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

CONSULTATION DRAFT
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PART 1 – REGULATORY REQUIREMENTS AND GUIDANCE NOTES

CHAPTER 1 – INTRODUCTION

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

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 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 an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest);

(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. A significant number of legal firms who have in the past provided services in respect of (d) and (e) 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). 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.

29. 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

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

31. 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 an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest);

(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,

32. 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). 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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

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

39. 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

40. 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

41. 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.

42. 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.

43. 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 Outsourcing

44. 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.

45. 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.

46. 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

47. 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.

48. 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

49. 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 financial services 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.

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

50. 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.

51. 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.

3.2 Benefits of a Risk-Based Approach

52. 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.

53. 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.

54. 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

55. 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.

56. 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 geographical origin;
  - the complexity of their legal and transaction structures;
  - the way they were introduced to the prescribed business; and
  - the 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

57. 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.

58. 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.

59. 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

60. 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.

61. 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.

62. 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.

63. 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; and
- the type, volume and value of activity that can be expected within the business relationship

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

65. 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.

66. 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

67. From time to time the Commission issues Business from Sensitive Sources Notices, Advisory Notices 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 appraises itself of the available information on a regular basis. Additionally, this information must be taken into consideration when creating a relationship risk profile.

68. 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.

69. 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 Profile indicators

70. 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.

71. 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 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

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

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

3.6 Monitoring the Effectiveness of Policies, Procedures and Controls

73. 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;
- staff screening and training; and
- monitoring compliance arrangements.

3.7 Documentation

74. 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

CHAPTER 4 – CLIENT DUE DILIGENCE

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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 financial services 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.

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

75. 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 has been assessed as neither high nor low.

76. Where the risk of a particular business relationship has been assessed as high, 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.

77. Where the risk of a particular business relationship has been assessed as low 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

78. 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

79. 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.

80. 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.

81. 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.

82. 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.

83. 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.

84. 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

85. 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.

86. 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.

87. For business relationships which have been identified as low risk see Chapter 6.

4.4.1 Identification data for individuals

88. 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

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

90. 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.

91. 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

92. 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.

93. 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.

94. 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.

95. 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.

96. 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.

97. Where establishing a face-to-face business relationship with 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

98. 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.

99. Where an individual has a valid reason for being unable to produce the requested documentation, and who would otherwise be excluded from accessing relevant 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

100. At a minimum, in situations where non-Guernsey resident clients wish to establish a business relationship and it is not practical to obtain original documentation, a prescribed business must obtain copies of identification data, which have been certified by a suitable certifier.

4.5.1 Suitable certifiers

101. 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.

102. 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.

103. A prescribed business must give consideration to the suitability of a certifier based on the assessed risk of the business relationship, 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.

104. 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.

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

106. 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.

4.5.2 Additional measures

107. Examples of adequate measures required by Regulation 5 in order to mitigate or manage the specific risks associated with non face-to-face business relationships or

transactions include:

- 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 bank situated in a country or territory listed in Appendix C to the Handbook.

4.5.3 Verification of residential address of overseas residents

108. 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.

109. 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

110. 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.

111. 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

112. 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.

113. 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.

114. 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.

115. 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.

116. 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.

117. 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.

118. 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.

119. 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.

120. 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

121. 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.

122. 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

123. 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.

124. 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, verification must be undertaken prior to any distribution of trust assets to (or on behalf of) that beneficiary.

125. 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.

126. 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

127. 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.

128. 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.

129. 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

130. 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.

131. 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.

132. 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.

133. In the circumstances set out in Regulation [10], a prescribed business may accept 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).

134. 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.

135. 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.

136. 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. The 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.

137. 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.

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

4.8.1 Group introducers

139. 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.

140. 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

141. Regulation [7] prescribes the timing for identification and verification of identity.

142. 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.

143. 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.

144. 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

145. 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

146. 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].

147. 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

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Regulation 5 Additional Client Due Diligence

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 financial services 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.

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

148. This chapter provides for the treatment of business relationships 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

149. Where a prescribed business has assessed 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

150. 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.

151. 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.

152. 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

153. 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.

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

155. 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

156. 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.

157 Prescribed business must have appropriate and effective procedures in place which include:

- having effective measures in place to ensure they are aware of concerns about weaknesses in the AML/CFT systems of other countries or territories;
- referral to senior management prior to establishing relationships from such countries or territories;
- identifying 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
- recording in writing the findings of such examinations in order to assist the Commission, the FIS and other domestic competent authorities.

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

- Business from Sensitive Sources Notices 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; 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

Page

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 financial services 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.

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

159. This chapter provides for the treatment of relationships which have been assessed pursuant to Regulation 3 as low risk relationships 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

160. 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 is low (for example, locally resident retail clients who have a business relationship which is understood by the prescribed business), 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.

161. 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.

162. 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.

163. 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.

164. 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

165. Where establishing a face-to-face business relationship with an individual client 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;
- current permanent address; and
- date, place of birth and nationality.

