisions.

245. Where a prescribed business makes a decision to terminate a business relationship after it has made a disclosure or requested consent, it should update the FIS and consider whether it is necessary to request consent under the relevant legislative requirements in respect of any transaction or activity necessary to terminate the business relationship.

8.9 Freezing Orders

246. The United Nations has imposed general measures regarding terrorism and more specifically regarding Al-Qa'ida and the Taliban. The two United Nations Resolutions (1373 and 1267) in respect of the freezing of terrorist funds or other assets have been implemented in Guernsey by the Terrorism (United Nations Measures) (Channel Islands) Order 2001 ("Terrorism Order 2001") and by the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 ("Al-Qa'ida Order 2002"). Both Orders create offences of strict liability in respect of the release of funds to persons involved in terrorism or in breach of a notice from HM Procureur.

8.9.1 The Terrorism Order 2001

247. Under Article 5, it is a criminal offence for any person to make any funds or financial services available to or for the benefit of persons involved in terrorism.

248. In addition to this general prohibition, Article 6 provides that HM Procureur, as the Bailiwick's licensing authority, may by notice (referred to here as a Freezing of Funds Notice) direct that particular funds are not to be made available to any person, where HM Procureur has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be involved in terrorism.

8.9.2 The Al-Qa'ida Order 2002

249. This Order contains similar provisions in respect of the provision of funds to listed persons. A listed person is defined in Article 2 as (a) Usama bin Laden or (b) any person designated by the Committee of the Security Council of the United Nations in the list maintained by that Committee in accordance with resolution 1390 adopted by the Security Council on 16 January 2002 as (i) a member of the Al-Qa'ida organisation; (ii) a member of the Taliban; (iii) an individual, group, undertaking or entity associated with the persons covered by (a), (b)(i) or (ii) above.

250. Under Article 7 it is an offence for any person to make any funds available to or for the benefit of listed persons or any person acting on behalf of a listed person.

251. Under Article 8 of the Al-Qa'ida Order 2002, HM Procureur as the Bailiwick's

licensing authority may by notice (also referred to here as a Freezing of FundsNotice) direct that particular funds are not made available to any person, where he has reasonable grounds for suspecting that the person by, for or on behalf of whom any funds are held is or may be a listed person or a person acting on behalf of a listed person.

8.9.3 Licences

252. HM Procureur may issue a licence permitting the release of specified funds which would otherwise be caught by the provisions of Articles 5 and 6. No offence is committed in respect of such funds provided that the terms of the licence are complied with.

253. HM Procureur will entertain applications for licences under the Terrorism Order 2001 and the Al-Qa'ida Order 2002 from any party. Such licences will normally only be issued in respect of funding for necessities such as food, medical treatment and accommodation, but funding for extraordinary expenses will also be considered.

8.9.4 Obligations under Freezing of Funds Notice

254. If a prescribed business receives a Freezing of Funds Notice its obligations are twofold. It must:

(a) refuse to make the funds available to the person for or on behalf of whom the funds are held, unless authority has been given to release funds in accordance with the terms of a licence;

(b) send a copy of the Freezing of Funds Notice, without delay, to the person whose funds they are, or on whose behalf they are held. A prescribed business will be treated as complying with this requirement if, without delay, it sends a copy of the Freezing of Funds Notice to the owner at his last-known address or, if it does not have an address for the owner, it makes arrangements for a copy of the notice to be supplied to the owner at the first available opportunity. A financial services business, when sending a copy of the Freezing of Funds Notice to the subject, must not provide any further information and should refer the subject to HM Procureur.

255. In the event of HM Procureur issuing a Freezing of Funds Notice, the Commission would be informed and notification of the Notice would be placed on our website.

256. The text of the Orders together with additional information is available on the Commission's website.

CHAPTER 9 – EMPLOYEE SCREENING AND TRAINING

Key Regulations

Sections in this Chapter

REGULATIONS

The requirements of the Regulations to which the rules and guidance in this chapter particularly relate are:

- Regulation 13, which provides for procedures to be undertaken by a prescribed business when hiring employees and for the requirements of training relevant employees. See below.
- Regulation 15, which makes provisions in relation to the review of compliance. See Chapter 2.

Regulation 13

13. (1) A prescribed business shall maintain appropriate and effective procedures, when hiring employees or admitting any person as a partner in the business, for the purpose of ensuring high standards of employee and partner probity and competence.

(2) A prescribed business shall ensure that relevant employees, and any partners in the business, receive comprehensive ongoing training in relation to or concerning -

(a) the relevant enactments, these Regulations and the Handbook,

(b) the personal obligations of employees, and partners, and their potential criminal liability under these Regulations and the relevant enactments,

(c) the implications of non-compliance by employees, and partners, with any rules or guidance made for the purposes of these Regulations, and

(d) its policies, procedures and controls for the purposes of forestalling, preventing and detecting money laundering and terrorist financing.

(3) A prescribed business shall identify relevant employees and partners in the business who, in view of their particular responsibilities, should receive additional and ongoing training, appropriate to their roles, in the matters set out in paragraph (2) and must provide such additional training.

9. EMPLOYEE SCREENING AND TRAINING

A prescribed business must comply with the Rules in addition to the Regulations. The Rules are boxed and shaded for ease of reference. A prescribed business should note that the Court must take account of the Rules and Guidance issued by the Commission in considering compliance with the Regulations.

9.1 Objectives

257. One of the most important tools available to a prescribed business to assist in the prevention and detection of money laundering is to have staff who are alert to the potential risks of money laundering and terrorist financing and who are well trained in the requirements concerning CDD and the identification of unusual activity, which may prove to be suspicious.

9.2 Screening of Employees

258. In order for a prescribed business to ensure that employees and partners are of the required standard of competence and probity, which will depend on the role of the employee, consideration must be given to:

- obtaining and confirming appropriate references at the time of recruitment;
- requesting information from the employee or partner with regard to any regulatory action taken against him or action taken by a professional body; and
- requesting information from the employee or partner with regard to any criminal convictions and the provision of a check of his criminal record (subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002).

259. The term employee as defined in the Regulations includes any person working for a prescribed business, i.e. not only individuals working under a contract of employment (including on a temporary basis), but also those working under a contract for services. Where persons who are employees of any third parties carry out work in relation to prescribed business under an outsourcing agreement, the prescribed business must have procedures to satisfy itself as to the effectiveness of the screening procedures of the third party in ensuring employee competence and probity.

9.3 Relevant Employees

260. The requirements of the Regulations concerning training apply to employees and partners whose duties relate to the regulated activities of the prescribed business and any directors or managers (hereafter referred to as relevant employees), and not necessarily to all employees of a prescribed business.

261. When determining whether an employee is a relevant employee, for the purposes of

the Handbook a prescribed business may take into account the following:

- whether the employee is undertaking any client facing functions, or handles or is responsible for the handling of business relationships or transactions;
- whether the employee is directly supporting a colleague who carries out any of the above functions;
- whether an employee is otherwise likely to be placed in a position where he might see or hear anything which may lead to a suspicion; and
- whether an employee's role has changed to involve any of the functions mentioned above.

9.4 Employee Training

262. The Board must be aware of the obligations of the prescribed business in relation to staff screening and training.

263. A prescribed business must, in ensuring that relevant employees receive the ongoing training required under the Regulations, in particular ensure that they are kept informed of:

- the CDD requirements and the requirements for the internal and external reporting of suspicion;
- the criminal and regulatory sanctions in place for failing to report information in accordance with policies, procedures and controls;
- the identity and responsibilities of the MLRO;
- the principal vulnerabilities of the products and services offered by the prescribed business; and
- new developments, including information on current money laundering and terrorist financing techniques, methods, trends and typologies.

264. A prescribed business must in providing the training required under the Regulations:

- provide appropriate training to enable relevant employees adequately and responsibly to assess the information that is required for them to judge whether an activity or business relationship is suspicious in the circumstances;
- provide relevant employees with a document outlining their own obligations and potential criminal liability and those of the prescribed business under the relevant enactments and the Regulations;
- prepare and provide relevant employees with a copy, in any format, of the prescribed business' policies, procedures and controls manual for AML/CFT; and
- ensure its employees and partners are fully aware of legislative requirements.

265. In ensuring compliance with the requirement for training, a prescribed business may take account of AML/CFT training included in entry requirements and continuing professional development requirements for their professional employees.

266. However, a prescribed business must also ensure appropriate training is provided for any relevant employees without a professional qualification, at a level appropriate to the functions being undertaken by those employees, and the likelihood of their encountering suspicious activities.

267. Applying a risk-based approach to the various methods available for training, gives each firm flexibility regarding the frequency, delivery mechanisms and focus of such training. A prescribed business should review its own employees and available resources and implement training programs that are appropriate to the nature and complexity of its operation.

9.4.1 The MLRO

268. A prescribed business is required under the Regulations to identify particular relevant employees who in view of their roles should receive additional training and it must provide such training. Such employees must include the MLRO and any nominated persons or deputies to whom suspicion reports may be made. The additional training must include in depth and specific training with regard to;

- the handling and reporting of internal suspicion reports;
- the handling of production and restraining orders;
- liaising with law enforcement agencies; and
- the management of the risk of tipping off.

269. Please refer to section 2.4 for information on the role and responsibilities of the MLRO.

9.4.2 The Board and senior management

270. The Board and senior management are responsible for the effectiveness and appropriateness of the prescribed business' policies, procedures and controls to counter money laundering and terrorist financing. As such they must be identified as relevant employees to whom additional training must be given in order that they remain competent to give adequate and informed consideration to the evaluation of the effectiveness of those policies, procedures and controls.

271. In addition to the general training provided to relevant employees a detailed level of additional training must be provided to the Board and senior management to provide a clear explanation and understanding of:

- the relevant enactments and the Regulations and information on the offences and the related penalties, including potential director and shareholder liability;

- the CDD and record keeping requirements; and
- the internal and external suspicion reporting procedures.

9.5 Timing and Frequency of Training

272. As part of providing comprehensive ongoing training, appropriate training must be provided for all new relevant employees prior to them becoming actively involved in day-to-day operations. Thereafter, the frequency of training should be determined on a risk-based approach, with those employees with responsibility for the handling of business relationships or transactions receiving more frequent training.

273. Such programmes may include, as well as the matters required in the Regulations:

- the principal vulnerabilities of any new products, services or delivery channels offered;
- the nature of terrorism funding and terrorist activity, in order that staff are alert to client transactions or activities that might be terrorist-related;
- information on the changing behaviour and practices amongst money launderers and those financing terrorism;
- emerging typologies; and
- the policies, procedures and controls applied by the prescribed business to the assessment of risk and the requirements for dealing with high risk relationships.

274. At a minimum, training must be provided to all relevant employees at least every two years but will need to be more frequent to meet the requirements in the Regulations if new legislation or significant changes to the Handbook are introduced or where there have been significant technological developments within the prescribed business.

9.6 The Relevance of Training

275. Whilst there is no single or definitive way to conduct staff training for AML/CFT purposes, the critical requirement is that staff training must be adequate and relevant to those being trained and the training messages should reflect good practice. The training should equip staff in respect of their responsibilities.

276. Prescribed businesses must put in place mechanisms to measure the effectiveness of the AML/CFT training.

277. The guiding principle of all AML/CFT training should be to encourage employees, irrespective of their level of seniority, to understand and accept their responsibility to contribute to the protection of the prescribed business against the risk of money laundering and terrorist financing.

278. The precise approach will depend on the size, nature and complexity of the prescribed business. Classroom training, videos and technology-based training programmes can all be used to good effect depending on the environment and the number of people to be trained.

279. Training should highlight to employees the importance of the contribution that they can individually make to the prevention and detection of money laundering and terrorist financing. There is a tendency, in particular on the part of more junior employees, to mistakenly believe that the role they play is less pivotal than that of more senior colleagues. Such an attitude can lead to failures to disseminate important information because of mistaken assumptions that the information will have already been identified and dealt with by more senior colleagues.

CHAPTER 10 – RECORD KEEPING

Key Regulations

Sections in this Chapter

REGULATIONS

The requirements of the Regulations to which the rules and guidance in this chapter particularly relate are:

- Regulation 14, which provides for the record keeping requirements of a prescribed business. See below.
- Regulation 15, which makes provisions in relation to the review of compliance. See Chapter 2.

Regulation 14

14. (1) A prescribed business shall keep-

(a) a transaction document and any client due diligence information, or

(b) a copy thereof,

for the minimum retention period.

