

Feedback on the Commission’s consultation paper on amendments to Handbook to apply counter proliferation financing controls

Background

On 12 January 2024 the Commission issued a consultation on proposals to amend rules and guidance in the Handbook on Countering Financial Crime and Terrorist Financing (the “Handbook”) to support the extension of the existing anti-money laundering and terrorist financing obligations upon specified businesses to countering proliferation financing. The Commission also took the opportunity to update the Handbook to take account of the recent publication of the second National Risk Assessment (the “NRA”) on the money laundering, terrorist financing and proliferation financing risks to the Bailiwick, changes to the rules on pooled bank accounts for local businesses and changes to chapter 12 of the Handbook on UN, UK and Bailiwick sanctions, as well as other minor changes.

This consultation closed on 2 February 2024 with twelve responses. Feedback and comments were received from a wide range of industry sectors; either from firms themselves or via their industry bodies.

The Commission is grateful to everyone who replied to the consultation.

Summary

The message from the majority of respondents was positive and supportive of the proposed amendments. Respondents did raise queries and propose suggestions, so a summary of the most common queries raised that have not been incorporated into the updated Handbook, together with the Commission’s response, is included below:

Q1: Can the proliferation financing (“PF”) hubs jurisdictional list be included in the Handbook as an appendix, with updates being published as and when required?

It is not possible to provide a definitive list of jurisdictions which would be regarded as PF hubs as it would be overly prescriptive and not reflect how rapidly a jurisdiction’s exposure to PF can change. There is information in the PF NRA about the jurisdictions which act as PF hubs for the two sanctioned countries in terms of shipment of goods, military cooperation and financing which will assist firms on this. Geography is only one element of a PF business risk assessment (“BRA”) which should also factor in types of customers, products, services, transactions and delivery channels.

Q2: Is it reasonable to expect firms to be able to ascertain the risks of products or services being stolen by a state actor, as described in draft guidance at 3.113(c) which highlights that Iran and North Korea use virtual assets to help finance their weapons programme and are widely reported to carrying out hacking?

This is guidance for firms on the sort of risk factors to consider when assessing the risk posed by products, services and transactions where certain types of assets to which those products, services or transactions relate may be more susceptible to theft than other asset types. The purpose of such guidance is to highlight that certain assets are more vulnerable to being stolen by a state actor. If firms handle these types of assets, they should be aware of these risks and manage and mitigate them accordingly.

Q3: Throughout the proposed updates, reference is specifically made to North Korea and Iran with respect to proliferation financing. Will the Commission have to update these references in the Handbook as and when changes to jurisdictions are made?

The Commission will need to update these references in the Handbook when changes to these jurisdictions are made but this is likely to be much less frequent than the changes we make to the list of higher risk jurisdictions in Appendix I.

Q4: Should references in chapter 17 of the Handbook to the dates for the transitional provisions in Schedule 3 of Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law for business risk assessments and policies and procedures be updated?

No – this is because those dates have not been amended within Schedule 3 and the reference to those dates in the Handbook simply reflect what is in the Law.

Q5: Why is there is no reference to the date that the updated policies, procedures and controls must be updated for proliferation financing purposes?

There is no date for updating policies, procedures and controls because Handbook Rule 3.57 (3.58 in the updated version) states that where changes to BRAs are made, the firm must consider whether its policies, procedures and controls remain appropriate and effective or require updating and if so, do so on a timely basis. As firms are being required to undertake a PF BRA by 31 December 2024, any updates required to their policies, procedures and controls should be made soon after completing that assessment.

Next steps

The Commission has updated the Handbook following consideration of the feedback received. The updated Handbook will be issued on Friday 16 February 2024.