6.2.2 Verification of identity for face-to-face individuals

166. Subject to section 6.3, the legal name and either the current permanent address or the date and place of birth of the individual must be verified.

167. In order to verify the legal name and either the current permanent 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

168. 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 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.

6.3 Receipt of Funds as Verification of Identity

169. 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.

170. 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.

171. 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.

172. 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 identify 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.

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

173. 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

174. 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.

175. 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.

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

177. 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.

178. 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.

179. 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.

180. 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

181. 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.

182. 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.

183. 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.

184. 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.

185. 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.

186. 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

187. 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.

188. 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.

189. 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

Page

Key Regulations

Regulation 12 Reporting Suspicion

Sections in this Chapter

ADDITIONAL LEGISLATION

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

Financial services businesses must comply with the relevant provisions of the Disclosure (Bailiwick of Guernsey) Law, 2007 and the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, and 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:

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.

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

190. 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.

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

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

8.2 Obligation to Report

193. 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.

194. 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.

195. 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.

196. 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.

197. 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.

198. 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.

199. 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.

200. 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

201. 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

202. Prior to making a disclosure to the FIS the prescribed business should consider all available options in respect of the business relationship.

203. 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.

204. 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.

205. 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.

206. 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."

207. In the context of these three laws a prescribed business should note that the reference to an "officer" includes a police or customs officer, or an officer of the Commission – see section 8.9.

208. 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.

209. 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.

210. 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.

211. 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.

212. 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.

213. 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

214. 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.

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

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

8.5.1 Recording and discussion with the MLRO

217. 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.

218. 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

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

220. 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.

221. 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.

222. 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.

223. 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.

224. 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.

225. 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

226. 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.

227. 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.

228. 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.

229. 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

230. 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.

231. 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 Reports to the Commission

232. In addition to making a disclosure to the FIS, prescribed businesses should at the same time make such disclosures to the Commission, where:

- the policies, procedures and controls of the prescribed business failed to detect the transaction or activity and the matter had been brought to the attention of the prescribed business in another way (for example, by the FIS) – unless the FIS has specifically requested that such information should not be communicated to another person;
- the transaction or activity may present a significant reputational risk to Guernsey and/or the prescribed business;
- it is suspected that an employee of the prescribed business was involved; or
- an employee of the prescribed business has been dismissed for serious breaches of its internal policies, procedures and controls

233. Disclosures to the Commission should be in the same format and contain the same information as those provided to the FIS.

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 financial services 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.

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

234. 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

235. 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).

236. 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

237. 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.

238. 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

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

240. 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.

241. 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.

242. 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.

243. 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.

244. 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

245. 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.

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

9.4.2 The Board and senior management

247. 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.

248. 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

249. 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.

250. 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.

251. 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

252. 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.

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

254. 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.

255. 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.

256. 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

Page

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 financial services business. See below.
- Regulation 15, which makes provisions in relation to the review of compliance. See Chapter 2.

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

257. 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

258. 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

259. 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
- information as to where copies of the identification data may be obtained.

10.2.2 Transactions

260. 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.

261. 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.

262. 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

263. 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

264. 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

265. 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

266. 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

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

268. 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.

269. 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.

270. 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

271. The minimum retention periods are set out in Regulation [14].

272. When considering its policies, procedures and controls for the keeping of documents, a prescribed business should weigh the needs of the investigating authorities against normal commercial considerations.

273. For example, when original vouchers are used for account entry, and are not returned to the client or agent, it is of assistance to the authorities if these original documents are kept for at least one year to assist forensic analysis (for example, to investigate and prosecute cheque fraud).

10.5 Requirements on Closure or Transfer of Business

274. 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

financial service provider 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

275. 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.

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

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

11.1 Legal Professionals

278. 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.

279. 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

280. 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.

281. 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.

282. 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.

283. 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.

284. 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.

285. 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.

286. 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).

287. 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.

288. 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

289. 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.

290. 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.

291. 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.

292. 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.

293. 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

294. 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

295. 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.

296. 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

297. 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.

298. 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

299. 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.

300. 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.

301. 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

302. 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

303. 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.

304. 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

305. 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.

306. 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.

307. 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

308. 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.

309. 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.

310. 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.

311. 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.

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

11.3.1.6 Third party funding

313. 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.

APPENDIX A (CONTINUED)

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

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; or

(b) a prescribed business supervised by the Commission; 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 financial services business or 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 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 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.

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.

Prescribed business:

[As defined in the schedule to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, as amended by the Criminal Justice (Proceeds of Crime) (Lawyers, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008.]

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 Lawyers, 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.

Proceeds:

Refers to any property derived from or obtained, directly or indirectly, through the commission of an offence.

Recognised investment exchange:

An investment exchange which appears to the Commission to be situate in and recognised as an investment exchange within the meaning of the law relating to investment exchanges of:

(a) any member state of the European Economic Community; or
(b) any prescribed country or territory; or
(c) any country or territory specified in writing by the Commission in any particular case for any particular purpose.

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.

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.