(2) Where a prescribed business is required by any enactment, rule of law or court order to provide a transaction document or any client due diligence information to any person before the end of the minimum retention period, the prescribed business shall-

(a) keep a copy of the transaction document or client due diligence information until the period has ended or the original is returned, whichever occurs first, and

(b) maintain a register of transaction documents and client due diligence information so provided.

(3) A prescribed business shall also keep records of -

(a) any reports made to a money laundering reporting officer as referred to in regulation 12 and of any disclosure made under Part I of the Disclosure Law or section 12 of the Terrorism Law made other than by way of a report to the money laundering reporting officer, for five years starting from-

(i) in the case of a report or a disclosure in relation to a business relationship, the date the business relationship ceased, or

(ii) in the case of a report or a disclosure in relation to an occasional transaction, the date that transaction was completed,

(b) any training carried out under regulation 13 for five years starting from the date the training was carried out,

(c) any minutes or other documents prepared pursuant to regulation 15(c) until -

(i) the expiry of a period of five years starting from the date they were finalised, or

(ii) they are superseded by later minutes or other documents prepared under that regulation,

whichever occurs later, and

(d) its policies, procedures and controls which it is required to establish and maintain pursuant to these Regulations, until the expiry of a period of five years starting from the date that they ceased to be operative.

(4) Documents and client due diligence information, including any copies thereof, kept under this regulation -

(a) may be kept in any manner or form, provided that they are readily retrievable, and

(b) must be made available promptly to any police officer, the Financial Intelligence Service, the Commission or any other person where such documents or client due diligence information are requested pursuant to these Regulations or any relevant enactment.

10. RECORD KEEPING

A prescribed business must comply with the Rules in addition to the Regulations. The Rules are boxed and shaded for ease of reference. A prescribed business should note that the Court must take account of the Rules and Guidance issued by the Commission in considering compliance with the Regulations.

10.1 Objectives

280. Record keeping is an essential component that the Regulations require in order to assist in any financial investigation and to ensure that criminal funds are kept out of the financial system, or if not, that they may be detected and confiscated by the appropriate authorities.

10.2 General and Legal Requirements

281. To ensure that the record keeping requirements of the Regulations are met, a prescribed business must have appropriate and effective policies, procedures and controls in place to require that records are prepared, kept for the stipulated period and in a readily retrievable form so as to be available on a timely basis, i.e. promptly, to domestic competent authorities upon appropriate authority.

10.2.1 Client due diligence information

282. In order to meet the requirement in the Regulations to keep transaction documents and CDD information a prescribed business must keep the following records:

- copies of the identification data obtained to verify the identity of all clients, beneficial owners and underlying principals; and
- copies of any client files, account files, business correspondence and information relating to the business relationship or occasional transaction; or
- information as to where copies of the identification data may be obtained.

10.2.2 Transactions

283. In order to meet the requirement to keep each transaction document, all transactions carried out on behalf of or with a client in the course of business, both domestic and international, must be recorded by the prescribed business. In every case, sufficient information must be recorded to enable the reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

284. A prescribed business must ensure that in order to meet the record keeping requirements for transactions, documentation is maintained which must include:

- the name and address of the client, beneficial owner and underlying principal;
- if a monetary transaction, the currency and amount of the transaction;

- account name and number or other information by which it can be identified;
- details of the counterparty, including account details;
- the nature of the transaction; and
- the date of the transaction.

285. Records relating to unusual and complex transactions and high risk transactions must include the prescribed business' own reviews of such transactions.

10.2.3 Internal and external suspicion reports

286. In order to meet the requirement to keep records of reports of suspicion made to a MLRO, a prescribed business must keep:

- the internal suspicion report;
- records of actions taken under the internal and external reporting requirements;
- when the MLRO has considered information or other material concerning possible money laundering, but has not made a disclosure of suspicion to the FIS, a record of the other material that was considered and the reason for the decision; and
- copies of any disclosures made to the FIS.

10.2.4 Training

287. Training records must include:

- the dates AML/CFT training was provided;
- the nature of the training; and
- the names of the employees who received training.

10.2.5 Compliance monitoring

288. In order to meet the requirement to keep records of documents prepared in connection with the obligation of the Board to discuss a review of compliance and of its compliance review policy and other policies, procedures and controls relating to compliance, a prescribed business must retain:

- reports by the MLRO to the Board and senior management;
- records of consideration of those reports and of any action taken as a consequence; and
- any records made within the prescribed business or by other parties in respect of compliance of the prescribed business with the Regulations and the Handbook.

10.3 Record Keeping

289. The record keeping requirements are the same, regardless of the format in which the records are kept, or whether the transaction was undertaken by paper or electronic means or however they are subsequently retained. A prescribed business must, however, consider whether keeping documents other than in original paper form could pose legal evidential difficulties, for example, in civil court proceedings.

10.3.1 Ready retrieval

290. A prescribed business must periodically review the ease of retrieval of, and condition of, paper and electronically retrievable records.

291. Where the FIS or another domestic competent authority requires sight of records, under the Regulations or the relevant enactment, which according to a prescribed business' procedures would ordinarily have been destroyed, the prescribed business must none the less conduct a search for those records and provide as much detail to the FIS or other domestic competent authority as possible.

292. The Regulations require documents which must be kept to be made available promptly to domestic competent authorities where so requested under the Regulations or other relevant enactment. Prescribed businesses must therefore consider the implications for meeting this requirement where documentation, data and information is held overseas or by third parties, such as under outsourcing arrangements, or where reliance is placed on introducers or intermediaries.

293. Prescribed businesses must not enter into outsourcing arrangements or place reliance on third parties to retain records where access to records is likely to be restricted as this would be in breach of the Regulations which require records to be readily retrievable.

10.4 Period of Retention

294. The minimum retention periods are set out in Regulation 14.

10.5 Requirements on Closure or Transfer of Business

295. Where a prescribed business terminates activities, or disposes of a business or a block of business relationships, for example, by way of asset sale, to another prescribed business the person taking on that business must ensure that the record keeping requirements in the Regulations are complied with in respect of such business.

PART 2 – SPECIFIC INDUSTRY SECTORS

CHAPTER 11 – SPECIFIC INDUSTRY SECTORS

Sections in this Chapter

11. SPECIFIC INDUSTRY SECTORS

296. The continuing effort by governments globally to combat money laundering and the financing of terrorism has made the work of the criminal more difficult. In part, as a means of circumventing AML/CFT measures, criminals have had to develop more complex schemes. This increase in complexity, means that those individuals desiring to launder criminal proceeds - unless they already have specialised professional expertise themselves - often turn to the expertise of legal professionals, accountants, financial consultants, and other professionals to aid them in the movement of such proceeds. It is apparent that some of the functions of these professionals are the gateway through which the criminal must pass to achieve his goals. Thus the legal and accounting professionals serve as a "gatekeeper" since they have the ability to furnish access (knowingly or unwittingly) to the various functions that might help the criminal with funds to move or conceal.

297. The criminal not only relies on the expertise of professional firms but also uses their professional status to minimise suspicion surrounding their criminal activities.

298. The following sections provide more information on each sector and highlight some of the areas of vulnerability.

11.1 Legal Professionals

299. Internationally, there is a widely held perception that legal professionals will not report suspicions of money laundering or terrorist financing, perhaps by making excessive use of legal professional privilege, or at a minimum that suspicion reports by legal professionals are only made where suspicion has become near certainty.

300. The AML/CFT legislation in Guernsey contains a clear and specific requirement that a suspicion report is made in all circumstances where there is knowledge or suspicion or reasonable grounds for having knowledge or suspicion of money laundering or terrorist financing. This reporting requirement is regardless of the value of the transaction or whether it involves tax matters.

11.1.1 Legal Professional Privilege

301. Legal Professional Privilege (LPP) is a privilege against disclosure, ensuring clients know that certain documents and information provided to legal professionals cannot be disclosed at all. It recognises the client's fundamental human right to be candid with his legal adviser, without fear of later disclosure to his prejudice. It is an absolute right and cannot be overridden by any other interest.

302. LPP does not extend to everything legal professionals have a duty to keep confidential. LPP protects only those confidential communications falling under either of the two heads of privilege – advice privilege or litigation privilege.

303. Legal advice privilege – which protects confidential communications between lawyers acting in their legal professional capacity and their clients made for the

dominant purpose of seeking or giving legal advice.

304. Litigation privilege – which applies where there is "a real likelihood" of litigation or litigation is actually underway and which protects communications between lawyers and clients, or between lawyers and third parties, made for the dominant purpose of advancing the prosecution or defence of the matter or the seeking or giving of legal advice in connection with it.

305. Information or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to him:

(a) by (or by a representative of) a client of his in connection with the giving by the adviser of legal advice to the client;

(b) by (or by a representative of) a person seeking legal advice from the adviser; or

(c) by a person in connection with legal proceedings or contemplated legal proceedings,

and does not apply to information or another matter which is communicated or given with a view to furthering a criminal purpose.

306. LPP protects advice you give to a client on avoiding committing a crime or warning them that proposed actions could attract prosecution. LPP does not extend to documents which themselves form part of a criminal or fraudulent act, or communications which take place in order to obtain advice with the intention of carrying out an offence. It is irrelevant whether or not you are aware that you are being use for that purpose.

307. It is not just your client's intention which is relevant for the purpose of ascertaining whether information was communicated for the furtherance of a criminal purpose. It is also sufficient that a third party intends the lawyer/client communication to be made with that purpose (e.g. where the innocent client is being used by a third party).

308. If you know the transaction or activity you are working on is a principal offence, you risk committing an offence yourself. Also, communications relating to the transaction or activity are not privileged and can be disclosed.

309. If you merely suspect a transaction or activity might constitute a money laundering or terrorist financing offence, the position is more complex. If the suspicions are correct, communications with the client are not privileged. If the suspicions are unfounded, the communications should remain privileged and are therefore non-disclosable.

11.1.2 Suspicious activities, features and vulnerabilities

310. In the absence of a satisfactory explanation the following may be regarded as

suspicious activity:

- while face-to-face contact with clients is not always necessary, an excessively obstructive or secretive client may be a cause for concern;
- instructions that are unusual in themselves, or that are unusual for your firm or your client;
- instructions or cases that change unexpectedly and for which there seems to be no logical reason for the changes;
- a client deposits funds into your client account but then ends the transaction for no apparent reason;
- a client tells you that funds will be coming from one source and at the last minute the source changes;
- a client unexpectedly asks you to send money received into your client account back to its source, to the client or to a third party;
- disputes which are settled too easily - this may indicate sham litigation;
- loss-making transactions where the loss is avoidable;
- dealing with money or property where you suspect that either is being transferred to avoid the attention of a trustee in a bankruptcy case or a law enforcement agency.

311. When determining the risks associated with the provision of services related to regulated activities, consideration should be given to such factors as:

- services where designated legal professionals, acting as financial intermediaries, actually handle the receipt and transmission of cash proceeds through accounts they actually control in the act of closing a business transaction;
- services to conceal improperly beneficial ownership from competent authorities (as opposed to services intended legitimately to screen ownership from the general public, such as for privacy or other reasons);
- commercial or real property transactions having structures with no apparent legitimate business, economic, tax or legal reasons. However, transaction structures that are designed by designated legal professionals for legitimate business and/or tax efficient structuring and planning should not be seen as a risk variable, especially where other regulated parties with well known reputations (e.g. accountants or financial services businesses) refer the work to designated legal professionals and/pr are involved in the transaction;
- services knowingly designed to illegally evade revenue or other government authorities' claims concerning an asset or other property. This obviously would not include however, services for legitimate, business and/or tax efficient structuring and planning, structuring for management liability or to otherwise lawfully comply with the law;
- administrative arrangements concerning estates where the deceased was known to the designated legal professional as being a person who had been convicted of acquisitive crimes.

312. Legal professionals should only use client accounts to hold client money for legitimate transactions for clients, or for another proper legal purpose. From the criminals perspective putting dirty money through a legal professional's client account can clean it, whether the money is sent back to the client, on to a third party, or invested in some way.

313. It can be difficult to draw a distinction between holding client money for a legitimate transaction and acting more like a bank but legal professionals should take care to not provide a de facto banking service for their clients. For example, when the proceeds of a sale are left with a legal professional to make payments, these payments may be to mainstream loan companies, but they may also be to more obscure recipients, including private individuals, whose identity is difficult or impossible to check.

314. While the majority of charities are used for legitimate reasons, they can be used as money laundering and terrorist financing vehicles. If legal professionals are acting for a charity, consideration should be given to its purpose and the organisations it is aligned with. If money is being received on the charity's behalf from an individual or a company donor, or a bequest from an estate, legal professionals should be alert to unusual circumstances including large sums of money.

11.2 Accountants

315. Accountants perform a number of important functions in helping their clients organise and manage their financial affairs. These provisions may include the provision of advice to individuals and business in such matters as investment, company formation, trusts and other legal arrangements, as well as the optimisation of tax situations. Additionally, some may be directly involved in carrying out specific types of financial transactions (holding or paying out funds relating to the purchase or sale of real estate, for example) on behalf of clients.

11.2.1 Suspicious features or activities

316. Criminals need the same services as legitimate clients. They need a whole range of financial and business advice. Even unwitting involvement in money laundering can put a firm at risk. To reduce the risk of involvement in money laundering or the financing of terrorism firms should take note of danger signals such as:

- the secretive client - who is reluctant to provide details of identity and background or who is over plausible;
- untypical instructions -the client who has obvious reason for using a particular firm;
- lack of economic purpose -the client's transaction lacks or includes steps, which lack any obvious economic purpose. Or perhaps it involves a structure which appears unnecessarily complicated to achieve the declared purpose i.e. subsidiaries, branches, trusts or nominees when there is no commercial justification;

- nominees and trusts behind the fund management, transfer, disposition etc.;
- holding client's assets without convincing reason;
- suspect territory i.e. a country where drug production or trafficking may be prevalent.

317. Firms may also wish to consider the different types of risk to which they are exposed. These risks may include:

- being used to launder money through the handling of cash or assets,
- becoming concerned in an arrangement which facilitates money laundering or terrorist financing through the provision of investment services;
- risks attaching to the client and/or those who trade with or otherwise interact with clients as regards their potential for involvement in money laundering or terrorist financing.

11.3 Estate Agents

318. The growth of AML/CFT regulation and advances in technology have led to criminals using increasingly complex commercial arrangements that require the services of professionals outside the financial services industry, including estate agents. For example, investment of illicit capital in property is a classic method of laundering. This investment is often made by way of chain transactions in property to disguise the source of funds or by investment in tourist or recreational property complexes that provide the appearance of legality.

319. Property investments are an easy way of converting money through purchase or resale since very few questions have been asked traditionally about the source of the funds used.

11.3.1 Suspicious features or activities

11.3.1.1 Cash

320. Large payments made in actual cash may be a sign of money laundering or terrorist financing. It is good practice to establish a policy of not accepting cash payments above a certain limit.

321. Clients may attempt to circumvent such a policy by depositing cash directly into a firm's client account at a bank. Avoid disclosing client account details as far as possible and make it clear that electronic transfer of funds is expected.

322. If a cash deposit is received, consideration should be given as to whether there is a risk of money laundering taking place and whether it is a circumstance requiring a disclosure to the FIS.

11.3.1.2 Source of funds

323. Estate agents should monitor whether funds received from clients are from credible sources. For example, it is reasonable for monies to be received from a company if the client is a director of that company and has the authority to use company money for the transaction. However, if funding is from a source other than the client, further enquiries may need to be made. Where a decision is made to accept funds from a third party, perhaps because time is short, ask how and why the third party is helping with the funding.

11.3.1.3 Client account details

324. Think carefully before information is disclosed in respect of client account details as the provision of such information will allow money to be deposited into the account without prior knowledge. If it is necessary to provide client account details, ask the client where the funds will be coming from. Will it be an account in their name, from the UK or abroad? Consider the risks.

325. Keep the circulation of client account details to a minimum. Discourage clients from passing the details on to third parties and ask them to use the account details only for previously agreed purposes.

11.3.1.4 Ownership issues

326. Properties owned by nominee companies or multiple owners may be used as money laundering vehicles to disguise the true owner and/or confuse the audit trail.

327. Firms should be alert to sudden or unexplained changes in ownership. One form of laundering, known as flipping, involves a property purchase, often using someone else's identity. The property is then quickly sold for a much higher price to the same buyer using another identity. The proceeds of crime are mixed with mortgage funds for the purchase. This process may be repeated several times.

328. Another potential cause for concern is where a third party is providing the funding for a purchase, but the property is being registered in someone else's name. There may be legitimate reasons for this, such as a family arrangement, but firms should be alert to the possibility of being misled about the true ownership of the property. Consideration should be given to undertaking further CDD measures on the person providing the funding.

11.3.1.5 Funding

329. Many properties are bought with a combination of deposit, mortgage and/or equity from a current property. Firms should be aware of the necessity of ensuring that information on funding is kept up to date, for example if a mortgage falls through and new funding is obtained.

330. Usually purchase funds comprise some private funding, with the majority of the purchase price being provided via a mortgage. Transactions that do not involve a mortgage are potentially higher risk.

331. Attention should be given to large payments from private funds, especially if the client has a low income and payments are made from a number of individuals or sources.

332. Where there is cause for concern ask the client to explain the source of the funds. Assess whether you think the explanation provided is valid - for example, the money may have been received from an inheritance or from the sale of another property. Additionally, consider whether the beneficial owners were involved in the transaction.

333. Remember that payments made through the banking system are not guaranteed to be clean.

11.3.1.6 Third party funding

334. Third parties often assist with purchases, for example relatives often assist first time home buyers. Funds may be received directly from those third parties and a decision will need to be taken, on a risk-based approach as to the extent of CDD measures to be undertaken relation to the third parties. Consider whether there are any obvious warning signs and what information is available regarding:

- your client;
- the third party;
- their relationship;
- the proportion of the funding being provided by the third party.

Consider any obligations to the lender which may arise in these circumstances - it is usual for lenders to be advised if the buyers are not funding the balance of the price from their own resources.

PART 3 – APPENDICES AND GLOSSARY

CHAPTER 12 – APPENDICES

Appendices in this Chapter

APPENDIX A

MONEY LAUNDERING AND FINANCING OF TERRORISM TECHNIQUES AND METHODS

What is Money Laundering?

Deception is the heart of money laundering: at its most basic level money laundering is deception by attempting to make assets appear to have been obtained through legal means with legally-earned funds or to be owned by third parties who have no relationship to the true owner.

The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. From the perspective of the criminal, it is no use making a profit from criminal activities if that profit cannot be put to use. A proportion of the profit will often be re-invested into further criminal ventures, but criminals will often wish to use the rest for spending, legitimate investments and other purposes. If this activity is to be achieved without being detected the money must be 'laundered'. Money laundering can be described as the processing of criminal proceeds to disguise their illegal origin. Criminals seek to put their proceeds of crime into a state in which it appears to have an entirely respectable origin. If this act is carried out successfully it allows criminals to maintain control over their proceeds and ultimately to provide a legitimate cover for their sources of income and wealth. Where criminals are allowed to use the proceeds of crime, the ability to launder such proceeds makes crime more attractive.

However, this does not mean that all criminals need to resort to elaborate schemes in order to create the perception of legitimacy of the source and ownership of their assets. Small-time criminals rarely do; they deal in cash and avoid financial institutions as much as possible. Even with regard to larger criminal activities the need to launder money will vary from jurisdiction to jurisdiction.

The money laundering process is generally made up of three stages:

- The placement stage where illegitimate funds find their way into the financial system via payment into legitimate accounts. For example, depositing cash in banks which ask no questions, using business entities that are cash intensive in nature to co-mingle funds, e.g. restaurants, taxi firms, casinos, buying precious metals/diamonds, or artwork/stamp collections;
- The layering stage which is used to disguise the audit trail between the funds and the original point of entry into the financial system. This is achieved by moving the funds around so that the origins of the money become obscured;
- The integration stage where funds are reintroduced as legitimate wealth to fund further activities or to acquire assets.

What is Financing of Terrorism?

For terrorists, the acquisition of funds is not an end in itself but a means of resourcing a terrorist attack. With terrorist financing, it does not matter whether the transmitted funds come from a legal or illegal source. Indeed, terrorist financing frequently involves

funds that, prior to being remitted, are unconnected to any illegal activity. Examples have occurred when legitimate funds have been donated to charities that, sometimes unknown to the donors, are actually fronts for terrorist organisations.

Tracking terrorist financial transactions arising from legitimate sources is more difficult than following the money trails of the proceeds of crime because of the often relatively small amount of funds required for terrorist actions and the range of legitimate sources and uses of funds. While many organised crime groups are adept at concealing their wealth and cash flows for long periods of time, their involvement in the physical trade of illicit drugs, arms, and other commodities, often exposes the revenues and expenditures connected to these illegal dealings. In contrast, terrorist attacks are in many cases comparatively inexpensive, and their financing is often overshadowed by the larger financial resources allocated for the group's political and social activities, making it more difficult to uncover the illicit nexus.

Identifying and disrupting the mechanisms through which terrorism is financed are key elements in the overall efforts to combat terrorism. As well as reducing the financial flows to terrorists and disrupting their activities, action to counter terrorist financing can provide vital information on terrorists and their networks, which in turn improves law enforcement agencies' ability to undertake successful investigations.

Red Flags

Much of the information in Chapter 11 can be used for training purposes and to provide employees with examples of red flags. The case studies below can also be used for training purposes.

Case Studies

The following case studies demonstrate how financial products and services can be used to launder the proceeds of crime or to finance terrorism.

Example 1 – A lawyer uses cross-border companies and trust accounts to launder money

Mr S headed an organisation importing narcotics into Country A from Country B. A lawyer, Mr L, was employed by Mr S to launder the proceeds of this operation.

In order to launder the proceeds of the narcotics operation, Mr L established a web of foreign corporate entities. These entities were incorporated in Country C, where scrutiny of ownership, records, and finances was not strong. A local management company in Country D administered these companies. The companies were used to camouflage the movement of illicit funds, the acquisition of assets and the financing of criminal activities. Mr S was the holder of 100% of the bearer share capital of these entities.

In Country A, a distinct group of persons and companies without any apparent association to Mr S transferred large amounts of money to Country D where it was deposited in, or transited through, the companies owned by Mr S. This same network was found to have

been used to transfer large amounts of money to a person in Country E who was later found to be responsible for drug shipments destined for Country A.

Several other lawyers and their client accounts were found to have been used to receive cash and transfer funds, ostensibly for the benefit of commercial clients in Country A.

Concurrently, Mr L established a separate similar network (which included other lawyers) to purchase assets and place funds in vehicles and instruments designed to mask the beneficial owner's identity.

Example 2 – Internet check uncovers drug trafficker attempting to launder proceeds of crime

Mr Z is a wealthy businessman. He is also a drug trafficker. Mr Z's business interests in Africa and South America include a range of companies involved with organic, coffee production and sale, and a cluster of hospitality/retail outlets. He has close relationships with high level government contacts in a number of these countries. Whilst the coffee business is funded by the proceeds of drug trafficking it is also a successful business in its own right.

Mr Z secures the services of a property search specialist - which he owns - to find a tax neutral jurisdiction in which he can redomicile some of his companies and purchase a substantial property from which he can run his affairs when he is in the jurisdiction. The property search specialist approaches a range of estate agents and seeks to engineer the purchase of a property through a local estate agent. The estate agent makes an internet search on Mr Z and discovers that he has links to foreign government officials, some of whom have featured in media articles about corruption and other crimes. The estate agent suspects money laundering and makes a suspicion report to the local financial intelligence unit. Neither the property transactions nor any of the other transactions in the jurisdiction took place.

Example 3 – Fraud lies behind potential property transaction

A local estate agent is approached by Mrs Y by telephone in connection with the purchase of a house. Mrs Y follows up this contact with a meeting. It became apparent to the estate agent that Mrs Y was unconcerned about the cost of the house and whether she was paying substantially more than it was worth. Mrs Y did not need to sell her existing property in order to fund the purchase and she was not clear about the use to which she intended to make of the property. The estate agent became suspicious and made a suspicion report to the financial intelligence unit. It transpired that Mrs Y was part of a fraud ring in a neighbouring jurisdiction.

Example 4 – Lawyers playing a small part in multi-jurisdictional transaction arrangements

Mr T is an accomplished money launderer. He is aware that lawyers in the smaller, international finance centres are used to being part of multi-jurisdictional transaction arrangements led by a firm of lawyers in London or New York. The lawyers in the finance

centres are used to being a small part of the transaction arrangements. Firm XYZ is one such firm of lawyers. Firm XYZ receives instructions from firm P on behalf of customers in jurisdictions L, M and N. The instructions are to set up a special purpose vehicle which will issue bonds, the interest payments of which will be backed by intellectual property royalties - in practice this backing is the proceeds of drug trafficking. Firm XYZ receives a certificate from firm B providing information on the proposed structure.

Firm XYZ specialises in such arrangements - it promises that its staff are available 24 hours a day. It is aware that it can meet the FATF standards on knowing the purpose and intended nature of transactions by having proportionate knowledge of the part of the arrangement in which it is involved.

All substantial new business at firm XYZ is considered by the money laundering reporting officer and he decides to request further information on the arrangement as he cannot understand the economic rationale behind its complexity.

Mr T, through firm P, makes it known that firm XYZ does not need to know this information. Firm XYZ is being paid to provide advice and to establish a company for a small part of the arrangement, the arrangement is sensitive and time critical, and firm XYZ has sufficient information to fulfil its part of the arrangement. The senior management of firm XYZ overrule the money laundering reporting officer's reservations and the arrangement progresses.

Three years later a drug trafficking investigation in jurisdiction S leads investigators to the arrangement. They discover that the drug traffickers placed their proceeds of crime into the arrangement and that they are also the purchasers of the bonds issued by the special purpose vehicle established by firm XYZ. They had been using the dividends paid by the company to help demonstrate that their life styles were funded by "clean" money.

Example 5 – Auditor uncovers NPO being used for terrorist financing

Mr J is an auditor at accountancy firm ZZZ. For some years he has been responsible for the audit of the financial statements of firm B, a manufacturer of specialist hand tools for the oil and gas industries.

Firm B decides to seek advice on splitting its business into two separate companies under a holding company. It asks for help from the senior commercial adviser of firm ZZZ. The adviser feels that he must consider the accounts of firm B closely in order to provide the best commercial (including tax) advice. Close analysis of Mr J's papers and the accounts and other information provided by firm ZZZ, reveals the unusual timing of a series of large payments to a non-profit organisation (NPO) in a distant jurisdiction known to have civil strife, terrorist activity and to be a centre of drug production. It is not clear why firm B is supporting the NPO. The adviser is informed that the manufacturer supports the NPO as it is based in a gas producing country and that the NPO supported the families of victims of an accident which had taken place while representatives of the firm had been in the country. Upon investigation, the commercial adviser becomes suspicious that the payments made to the NPO are helping to fund the terrorist activity.

It transpired that several of the senior representatives of the firm were engaged in terrorist financing.

Example 6 – A jurisdiction too far

Mr P is a director of a hotel group which is active in a range of jurisdictions. The group has appointed firms of accountants and lawyers to act for it in a range of jurisdictions. Mr P's identity has been verified on various occasions when firms have been appointed to act for the group. The firms of lawyers and accountants which act for the group are also usually global entities – these firms have usually relied on the existence of customer due diligence undertaken by associate offices and the long-standing relationships Mr P has with those offices. Mr P is also a non-executive director of a construction supplies group, also internationally active.

Mr P is a money launderer – he helps to launder the proceeds of the crime for which the construction supplies group is a front. To date, because of his roles with two sizeable companies and his relationships with global firms of lawyers and accountants, he has not been suspected of any criminal activity.

The construction supplies group now wishes to obtain the joint benefits of rationalising the number of companies it controls and establishing more difficult trails for law enforcement to follow by setting up part of the rationalised group in a jurisdiction – jurisdiction S – in which it does not have a presence. Jurisdiction S is located several hours' flight from the group's main countries of activity. Mr P carries out much of the work himself with firms of lawyers and accountants in jurisdiction S on behalf of the construction supplies company.

Mr P also intends to establish companies and trusts in jurisdiction S to hold assets for him and his family. He therefore receives a wide range of legal and accountancy advice on behalf of the construction supplies group and his family.

An employee at the law firm in jurisdiction S became suspicious. She becomes concerned about the rationale for establishing operations in jurisdiction S, about the complexity and opacity of the proposals and about the wealth which has been accumulated by Mr P, which is greater than his seemingly legitimate employment would warrant. Accordingly, a suspicion report is made to the financial intelligence unit.

APPENDIX B

INTRODUCER CERTIFICATE IC1

Name of accepting prescribed business		
Name of Introducer		
Account name (in full)		
Details of associated account/s (which are part of the same structure)		
Introducer's contact details	Address:	
	Telephone:	Fax:
	Email:	

The Introducer certifies that it is an Appendix C business and in respect of this account it has obtained and holds the verification required to satisfy the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing or the Handbook for Legal Professionals, Accountants and Estate Agents on Countering Financial Crime and Terrorist Financing (as appropriate) issued by the Guernsey Financial Services Commission, as updated from time to time. The information disclosed for this account by the Introducer accurately reflects the information held and is being given for account opening and maintenance purposes only. The Introducer undertakes to supply certified copies or originals of the verification documentation upon request without delay.

Signature: _____ _____

Full Name: _____ _____

Official Position: _____ _____

Date: _____ _____

Please identify the number of supplementary pages being submitted: IC2 ☐ IC3 ☐ IC4 ☐

INTRODUCER CERTIFICATE IDENTIFICATION INFORMATION

IC2

Name of Introducer: _____

Account name (in full): _____

To be completed for applicants for business who are individuals or partners in a partnership only

(Please complete the section below and attach additional copies of this sheet as required)

	1	2
Full Name		
Nationality, date and place of birth		
Current residential address (please include postcode). Note: A PO Box only address is insufficient		
Does the Introducer consider the related party to be, or to be associated with a PEP?	Yes ☐ No ☐	Yes ☐ No ☐

To be completed for applicants for business who are companies, partnerships, trusts or foundations

(if a Company or Partnership): Date and place of incorporation and registration number		Are bearer shares currently in issue? Yes ☐ No ☐
(if a Company or Partnership): Current registered office address		If no, can bearer shares be issued? Yes ☐ No ☐
(if a Trust or Foundation): Date of establishment and legal jurisdiction		
Type of trust/foundation/company		Is it a trading company? Yes ☐ No ☐

To be completed for all applicants for business

Nature of activities or purpose and intended nature of business relationship (please provide full description)	
(for all PEP relationships and, where appropriate, for high risk relationships): Source of wealth (and identify the period over which this has been derived)	
Account activity	

Should the space provided be insufficient, please continue using IC4.

Initial of signatory/ies completing IC1		

INTRODUCER CERTIFICATE IC3
RELATED PARTIES

Name of Introducer: _____

Account name (in full): _____

Details of all principal(s) (see IC5 for definition) including beneficial owners and excluding officers of the Introducer

(Please complete the section below and attach additional copies of this sheet as required)

	1	2
Full Name		
Nationality, date and place of birth		
Current residential address (please include postcode). Note: A PO Box only address is insufficient		
Role of principal and date relationship commenced		
Does the Introducer consider the related party to be, or to be associated with a PEP?	Yes ☐ No ☐	Yes ☐ No ☐

	3	4
Full Name		
Nationality, date and place of birth		
Current residential address (please include postcode). Note: A PO Box only address is insufficient.		
Role of principal and date relationship commenced		
Does the Introducer consider the related party to be, or to be associated with a PEP?	Yes ☐ No ☐	Yes ☐ No ☐

Initial of signatory/ies completing IC1		

APPENDIX B (CONTINUED)

INTRODUCER CERTIFICATE IC4
ADDITIONAL INFORMATION

Name of Introducer: _____

Account name (in full): _____

This section is to be used by the prescribed business to identify any additional information or documentation that they require over and above the stated minimum and/or for the Introducer to provide additional information to supplement the details contained in IC1, IC2 and/or IC3.

Initial of signatory/ies completing IC1		

INTRODUCER CERTIFICATE NOTES AND GUIDANCE

IC5

These notes and the definitions below are intended to assist the Introducer in completing the required forms and to enable greater consistency to be achieved.

"Associated accounts"	Refers to an account with the same prescribed business where any of the principals are connected with an account in the same group or structure.
"Account activity"	An estimate of the total flow of funds in and out of the account should be provided. An estimated maximum account turnover should also be provided. For a trading operation, the scale and volume of transactions should be explained.
"Bearer shares"	Should bearer shares be subsequently issued (after the opening of the account) such that the "Yes" box needs ticking in IC2, an updated form should be supplied to the accepting financial services business without delay.
"Certified copy"	An officer or authorised signatory of a regulated financial services business or prescribed business will be an acceptable certifier. An acceptable "certified copy" document should be an accurate and complete copy of the original such that the certifier will sign and date the copy document printing his position, capacity and company name.
"Introducer"	Is an Appendix C business.
"Nature of activities or purpose and intended nature of business relationship"	A sufficient description should be provided to enable the accepting prescribed business to properly categorise the underlying nature of the arrangements. If the activity is of a commercial nature, then additional information may be required.
"PEP"	Politically exposed person as defined in the Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing and the Handbook for Legal Professionals, Accountants and Estate Agents on Countering Financial Crime and Terrorist Financing.
"Principal"	Includes any person or other entity that has or is likely to receive a benefit in the foreseeable future or who the Introducer customarily treats as having an economic interest.
"Role"	This might include, for example, a beneficial owner, a shareholder, beneficiary, settlor, partner, etc.
"Signatory"	The Introducer's Certificate will need to be signed or initialled (where appropriate) in line with the Introducer's current mandate/authorised signatory list held with the accepting prescribed business.
"Source of wealth"	The origins of the wealth of the principal/s (and over what period) should be identified. Generally, simple one word answers will be unacceptable, for example, "income", "dividends", "Bill Smith", or "work". A brief description to give a fuller picture is expected, for example, "sale of UK private company in 1997", "life time savings of settlor who was a doctor", "inheritance from parents' UK estate" and "UK property development over the last 10 years".
"Trading"	Implies commercial activity which may include a business, invoicing or re-invoicing operations. For clarity, a "trading company" does not include a personal service/employment company.

Please refer to the accepting prescribed business should you have any doubt or queries about completing the Introducer Certificate Forms.

APPENDIX C

COUNTRIES OR TERRITORIES WHOSE REGULATED BUSINESSES MAY BE TREATED AS IF THEY WERE LOCAL FINANCIAL SERVICES BUSINESSES OR LOCAL PRESCRIBED BUSINESSES

Austria
Australia
Belgium
Canada
Denmark
Finland
France
Germany
Gibraltar
Greece
Hong Kong
Iceland
Ireland
Isle of Man
Italy
Japan
Jersey
Luxembourg
Netherlands
New Zealand
Norway
Portugal
Singapore
South Africa
Spain
Sweden
Switzerland
United Kingdom
United States of America

Appendix C to the Handbook was established to reflect those countries or territories which the Commission considers require regulated financial services businesses and regulated prescribed businesses to have in place standards to combat money laundering and terrorist financing consistent with the FATF Recommendations and where such businesses are supervised for compliance with those requirements. It was also designed as a mechanism to recognise the geographic spread of the clients of the Guernsey finance sector and is reviewed periodically with countries or territories being added as appropriate.

The fact that a country or territory has requirements to combat money laundering and terrorist financing that are consistent with the FATF Recommendations means only that the necessary legislation and other means of ensuring compliance with the Recommendations is in force in that country or territory. It does not provide assurance that a particular overseas business is subject to that legislation, or that it has implemented the necessary measures to ensure compliance with that legislation.

Guernsey prescribed businesses are not obliged to deal with regulated financial services or prescribed businesses in the jurisdictions listed above as if they were local, notwithstanding that they meet the requirements identified in this Appendix. Guernsey prescribed businesses should use their commercial judgement in considering whether or not to deal with a regulated financial services or prescribed business and may, if they wish, impose higher standards than the minimum standards identified in the Handbook.

In accordance with the definition provided for in the Regulations an "A**ppendix C business**" means -

(a) a financial services business supervised by the Commission,

(b) a prescribed business registered under the Regulations, or

(c) a business -

(i) which is carried on from a country or territory listed in Appendix C to the Handbook and which would, if it were carried on in the Bailiwick, be -

(A) a financial services business, or

(B) a prescribed business,

(ii) which may only be carried on in that country or territory by a person regulated for that purpose under the law of that country or territory,

(iii) the conduct of which is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations on Money Laundering in respect of such a business, and

(iv) the conduct of which is supervised for compliance with the requirements referred to in subparagraph (iii), by an overseas regulatory authority.

The absence of a country or territory from the above list does not prevent the application of section 4.8.1 of the Handbook (reliable introductions by an overseas branch or member of the same group, subject to satisfactory terms of business).

APPENDIX D1

INTERNAL REPORT FORM

Name of client			
Full account name(s)			
Account/product number(s)			
Date(s) of opening			
Date of client's birth			
Nationality			
Passport number			
Identification and reference			
Client's address			
Details arousing suspicion			
As relevant:	Amount (currency)	Date of receipt	Source of funds
Other relevant information			
Money Laundering Reporting Officer*			

** The Reporting Officer should briefly set out the reason for regarding the transactions to be reported as suspicious or, if he decides against reporting, the reasons for that decision.*

APPENDIX D2

DISCLOSURE

STRICTLY PRIVATE AND CONFIDENTIAL		
Your ref:	Our ref:	Date:

The Financial Intelligence Service, Hospital Lane, St Peter Port, Guernsey, GY1 2QN
Tel: 714081 Fax: 710466 E-mail: director@guernseyfis.org

Legislation under which this disclosure is made *(please tick one of the following)*:

Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ☐
Disclosure (Bailiwick of Guernsey) Law, 2007 ☐

Subject's full name(s)			
Gender			
Date(s) of birth		Place(s) of birth	
Passport or ID number(s)			
Nationality(ies)			
Address(es)			
Telephone	Home:	Work:	Mobile:
Occupation/employer			
Associated company: *e.g. company registration number, date and place of incorporation, etc.*			
Account name			
Account/product number			
Date account/product opened			
Details of any intermediary			
Other relevant information: *e.g. additional details of identification and/or references taken, associated parties, addresses, telephone numbers, etc.*			

DISCLOSURE (CONTINUED)

Reasons for suspicion:
Current status of business relationship:

When submitting this report, please provide a covering letter which includes contact information and append any additional material that you may consider relevant and which may be of assistance to the recipient, i.e. bank statements, vouchers, international transfers, inter-account transfers, telegraphic transfers, details of associated accounts and products, etc.

APPENDIX D3

SPECIMEN ACKNOWLEDGEMENT OF THE FIS

MLRO

Your Ref :
FIS Ref :

PRIVATE & CONFIDENTIAL - ADDRESSEE ONLY

Dear

Thank you for the disclosure of information you have provided under the provisions of *(the Disclosure (Bailiwick of Guernsey) Law, 2007 or the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as amended)* concerning:-

XXXXXX XXXXXXX

Your suspicions have been noted.

Thank you for your continued co-operation.

Yours sincerely

APPENDIX D4

SPECIMEN CONSENT OF THE FIS

MLRO

Your Ref :
FIS Ref :

PRIVATE & CONFIDENTIAL - ADDRESSEE ONLY

Dear

Thank you for the disclosure of information you have provided under the provisions of *(the Disclosure (Bailiwick of Guernsey) Law, 2007 or the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as amended)* concerning:-

XXXXXX XXXXXXX

Your suspicions have been noted.

Based upon the information provided you have consent to

However, this consent does not release you from your obligation in respect of all future transactions on the account or arising from the relationship to comply with the relevant anti money laundering legislation and to have due regard to the Guernsey Financial Services Commission Handbook on the subject.

Thank you for your continued co-operation.

Yours sincerely

APPENDIX E

GUERNSEY STATUTORY INSTRUMENT
2008 No. 49

The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008[a]

ARRANGEMENT OF REGULATIONS

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[a] Amended by G.S.I. No. 72 of 2008 (The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2008) and G.S.I. No. ** of 2009 (The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2009).

GUERNSEY STATUTORY INSTRUMENT
2008 No. 49

The Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008

THE POLICY COUNCIL, in exercise of the powers conferred upon it by sections 49A, 49D and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999[b], hereby makes the following Regulations:-

PART I
INTRODUCTORY PROVISIONS AND RISK ASSESSMENT

Citation.

1. These Regulations may be cited as the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008.

Commencement.

2. (1) Regulations 1, 2 and 12, Part IV and regulations 25, 26(1)(a) and 27, to 30 shall come into force on the 8th October, 2008.

(2) All remaining provisions of these Regulations (other than regulation 15(d)) not brought into force under paragraph (1) shall come into force -

(a) in respect of a prescribed business which is also a relevant business for the purposes of the Law by virtue of paragraph 5 ("Legal and accountancy services") of Schedule 2 to the Law, on the 7th November, 2008, and

(b) in respect of a prescribed business which is also a relevant business for the purposes of the Law by virtue of paragraph 3 ("Estate agency") of Schedule 2 to the Law, on the 5th December, 2008.

(3) Regulation 15(d) shall come into force on the 1st January 2009.

Risk assessment and mitigation.

3. (1) A prescribed business must -

(a) carry out a suitable and sufficient business risk assessment -

(i) as soon as reasonably practicable after these Regulations come into force, or

---

[b] Order in Council No. VIII of 1999, as amended by Order in Council No. II of 2005 and No. ** of 2007, Ordinance XXVIII of 1999, Ordinance XII of 2002, G.S.I. No. 27 of 2002 and certain sections of the Law are modified in their application to external confiscation orders by Ordinance XXXIII of 1999.

(ii) in the case of a prescribed business which only becomes such on or after the date these Regulations come into force, as soon as reasonably practicable after it becomes such a business,

(b) regularly review its business risk assessment so as to keep it up to date and, where, as a result of that review, changes to the business risk assessment are required, it must make those changes,

(c) prior to the establishment of a business relationship or the carrying out of an occasional transaction, undertake a risk assessment of that proposed business relationship or occasional transaction,

(d) regularly review any risk assessment carried out under subparagraph (c) so as to keep it up to date and, where changes to that risk assessment are required, it must make those changes, and

(e) ensure that its policies, procedures and controls on forestalling, preventing and detecting money laundering and terrorist financing are appropriate and effective, having regard to the assessed risk.

(2) A prescribed business must have regard to -

(a) any relevant rules and guidance in the Handbook, and

(b) any notice issued by the Commission under the Law,

in determining, for the purposes of these Regulations, what constitutes a high or low risk.

PART II
CLIENT DUE DILIGENCE ETC.

Client due diligence.

4. (1) A prescribed business shall, subject to the following provisions of these Regulations, ensure that the steps in paragraph (3) are carried out -

(a) when carrying out the activities described in paragraphs (2)(a) and (b), and

(b) in the circumstances described in paragraphs (2)(c) and (d).

(2) The activities and circumstances referred to in paragraph (1) are -

(a) establishing a business relationship,

(b) carrying out an occasional transaction,

(c) where the prescribed business knows or suspects or has reasonable grounds for knowing or suspecting -

(i) that, notwithstanding any exemptions or thresholds pursuant to these Regulations, any party to a business relationship is engaged in money laundering or terrorist financing, or

(ii) that it is carrying out a transaction on behalf of a person, including a beneficial owner or underlying principal, who is engaged in money laundering or terrorist financing, and

(d) where the prescribed business has doubts about the veracity or adequacy of previously obtained identification data.

(3) The steps referred to in paragraph (1) are that -

(a) the client shall be identified and his identity verified using identification data,

(b) any person purporting to act on behalf of the client shall be identified and his identity and his authority to so act shall be verified,

(c) the beneficial owner and underlying principal shall be identified and reasonable measures shall be taken to verify such identity using identification data and such measures shall include, in the case of a legal person or legal arrangement, measures to understand the ownership and control structure of the client,

(d) a determination shall be made as to whether the client is acting on behalf of another person and, if the client is so acting, reasonable measures shall be taken to obtain sufficient identification data to identify and verify the identity of that other person,

(e) information shall be obtained on the purpose and intended nature of each business relationship, and

(f) a determination shall be made as to whether the client, beneficial owner and any underlying principal is a politically exposed person.

(4) A prescribed business must have regard to any relevant rules and guidance in the Handbook in determining, for the purposes of this regulation and regulation 5, what constitutes reasonable measures.

Additional client due diligence.

5. (1) Where a prescribed business is required to carry out client due diligence, it must also carry out enhanced client due diligence in relation to the following business relationships or occasional transactions -

(a) a business relationship or occasional transaction in which the client or any beneficial owner or underlying principal is a politically exposed person,

(b) a business relationship or an occasional transaction -

(i) where the client is established or situated in a country or territory that does not apply, or insufficiently applies, the Financial Action Task Force Recommendations on Money Laundering, or

(ii) which the prescribed business considers to be a high risk relationship, taking into account any notices or warnings issued from time to time by the Commission, and

(c) a business relationship or an occasional transaction which has been assessed as a high risk relationship under regulation 3(1)(c).

(2) In paragraph (1) -

(a) "**enhanced client due diligence**" means

(i) obtaining senior management approval for establishing a business relationship or undertaking an occasional transaction,

(ii) obtaining senior management approval for, in the case of an existing business relationship with a politically exposed person, continuing that relationship,

(iii) taking reasonable measures to establish the source of any funds and of the wealth of the client and beneficial owner and underlying principal,

(iv) carrying out more frequent and more extensive ongoing monitoring in accordance with regulation 11, and

(v) taking one or more of the following steps as would be appropriate to the particular business relationship or occasional transaction –

(A) obtaining additional identification data,

(B) verifying additional aspects of the client's identity, and

(C) obtaining additional information to understand the purpose and intended nature of each business relationship.

(b) "**politically exposed person**" means -

(i) a person who has, or has had at any time, a prominent public function or who has been elected or appointed to such a function in a country or territory other than the Bailiwick including, without limitation -

(A) heads of state or heads of government,

(B) senior politicians and other important officials of political parties,

(C) senior government officials,

(D) senior members of the judiciary,

(E) senior military officers, and

(F) senior executives of state owned body corporates,

(ii) an immediate family member of such a person including, without limitation, a spouse, partner, parent, child, sibling, parent-in-law or grandchild of such a person and in this subparagraph "**partner**" means a person who is considered by the law of the country or territory in which the prescribed public function is held as being equivalent to a spouse, or

(iii) a close associate of such a person, including, without limitation -

(A) a person who is widely known to maintain a close business relationship with such a person, or

(B) a person who is in a position to conduct substantial financial transactions on behalf of such a person.

(3) *[Deleted by the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2009]*

(4) Where the client was not a Guernsey resident who was physically present when a prescribed business carried out an activity set out in regulation 4(2)(a) or (b), a prescribed business must take adequate measures to compensate for the specific risk arising as a result -

(a) when carrying out client due diligence, and

(b) where the activity was establishing a business relationship, when carrying out monitoring of that relationship pursuant to regulation 11.

Client due diligence for low risk relationships.

6. (1) Where a prescribed business is required to carry out client due diligence in relation to a business relationship or occasional transaction which has been assessed as a low risk relationship pursuant to regulation 3(1)(c), it may, subject to the following provisions of this regulation apply reduced or simplified client due diligence measures.

(2) The discretion in paragraph (1) may only be exercised -

(a) in accordance with the requirements set out in chapter 6 of the Handbook, and

(b) provided that the client and every beneficial owner and underlying principal is established or situated in the Bailiwick or a country or territory listed in Appendix C to the Handbook.

(3) For the avoidance of doubt, simplified or reduced client due diligence shall not be applied -

(a) where the prescribed business knows or suspects or has reasonable grounds for knowing or suspecting that any party to a business relationship or any beneficial owner or underlying principal is engaged in money laundering or terrorist financing, or

(b) in relation to business relationships or occasional transactions where the risk is other than low.

Timing of identification and verification.

7. (1) Identification and verification of the identity of any person or legal arrangement pursuant to regulations 4 to 6 must, subject to paragraph (2) and regulation 4(1)(b), be carried out before or during the course of establishing a business relationship or before carrying out an occasional transaction.

(2) Verification of the identity of the client and of any beneficial owners and underlying principals may be completed following the establishment of a business relationship provided that -

(a) it is completed as soon as reasonably practicable thereafter,

(b) the need to do so is essential not to interrupt the normal conduct of business, and

(c) appropriate and effective policies, procedures and controls are in place which operate so as to manage risk.

Anonymous accounts

8. A prescribed business must, in relation to all clients-

(a) not set up anonymous accounts or accounts in fictitious names, and

(b) maintain accounts in a manner which facilitates the meeting of the requirements of these Regulations.

Non-compliance with client due diligence measures etc.

9. Where a prescribed business cannot comply with any of regulations 4(3)(a) to (d) it must -

(a) in the case of an existing business relationship, terminate that business relationship,

(b) in the case of a proposed business relationship or occasional transaction, not enter into that business relationship or carry out that occasional transaction with the client, and

(c) consider whether a disclosure must be made pursuant to Part I of the Disclosure Law[c] or section 12 of the Terrorism Law[d].

Introduced business.

10. (1) In the circumstances set out in paragraph (2), a prescribed business may accept a written confirmation of identity and other matters from an introducer in relation to the requirements of regulation 4(3)(a) to (e) provided that -

(a) the prescribed business also requires copies of identification data and any other relevant documentation to be made available by the introducer to the prescribed business upon request and without delay, and

(b) the introducer, subject to limited exceptions provided for in chapter 4 of the Handbook, keeps such identification data and documents.

(2) The circumstances referred to in paragraph (1) are that the introducer -

(a) is an appendix C business, or

(b) is either an overseas branch, or a member, of the same group of bodies corporate as, the prescribed business with which it is entering into the business relationship ("**receiving prescribed business**"), and -

(i) the ultimate parent body corporate of the group of bodies corporate of which both the introducer and the receiving prescribed business are members, falls within subparagraph (a), and

(ii) the introducer and the receiving prescribed business are subject to effective policies, procedures and controls on countering money laundering and terrorist financing of that group of bodies corporate.

(3) Notwithstanding paragraph (1), where reliance is placed upon the introducer the responsibility for complying with the relevant provisions of regulation 4 remains with the receiving prescribed business.

PART III
ENSURING COMPLIANCE AND RECORD KEEPING

Monitoring transactions and other activity.

11. (1) A prescribed business shall perform ongoing and effective monitoring of any existing business relationship, which shall include-

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[c] Approved by resolution of the States on 30th May 2007.
[d] Order in Council No. XVI of 2002 as amended by Order in Council No. XIII of 2006 and the Terrorism and Crime (Bailiwick of Guernsey) (Amendment) Ordinance, 2007.

(a) reviewing identification data to ensure it is kept up to date and relevant in particular for high risk relationships or clients in respect of whom there is a high risk,

(b) scrutiny of any transactions or other activity, paying particular attention to all -

(i) complex transactions,

(ii) transactions which are both large and unusual, and

(iii) unusual patterns of transactions,

which have no apparent economic purpose or no apparent lawful purpose, and

(c) ensuring that the way in which identification data is recorded and stored is such as to facilitate the ongoing monitoring of each business relationship.

(2) The extent of any monitoring carried out under this regulation and the frequency at which it is carried out shall be determined on a risk sensitive basis including whether or not the business relationship is a high risk relationship.

Reporting suspicion.

12. A prescribed business shall -

(a) appoint a person of at least management level as the money laundering reporting officer and provide the name and title of that person to the Commission and the Financial Intelligence Service as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment,

(b) nominate another person (a "**nominated officer**") to carry out the functions of the money laundering reporting officer in his absence, and ensure that any relevant employee is aware of the name of that nominated officer,

(c) ensure that where a relevant employee, other than the money laundering reporting officer, is required to make a disclosure under Part I of the Disclosure Law or section 12 of the Terrorism Law, that this is done by way of a report to the money laundering reporting officer, or, in his absence, to a nominated officer,

(d) ensure that the money laundering reporting officer, or in his absence a nominated officer, in determining whether or not he is required to make a disclosure under Part I of the Disclosure Law or section 12 of the Terrorism Law, takes into account all relevant information,

(e) ensure that the money laundering reporting officer, or, in his absence, a

nominated officer, is given prompt access to any other information which may be of assistance to him in considering any report, and

(f) ensure that it establishes and maintains such other appropriate and effective procedures and controls as are necessary to ensure compliance with requirements to make disclosures under Part I of the Disclosure Law and sections 12 of the Terrorism Law.

Employee screening and training.

13. (1) A prescribed business shall maintain appropriate and effective procedures, when hiring employees or admitting any person as a partner in the business, for the purpose of ensuring high standards of employee and partner probity and competence.

(2) A prescribed business shall ensure that relevant employees, and any partners in the business, receive comprehensive ongoing training in relation to or concerning -

(a) the relevant enactments, these Regulations and the Handbook,

(b) the personal obligations of employees, and partners, and their potential criminal liability under these Regulations and the relevant enactments,

(c) the implications of non-compliance by employees, and partners, with any rules or guidance made for the purposes of these Regulations, and

(d) its policies, procedures and controls for the purposes of forestalling, preventing and detecting money laundering and terrorist financing.

(3) A prescribed business shall identify relevant employees and partners in the business who, in view of their particular responsibilities, should receive additional and ongoing training, appropriate to their roles, in the matters set out in paragraph (2) and must provide such additional training.

Record-keeping.

14. (1) A prescribed business shall keep-

(a) a transaction document and any client due diligence information, or

(b) a copy thereof,

for the minimum retention period.

(2) Where a prescribed business is required by any enactment, rule of law or court order to provide a transaction document or any client due diligence information to any person before the end of the minimum retention period, the prescribed business shall-

(a) keep a copy of the transaction document or client due diligence information until the period has ended or the original is returned, whichever occurs first,

and

(b) maintain a register of transaction documents and client due diligence information so provided.

(3) A prescribed business shall also keep records of -

(a) any reports made to a money laundering reporting officer as referred to in regulation 12 and of any disclosure made under Part I of the Disclosure Law or section 12 of the Terrorism Law made other than by way of a report to the money laundering reporting officer, for five years starting from-

(i) in the case of a report or a disclosure in relation to a business relationship, the date the business relationship ceased, or

(ii) in the case of a report or a disclosure in relation to an occasional transaction, the date that transaction was completed,

(b) any training carried out under regulation 13 for five years starting from the date the training was carried out,

(c) any minutes or other documents prepared pursuant to regulation 15(c) until -

(i) the expiry of a period of five years starting from the date they were finalised, or

(ii) they are superseded by later minutes or other documents prepared under that regulation,

whichever occurs later, and

(d) its policies, procedures and controls which it is required to establish and maintain pursuant to these Regulations, until the expiry of a period of five years starting from the date that they ceased to be operative.

(4) Documents and client due diligence information, including any copies thereof, kept under this regulation -

(a) may be kept in any manner or form, provided that they are readily retrievable, and

(b) must be made available promptly to any police officer, the Financial Intelligence Service, the Commission or any other person where such documents or client due diligence information are requested pursuant to these Regulations or any relevant enactment.

Ensuring compliance, corporate responsibility and related requirements.

15. A prescribed business must, in addition to complying with the preceding

requirements of these Regulations -

(a) establish such other policies, procedures and controls as may be appropriate and effective for the purposes of forestalling, preventing and detecting money laundering and terrorist financing,

(b) establish and maintain an effective policy, for which responsibility must be taken by the board, for the review of its compliance with the requirements of these Regulations and such policy shall include provision as to the extent and frequency of such reviews,

(c) ensure that a review of its compliance with these Regulations is discussed and minuted at a meeting of the board at appropriate intervals, and in considering what is appropriate a prescribed business must have regard to the risk taking into account -

(i) the size, nature and complexity of the prescribed business,

(ii) its clients, products and services, and

(iii) the ways in which it provides those products and services,

(d) on, or within 14 days following 5 December in each year send to the Commission a certificate, in such form as is approved by the Commission for the purpose, signed on behalf of the business certifying, in respect of the period of 12 months ending on the 5 December in question (or throughout the period commencing upon first registration of the business under regulation 16 and the 5 December in question) -

(i) that it has, complied with the requirements of-

(A) these Regulations,

(B) the Handbook, and

(C) any instructions, or notice, issued by the Commission under the Law, and

(ii) the number of full time (or full time equivalent) members of staff (including executive directors and partners) employed by, or forming, the business, and

(e) have regard to the provisions of the Handbook.

PART IV
REGISTRATION

Registration of prescribed businesses.

16. (1) Subject to subsection (5), a prescribed business carrying on, or holding itself out as carrying on, business in, or from within, the Bailiwick must register with the Commission in accordance with these Regulations.

(2) A prescribed business which, by virtue of paragraph (1), is under an obligation to register shall submit, and pay, to the Commission -

(a) a statement, in such form and manner as the Commission may determine, of -

(i) the legal name and any trading names of the business,

(ii) its place and date of incorporation or establishment,

(iii) its principal place of business and any other business addresses in the Bailiwick,

(iv) details of the type or types of business carried out,

(v) the name of the money laundering reporting officer, and

(vi) the number of full time (or full time equivalent) members of staff (including executive directors and partners), and

(b) subject to paragraph (3) -

(i) where submission of the statement referred to in subparagraph (a) is made on or before 31 December 2008, a non-refundable registration fee of £450 plus, where the business has more than 5 full time (or full time equivalent) members of staff (including executive directors and partners), whichever is the lesser of -

(A) an amount calculated on the basis of £70 for each full time (or full time equivalent) member of staff (including executive directors and partners), less £350, or

(B) £1,400, or

(ii) where submission of the statement referred to in subparagraph (a) is made after 31 December 2008, a non-refundable registration fee calculated in accordance with the formula -

$$A = \frac{B}{12} \times C$$

where -

A is the fee payable,

B is the fee which would be payable under item (i), if submission of the statement had been made on or before 31 December 2008, and

C is the number of complete months from the date of submission of the statement to 31 December inclusive.

(3) Any fee payable under paragraph (2)(b) or regulation 17(2) shall be reduced as follows -

(a) by 50 per centum where the registration relates to a business -

(i) which is –

(A) registered, or

(B) in the opinion of the Commission is, or will be, under an obligation to register (and does so register within 4 months of the date upon which the Commission first formed its opinion),

under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, or

(ii) which is a member of a group of bodies corporate where one or more other members of that group are also under an obligation to pay a registration fee to the Commission under this regulation, or

(b) by 75 per centum where the registration relates to a business -

(i) which is –

(A) registered, or

(B) in the opinion of the Commission is, or will be, under an obligation to register (and does so register within 4 months of the date upon which the Commission first formed its opinion),

under the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, and

(ii) which is a member of a group of bodies corporate where one or more other members of that group are also under an obligation to pay a registration fee to the Commission under this regulation.

(4) On receipt of -

(a) a statement containing all the information referred to in paragraph (2)(a), and

(b) the registration fee,

the Commission shall register the prescribed business.

(5) A prescribed business is not required to be registered with the Commission where -

(a) the total turnover of the person carrying on the prescribed business in respect of the prescribed business does not exceed £50,000 per annum,

(b) the prescribed business -

(i) if it is an estate agent, does not hold deposits, or

(ii) if it is a prescribed business other than an estate agent, does not carry out occasional transactions, that is to say any transactions involving more than £10,000 carried out by the prescribed business in question in the course of that business, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked,

(c) the services of the prescribed business are provided only to customers resident in the Bailiwick, and

(d) the funds received by the prescribed business are drawn on a bank operating from or within the Bailiwick.

Validity of registration, annual fee and general requirements.

17. (1) The registration of a prescribed business shall, subject to payment of the annual fee under paragraph (2), remain effective until it is surrendered under regulation 20.

(2) An annual fee calculated in the same manner as provided for under regulation 16(2)(b)(i) (subject to any reduction applicable under regulation 16(3)) shall be payable, on, or within 30 days following 1 January in each calendar year following the year of registration, in respect of each prescribed business registered under this Part; provided that no annual fee shall be payable for 2009 in respect of a prescribed business which registers under this Part during 2008.

(3) A prescribed business must inform the Commission of any change occurring to the information given to the Commission for the purposes of its registration under regulation 16(2)(a)(i) to (v) or to any information given to the Commission thereafter -

(a) prior to making such a change, or

(b) where a change is sudden or unexpected, promptly after such change is made,

and for the purposes of this paragraph a change to such information shall include

the intention to cease being a prescribed business to which these Regulations apply.

Conditions of registration.

18. (1) The Commission may, when registering a prescribed business or at any time thereafter, impose such conditions in respect of the registration as it thinks fit.

(2) The Commission may vary or rescind any condition of a registration.

(3) Without prejudice to the generality of paragraph (1), the conditions which may be imposed in respect of a registration may make provision in the interests of the clients or potential clients of the prescribed business and for the protection of the public or of the reputation of the Bailiwick as a finance centre, and conditions may (without limitation) -

(a) require the prescribed business to take certain steps, to refrain from adopting or pursuing a particular course of action or to restrict the scope of its business in a particular way,

(b) impose limitations on the acceptance or carrying on of business,

(c) prohibit the prescribed business from soliciting (whether at all or in any specified manner) business, either generally or from particular persons or classes of persons, or

(d) require the prescribed business to provide, in whatever form and manner and at whatever time the Commission may reasonably determine, evidence of compliance with any provision of, or made under, any of the relevant enactments.

(4) The Commission may give public notice of the imposition, variation or rescission of a condition in respect of a registration and the date from which any such condition is effective, and, in deciding whether or not to do so, the Commission shall have regard to the interests of the clients and potential clients of the prescribed business and the protection of the public and the reputation of the Bailiwick as a finance centre.

(5) Where the Commission decides, otherwise than with the agreement of the prescribed business concerned, to impose, vary or rescind any condition in respect of a registration, the Commission shall serve upon the prescribed business concerned, in accordance with the provisions of regulation 22, notice in writing of the decision setting out particulars of the condition in question.

Suspension of registration.

19. (1) The Commission may suspend the prescribed business's registration at the request of the business concerned.

(2) The suspension of a registration in pursuance of paragraph (1) shall be for such

period as is approved for the purpose by the Commission.

(3) During a period of suspension of a registration in pursuance of paragraph (1) the suspended prescribed business may not carry on, or hold itself out as carrying on, business of the description to which the registration relates in or from within the Bailiwick.

Surrender of registration.

20. (1) A prescribed business may surrender its registration by notice in writing served upon the Commission.

(2) A surrender shall take effect upon service of the notice or at such later date as may be specified therein and, where a later date is so specified, the prescribed business may by a further notice in writing served upon the Commission substitute an earlier date upon which the surrender is, subject as aforesaid, to take effect, not being earlier than the date upon which the further notice was served.

(3) The surrender of a registration shall be irrevocable unless it is expressed to take effect on a particular date and, before that date, the Commission, upon the written application of the prescribed business concerned by notice in writing to that business, allows the surrender to be withdrawn.

List of, and information as to, registered prescribed businesses.

21. (1) The Commission shall -

(a) establish and maintain, in such form as the Commission may determine, a list of all prescribed businesses which are for the time being registered under this Part,

(b) make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of that list, and

(c) publish a copy of the list on the Commission's official website.

(2) The list maintained under paragraph (1) shall contain, in relation to each prescribed business -

(a) a statement of -

(i) the legal name and any trading names of the business, and

(ii) its principal place of business and any other business addresses in the Bailiwick, and

(b) such other particulars as the Commission may determine.

(3) If at any time it appears to the Commission that the list maintained under paragraph

(1), or any particular contained in an entry in that list, is inaccurate, the Commission shall make such addition, erasure or other alteration to that list or entry as the Commission considers necessary.

(4) The Commission may give public notice of the fact -

(a) that a particular business -

(i) has been registered under this Part, or

(ii) has ceased to be registered by virtue of the voluntary suspension or surrender of the registration, or

(b) that a condition upon the registration of a particular business has been imposed, varied or rescinded,

and, in deciding whether or not to do so, the Commission shall have regard to the interests of the public and the protection and enhancement of the reputation of the Bailiwick as a finance centre.

Notice of Commission's decision to impose conditions, etc.

22. Notice of a decision of the Commission required to be served under regulation 18(5) -

(a) shall state the grounds of the Commission's decision, and

(b) shall give particulars of the right of appeal conferred by regulation 23.

Appeals against decisions of Commission.

23. (1) A person aggrieved by a decision of the Commission to impose, vary or rescind any condition in respect of his registration under regulation 18 may appeal to the Court against the decision.

(2) The grounds of an appeal under this regulation are that -

(a) the decision was ultra vires or there was some other error of law;

(b) the decision was unreasonable,

(c) the decision was made in bad faith,

(d) there was a lack of proportionality, or

(e) there was a material error as to the facts or as to the procedure.

(3) An appeal under this regulation shall be instituted -

(a) within a period of 28 days immediately following the date of the notice of the

Commission's decision, and

(b) by summons served on the Chairman, or vice-Chairman, of the Commission stating the grounds and material facts on which the appellant relies.

(4) The Commission may, where an appeal under this regulation has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution, and upon hearing the application the Court may -

(a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct), or

(b) make such other order as the Court considers just,

and the provisions of this paragraph are without prejudice to the inherent powers of the Court or to any other rule of law empowering the Court to dismiss the appeal or the application for want of prosecution.

(5) On an appeal under this regulation the Court may -

(a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or

(b) confirm the decision, in whole or in part.

(6) On an appeal under this regulation against a decision described in paragraph (1) the Court may, upon the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the condition in question, or the variation or rescission thereof, pending the determination of the appeal.

(7) In this regulation, "**the Court**" means the Royal Court constituted by the Bailiff sitting unaccompanied by the Jurats, and the Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto.

(8) An appeal from a decision of the Royal Court made under these Regulation shall lie to the Court of Appeal on a question of law.

PART V
MISCELLANEOUS

Extension of sections 49B and 49C of the Law.

24. Sections 49B and 49C of the Law extend in respect of any prescribed business as if references in those sections to "financial services business" or "section 49" were references to "prescribed business" and "section 49A" respectively.

Offences as to false or misleading information, etc.

25. (1) If a person -

(a) in connection with the submission of a statement for the purposes of obtaining a registration under these Regulations,

(b) in purported compliance with a requirement imposed by these Regulations, or

(c) otherwise than as mentioned in paragraph (a) or (b), but in circumstances in which that person intends, or could reasonably be expected to know, that any statement, information or document provided by him would or might be used by the Commission for the purpose of exercising its functions conferred by these Regulations,

does any of the following: -

(i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,

(iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

(2) A prescribed business, or any director, controller, partner, senior officer or beneficial owner of a prescribed business, who fails to provide the Commission with any information in his possession knowing or having reasonable cause to believe -

(a) that the information is relevant to the exercise by the Commission of its functions under these Regulations in relation to the business, and

(b) that the withholding of the information is likely to result in the Commission being misled as to any matter which is relevant to and of material significance to the exercise of those functions in relation to the business,

is guilty of an offence.

Other offences.

26. (1) A prescribed business -

(a) which -

(i) carries on, or

(ii) holds itself out as carrying on,

business in, or from within, the Bailiwick whilst it is not registered in accordance with regulation 16, or

(b) which is a registered prescribed business, or whilst under an obligation to register in accordance with regulation 16 is not so registered, and which contravenes, or fails to comply with any other provision of these Regulations,

is guilty of an offence.

(2) A registered prescribed business which breaches, or fails to comply with, a condition imposed under regulation 18 is guilty of an offence.

Penalties.

27. A person or body guilty of an offence under regulation 25 or 26 is liable -

(a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment not exceeding a term of five years or a fine or both.

Transitional provisions.

28. (1) A prescribed business must, on the 5th December, 2008, or within 14 days thereafter, send to the Commission a certificate, in such form as is approved by the Commission for the purpose, signed on behalf of the business certifying that it has, throughout the period -

(a) commencing -

(i) on the day that these Regulations are made, or

(ii) if later, the day that the business commences trading, and

(b) ending on 5th December, 2008,

satisfied the requirements set out in paragraph (2).

(2) The requirements for the purposes of paragraph (1) are that the business has complied with -

(a) such of these Regulations,

(b) such provisions of the Handbook issued by the Commission, and

(c) such instructions, or notices, issued by the Commission under the Law,

as may be in force during the relevant period referred to in paragraph (1) .

Limitation of liability of Commission.

29. (1) No liability shall be incurred by -

(a) the Commission, or

(b) any officer, servant or member of the Commission,

in respect of anything done or omitted to be done after the commencement of these Regulations in the discharge or purported discharge of its or their functions and powers under these Regulations.

(2) Subsection (1) does not apply -

(a) if the thing done or omitted to be done is shown to have been in bad faith, or

(b) so as to prevent an award of damages made in respect of an act or omission on the ground that the act or omission was unlawful by virtue of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000[e].

(3) The Commission shall have no obligation to make any enquiries concerning -

(a) a registration, or

(b) the continued registration,

of any prescribed business.

Interpretation.

30. (1) In these Regulations, unless the context requires otherwise -

"**account**" means a bank account and any other business relationship between a prescribed business and a client which is of a similar nature having regard to the services offered by the prescribed business,

"**Advocate**" means an Advocate of the Royal Court of Guernsey,
"**anonymous account**" means an account or business relationship set up in such a manner as to deliberately conceal the true identity of a client,

"**appendix C business**" means -

[e] Order in Council No. XIV of 2000 and No. I of 2005.

(a) a financial services business supervised by the Commission,

(b) a prescribed business registered under these Regulations, or

(c) a business -

(i) which is carried on from a country or territory listed in Appendix C to the Handbook and which would, if it were carried on in the Bailiwick, be -

(A) a financial services business, or

(B) a prescribed business,

(ii) which may only be carried on in that country or territory by a person regulated for that purpose under the law of that country or territory,

(iii) the conduct of which is subject to requirements to forestall, prevent and detect money laundering and terrorist financing that are consistent with those in the Financial Action Task Force Recommendations on Money Laundering in respect of such a business, and

(iv) the conduct of which is supervised for compliance with the requirements referred to in subparagraph (iii), by an overseas regulatory authority,

"**Bailiwick**" means the Bailiwick of Guernsey,

"**beneficial owner**" means, in relation to a business relationship or occasional transaction -

(a) the natural person who ultimately owns or controls the client, and

(b) a person on whose behalf the business relationship or occasional transaction is to be or is being conducted and, in the case of a trust or other legal arrangement, this shall mean -

(i) any beneficiary in whom an interest has vested, and

(ii) any other person who appears likely to benefit from that trust or other legal arrangement,

"**board**" means -

(a) the board of directors of a prescribed business, where it is a body corporate, or

(b) the senior management of a prescribed business, where it is not a body corporate,

"**business relationship**" means a continuing arrangement between the prescribed business in question and another party, to facilitate the carrying out of transactions, in the course of such prescribed business -

(a) on a frequent, habitual, or regular basis, and

(b) where the monetary value of any transactions to be carried out in the course of the arrangement is not known on entering into the arrangement,

"**business risk assessment**" means an assessment which documents the exposure of a business to money laundering and terrorist financing risks, and vulnerabilities, taking into account its -

(a) size, nature and complexity, and

(b) clients, products and services and the ways in which it provides those services,

"**the Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987[f],

"**client**" means a person or legal arrangement -

(a) who is seeking to establish or has established, a business relationship with a prescribed business, or

(b) who is seeking to carry out, or has carried out, an occasional transaction with a prescribed business,

except that where such a person or legal arrangement is an introducer, the client is the person or legal arrangement on whose behalf the introducer is seeking to establish or has established the business relationship and provided that in the case of the prescribed business of estate agency, a client also includes a person or legal arrangement who wishes to acquire an interest in, or in respect of, real property,

"**client due diligence**" means the steps which a prescribed business is required to carry out pursuant to regulation 4(3),

"**client due diligence information**" means -

(a) identification data, and

(b) any account, files and correspondence relating to the business relationship or occasional transaction,

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[f] Ordres en Conseil Vol. XXX, p. 243, Orders in Council No. XX of 1991, No. XIII of 1994, No. II of 1997, No. II of 1998 and Nos. XVII and XXI of 2002, No. XXII of 2003 and Ordinance No. XXXIV of 2005.

"**Disclosure Law**" means the Disclosure (Bailiwick of Guernsey) Law, 2007,

"**document**" includes information recorded in any form (including, without limitation, in electronic form),

"**employee**" means an individual working, including on a temporary basis, for a prescribed business whether under a contract of employment, a contract for services or otherwise,

"**enactment**" includes a Law, an Ordinance or any subordinate legislation and any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**enhanced client due diligence**" shall be construed in accordance with regulation 5(2)(a),

"**Financial Action Task Force Recommendations on Money Laundering**" means the Financial Action Task Force Recommendations on Money Laundering and the Financial Action Task Force Special Recommendations on Terrorist Financing as revised or reissued from time to time,

"**Financial Intelligence Service**" means the service, known by that title, comprising those police officers assigned to the service for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures which are more commonly known, or referred to, as suspicious transaction reports,

"**Handbook**" means the Handbook for Prescribed Businesses on Countering Financial Crime and Terrorist Financing as revised or re-issued from time to time by the Commission,

"**high risk relationship**" means a business relationship or an occasional transaction which has a high risk of involving money laundering or terrorist financing and related terms shall be construed accordingly,

"**identification data**" means documents which are from a reliable and independent source,

"**introducer**" means a financial services business or prescribed business which is seeking to establish or has established, on behalf of another person or legal arrangement who is its customer or client, a business relationship with a prescribed business,

"**the Law**" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"**legal arrangement**" means an express trust or any other vehicle whatsoever which has a similar legal effect,

"**low risk relationship**" means a business relationship or an occasional transaction

which has a low risk of involving money laundering or terrorist financing and related terms shall be construed accordingly,

"**minimum retention period**" means-

(a) in the case of any client due diligence information -

(i) a period of five years starting from the date-

(A) where the client has established a business relationship with the prescribed business, that relationship ceased,

(B) where the client has carried out an occasional transaction with the prescribed business, that transaction was completed, or

(ii) such other longer period as the Commission may direct,

(b) in the case of a transaction document -

(i) a period of five years starting from the date that both the transaction and any related transaction were completed, or

(ii) such other longer period as the Commission may direct,

"**money laundering**" is any act which -

(a) constitutes an offence under section 38, 39 or 40 of the Law,

(b) constitutes an offence under section 57, 58 or 59 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000[g],

(c) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a) or (b),

(d) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a) or (b), or

(e) would constitute an offence specified in paragraph (a), (b), (c) or (d) if done in the Bailiwick,

irrespective of the value of the property involved and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it,

"**money laundering reporting officer**" means a manager, partner or director -

(a) appointed by a prescribed business to have responsibility for compliance

[g] Order in Council No. VII of 2000 as amended by Order in Council No. II of 2005.

with policies, procedures and controls to forestall, prevent and detect money laundering and terrorist financing, and

(b) nominated by a prescribed business to receive disclosures under Part I of the Disclosure Law and section 12 of the Terrorism Law,

"**notify**" means notify in writing,

"**occasional transaction**" means any transaction involving more than £10,000, carried out by the prescribed business in question in the course of that business, where no business relationship has been proposed or established and includes such transactions carried out in a single operation or two or more operations that appear to be linked,

"**overseas regulatory authority**" means any body or authority which appears to the Commission to carry out, in a country or territory outside the Bailiwick, functions corresponding to those carried out by the Commission,

"**police officer**" has the meaning in section 51(1) of the Law,

"**politically exposed person**" shall be construed in accordance with regulation 5(2)(b),

"**prescribed business**" means any business which is a relevant business for the purposes of the Law, but does not include a business of a type described in paragraphs 2 or 4 of Schedule 2 to the Law,

"**registered prescribed business**" means a prescribed business which is registered under Part IV,

"**relevant employees**" means any -

(a) member of the board,

(b) member of the management of the prescribed business, and

(c) employees whose duties relate to the prescribed business,

"**relevant enactments**" means -

(a) the Money Laundering (Disclosure of Information) (Guernsey) Law, 1995[h],

(b) the Money Laundering (Disclosure of Information) (Alderney) Law, 1998[i],

(c) the Law,

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[h] Order in Council No. IV of 1995.
[i] Order in Council No. VII of 1998.

(d) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

(e) the Money Laundering (Disclosure of Information) (Sark) Law, 2001[j],

(f) the Terrorism (United Nations Measures) (Channel Islands) Order 2001[k],

(g) the Al-Qaida and Taliban (United Nations Measures) (Channel Islands) Order 2002[l],

(h) the Terrorism Law,

(i) the Disclosure Law,

(j) the Disclosure (Bailiwick of Guernsey) Regulations, 2007[m],

(k) the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007[n],

(l) the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) (Bailiwick of Guernsey) Regulations, 2008[o],

(m) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008,

and such other enactments relating to money laundering and terrorist financing as may be enacted or made from time to time in respect of the Bailiwick or any part thereof,

"**risk**" means a risk of money laundering or terrorist financing occurring and "**risk assessment**" shall be construed accordingly,

"**subordinate legislation**" means any ordinance, statutory instrument, regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect,

"**Terrorism Law**" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

"**terrorist financing**" means doing any act which -

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[j] Order in Council No. XXXII of 2001.
[k] S.I. 2001/3363 (registered on 11th October 2001) as amended by U.K. S.I. 2002/258 and the British Overseas Territories Act, s.2(3) an Act of Parliament.
[l] S.I. 2002/258 (registered on 18th February 2002) as amended by the British Overseas Territories Act 2002, s.2(3) an Act of Parliament.
[m] G.S.I. 2007 No. 34.
[n] G.S.I. 2007 No. 36.
[o] G.S.I. 2007 No. 33

(a) constitutes an offence under section 8, 9, 10 or 11 of the Terrorism Law and, for the purposes of this definition, the "purposes of terrorism" shall include, to the extent that they do not already do so -

(i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of section 1 of the Terrorism Law, or

(ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,

(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a),

(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a), or

(d) would, in the case of an act done otherwise than in the Bailiwick, constitute an offence specified in paragraph (a), (b) or (c) if done in the Bailiwick,

irrespective of the value of the property involved, and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it,

"**transaction document**" means a document which is a record of a transaction carried out by a prescribed business with a client or an introducer,

"**underlying principal**" means, in relation to a business relationship or occasional transaction, any person who is not a beneficial owner but who-

(a) is a settlor, trustee or a protector of a trust which is the customer, or client, or the beneficiaries of which are the beneficial owners, or

(b) exercises ultimate effective control over the customer or client or exercises or is to exercise such control over the business relationship or occasional transaction,

and in this definition "**protector**" has the meaning in section 58 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000[p],

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989[q],

and other expressions have the same meanings as in the Law.

(2) A reference to an enactment is to that enactment as from time to time amended,

[p] Order in Council No. I of 2001, amended by No. XIV of 2003.
[q] Ordres en Conseil Vol. XXXI, p. 278; Ordinance No. XXIX of 2006.

repealed and replaced, extended or applied by or under any other enactment.

(3) In these Regulations, unless the context requires otherwise words and expressions importing the neuter gender include the masculine and the feminine.

(4) The Interpretation (Guernsey) Law, 1948[r] applies to the interpretation of these Regulations.

[r] Ordres en Conseil Vol. XIII, p. 355.

APPENDIX F

LINKS TO USEFUL WEBSITE ADDRESSES

Selection of the link listed below will take you to the corresponding website.

Links to official sites in Guernsey

Guernsey Financial Services Commission
Guernsey Finance
Guernsey Financial Intelligence Service
States of Guernsey

Links to other official sites

Asia/Pacific Group on Money Laundering
Basel Committee for Banking Supervision
British Bankers Association
Caribbean Financial Action Task Force (CFATF)
Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL)
Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)
Eurasian Group (EAG)
European Parliament
Financial Action Task Force
Financial Action Task Force on Money Laundering in South America (GAFISUD)
Group of States against Corruption
HM Treasury
Intergovernmental Action Group against Money-Laundering in Africa (GIABA)
International Association of Insurance Fraud Agencies, Inc
International Association of Insurance Supervisors
International Monetary Fund
International Organization of Securities Commissions
Interpol
Isle of Man Financial Supervision Commission
Isle of Man Insurance and Pensions Authority
Jersey Financial Services Commission
Middle East and North Africa Financial Action Task Force (MENAFATF)
Offshore Group of Banking Supervisors
Offshore Group of Insurance Supervisors
Organisation for Economic Cooperation and Development
Transparency International Corruption Perception Index
UK Financial Services Authority
UK Foreign and Commonwealth Office
UK Joint Money Laundering Steering Group
UK Office of Public Sector Information
UK Serious Organised Crime Authority
United Nations
United Nations – Office on Drugs and Crime (UNODC)
World Bank

CHAPTER 13 – GLOSSARY

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13. GLOSSARY

13.1 Glossary of Terms

Account:

Account means a bank account and any other business relationship between a prescribed business and a client which is of a similar nature having regard to the services offered by the prescribed business.

Associated account:

Associated account refers to an account with the same prescribed business where any of the principals are connected with an account in the same group or structure.

Account activity:

The provision of an estimate of the total flow of funds in and out of an account together with an estimate of the expected maximum account turnover.

Beneficial owner:

The natural person who ultimately owns or controls the client, and a person on whose behalf the business relationship or occasional transaction is to be or is being conducted and, in the case of a trust or other legal arrangements, this shall mean any beneficiary in whom an interest has vested, and any other person who appears likely to benefit from that trust or other legal arrangement.

Board:

References in the Handbook to the Board refer to the board of directors of a prescribed business, where it is a body corporate, or the senior management of a prescribed business, where it is not a body corporate.

Business relationship:

A continuing arrangement between the prescribed business in question and another party, to facilitate the carrying out of transactions, in the course of such prescribed business – (i) on a frequent, habitual, or regular basis; and (ii) where the monetary value of any transactions to be carried out in the course of the arrangement is not known on entering into the arrangement.

Business risk assessment:

An assessment which documents the exposure of a business to money laundering and terrorist financing risks and vulnerabilities taking into account its size, nature and complexity and its clients, products and services and the ways in which it provides those services.

Client:

A person or legal arrangement who is seeking to establish or has established, a business relationship with a prescribed business, or to carry out or has carried out, an occasional transaction with a prescribed business. Except that where such a person or legal arrangement is an introducer, the client is the person or legal arrangement on whose behalf the introducer is seeking to establish or has established the business relationship and provided that in the case of the prescribed business of estate agency, a client also includes a person or legal arrangement who wishes to acquire an interest in, or in respect of, real property.

Client due diligence:

The steps which a prescribed business is required to carry out in order to identify and verify the identity of the parties to a relationship and to obtain information on the purpose and intended nature of each business relationship and occasional transaction.

Client due diligence information:

Identification data and any account files and correspondence relating to the business relationship or occasional transaction.

Document

Includes information recorded in any form (including, without limitation, in electronic form).

Employee:

An individual working, including on a temporary basis, for a prescribed business whether under a contract of employment, a contract for services or otherwise.

Express trust:

A trust clearly created by the settlor, usually in the form of a document, for example, a written deed of trust. They are to be contrasted with trusts which come into being through the operation of the law and which do not result from the clear intent or decision of a settlor to create a trust or similar legal arrangement (for example, a constructive trust).

FATF Recommendations:

The Forty Recommendations and the Nine Special Recommendations on Terrorist Financing issued by the Financial Action Task Force.

Financial exclusion:

Where individuals are prevented from having access to essential financial services, such as banking services, because they are unable, for valid reasons, to produce more usual

CDD documentation.

FIS:

Police Officers and Customs Officers who are members of the Financial Intelligence Service.

Foreign counterparts:

Authorities in another country or territory that exercise similar responsibilities and functions to the domestic authority referenced.

Funds:

Assets of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable and legal documents or instruments evidencing title to, or interest in, such assets.

Handbook:

The Handbook for Legal Professionals, Accountants and Estate Agents on Countering Financial Crime and Terrorist Financing as revised or re-issued from time to time by the Commission.

Identification data:

Data, documents or information, in any form whatsoever, which is from a reliable and independent source.

Introducer:

A financial services business or prescribed business which is seeking to establish or has established, on behalf of another person or legal arrangement who is its client, a business relationship with a prescribed business.

Legal arrangement:

An express trust or any other vehicle whatsoever which has a similar legal effect.

Legal body:

Bodies corporate, foundations, anstalt, partnerships, or associations, or any similar bodies that can establish a permanent client relationship with a prescribed business or otherwise own property.

Maintain:

The regulatory requirements of the Handbook make it clear that maintain in this context

is to be read to mean that relevant policies, procedures and controls must be established, implemented and that the prescribed business must monitor such policies, procedures and controls to ensure that they are operating effectively.

Occasional transaction:

Any transaction where a business relationship has not been established and the transaction is more than £10,000. This includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked. Transactions separated by an interval of three months or more, are not required, in the absence of evidence to the contrary, to be treated as linked.

PEPs:

Individuals who are or have been entrusted with prominent public functions in a country or territory other than Guernsey, for example. Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials. Business relationships with family members or close associates of PEPs involve reputational risks similar to those with PEPs themselves. The definition is not intended to cover middle ranking or more junior individuals in the foregoing categories.

Prescribed business:

As defined in regulation 30 of the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 as amended.

Proceeds:

Refers to any property derived from or obtained, directly or indirectly, through the commission of an offence.

Regulated market:

As defined in section 9 of the Insider Dealing (Securities and Regulated Markets) Order, 1996 as amended.

Relevant employees:

"Relevant employees" means any -

(a) member of the board,
(b) member of the management of the prescribed business, and
(c) employees whose duties relates to the prescribed business.

Settlor:

Persons or companies who transfer ownership of their assets to trustees.

Termination:

The conclusion of the relationship between the prescribed business and the customer. In the case of a business relationship, termination occurs on the closing or redemption of a product or service or the completion of the last transaction. With an occasional transaction, termination occurs on completion of that occasional transaction or the last in a series of linked transactions or the maturity, claim on or cancellation of a contract or the commencement of insolvency proceedings against a customer/client.

Transactions:

In the general context of the Handbook, the reference to transactions should be understood to include occasional transactions, any client facing functions, or the handling of business relationships.

Transaction document:

A document which is a record of a transaction carried out by a prescribed business with a client or an introducer.

Underlying principal:

In relation to a business relationship or occasional transaction, any person who is not a beneficial owner but who is a settlor, trustee or a protector of a trust which is the client or the beneficiaries of which are the beneficial owners, or exercises ultimate effective control over the client or exercises or is to exercise such control over the business relationship or occasional transaction.

Vested interest:

An interest which, whether or not currently in possession, is not contingent or conditional on the occurrence of any event.