Guernsey Financial Services Commission

Handbook on Countering Financial Crime and Terrorist Financing

~~June 2017~~ November 2018

Key Changes to Consultation Version Tracked

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Introduction

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1.1. Introduction

1. The laundering of criminal proceeds, the financing of terrorism and the financing of the proliferation of weapons of mass destruction (henceforth referred to collectively as "ML and FT") 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.

2. 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 ("*the Bailiwick*") as a well-respected international financial centre depends on its ability to prevent the abuse of its financial services business ("*FSB*") and prescribed business ("*PB*") sectors by criminals and terrorists.

1.2. Background and Scope

3. *The Bailiwick* authorities are committed to ensuring that criminals, including money launderers, terrorists and those financing terrorism or the proliferation of weapons of mass destruction, cannot launder the proceeds of crime through *the Bailiwick* or otherwise use *the Bailiwick's* finance and business sectors. The Guernsey Financial Services Commission ("*the Commission*") endorses the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation issued by the Financial Action Task Force ("FATF" and the "*FATF Recommendations*"). This *Handbook* is a statement of the standards expected by *the Commission* of all *specified businesses* in *the Bailiwick* to ensure *the Bailiwick's* compliance with the *FATF Recommendations*.

4. Should a *specified business* assist in laundering the proceeds of crime or in the financing of a terrorist act or organisation, it could face regulatory investigation, the loss of its reputation, and law enforcement investigation. The involvement of a *specified business* with criminal proceeds or terrorist funds would also damage the reputation and integrity of *the Bailiwick* as an international finance centre.

5. Under Section 1(1) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as amended ("*the Law*") all offences that are indictable under the laws of *the Bailiwick* are considered to be predicate offences and therefore funds or any type of property, regardless of value, acquired either directly or indirectly as the result of committing a predicate offence, are considered to be the proceeds of crime. Under *Bailiwick* law all offences are indictable, with the exception of some minor offences which mainly concern public order and road traffic. The range of predicate offences is therefore extremely wide and includes, but is not limited to, the following:

   (a) participation in an organised criminal group and racketeering;
   (b) terrorism, including *FT*;
   (c) financing of proliferation of weapons of mass destruction;
   (d) human trafficking and migrant smuggling;
   (e) sexual exploitation, including sexual exploitation of children;
   (f) illicit trafficking in narcotic drugs and psychotropic substances;
   (g) illicit arms trafficking;
   (h) illicit trafficking in stolen and other goods;
   (i) corruption and bribery;
   (j) fraud and tax evasion;
   (k) counterfeiting and piracy of products;
   (l) environmental crime;
   (m) murder, manslaughter and grievous bodily injury;

(n) kidnapping, illegal restraint and hostage taking;
(o) robbery and theft;
(p) smuggling;
(q) extortion;
(r) forgery;
(s) piracy; and
(t) insider trading and market manipulation.

6. *The Bailiwick's* anti-money laundering ("AML") and countering the financing of terrorism ("CFT") legislation (and by extension this *Handbook*) applies to all *specified businesses* conducting business in *the Bailiwick*. This includes *Bailiwick*-based branches and offices of companies incorporated outside of *the Bailiwick* conducting financial services and/or prescribed business within *the Bailiwick*. In this *Handbook* all references to 'the firm' shall have the same meaning as *specified business* in Paragraph 21(1) of *Schedule 3*, and includes all such businesses whether natural persons, *legal persons* or *legal arrangements*, including but not limited to, companies, partnerships and sole traders.

~~7.~~ *Schedule 3* to *the Law* (referred to henceforth as "*Schedule 3*") and this *Handbook* have been drafted to take into account the fact that not all of the requirements of the *FATF Recommendations* are relevant to all businesses. ~~This *Handbook* also recognises not only the differences between *PBs* and the financial services sector, but also the links between individual firms, particularly in the area of property transactions in some of the islands in *the Bailiwick*.~~

~~8.~~

~~9.~~7. In this regard, while ~~the requirements of *Schedule 3* and this *Handbook* (which provide for~~certain provisions (for example, the ~~undertaking~~ application of a *risk*-based approach, corporate governance, *customer due diligence* ("*CDD*"), suspicion reporting, *employee* training and record keeping) apply equally to all firms, there are other requirements ~~of *Schedule 3* and~~ set out in this *Handbook* which may not be as relevant to some particular areas of industry (for example, *wire transfers*). Taking such an approach to the drafting of *Schedule 3* and this *Handbook* ~~helps~~ is intended to prevent the application of unnecessary and bureaucratic standards.~~The application of these latter requirements will be dependant not only upon the assessed risk of the business itself but also upon the nature of the business undertaken.~~

1.3. The Bailiwick's AML and CFT Framework

~~10.~~8. *The Bailiwick's* AML and CFT framework includes the following legislation (henceforth referred to as "*the Relevant Enactments*"):

(a) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
(b) The Drug Trafficking (Bailiwick of Guernsey) Law, 2000;
(c) The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011;
(d) The Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011;
(e) The Afghanistan (Restrictive Measures) (Alderney) Ordinance, 2011;
(f) The Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011;
(g) The Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013;
(h) The Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013;
(i) The Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013;
(j) The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
(k) The Disclosure (Bailiwick of Guernsey) Law, 2007;
(l) The Transfer of Funds (Guernsey) Ordinance, 2017;
(m) The Transfer of Funds (Alderney) Ordinance, 2017;
(n) The Transfer of Funds (Sark) Ordinance, 2017;
(o) The Disclosure (Bailiwick of Guernsey) Regulations, 2007;
(p) The Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007;

(q) The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008;
(r) The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008;
(s) The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017;
(t) The Beneficial Ownership of Legal Persons (Alderney) Law, 2017;
(u) The Beneficial Ownership (Definition) Regulations, 2017;
(v) The Beneficial Ownership (Alderney) (Definitions) Regulations, 2017;
(w) The Beneficial Ownership of Legal Persons (Provision of Information) (Transitional Provisions) Regulations, 2017;
(x) The Beneficial Ownership of Legal Persons (Provision of Information) (Transitional Provisions) (Alderney) Regulations, 2017;
(y) The Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017;
(z) The Beneficial Ownership of Legal Persons (Nominee Relationships) (Alderney) Ordinance, 2017; and
~~(q)~~(aa) The Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017;

and such other enactments relating to *ML* and *FT* as may be enacted from time to time in *the Bailiwick.*

~~11.~~9. Sanctions legislation is published by the States of Guernsey's Policy & Resources Committee and can be accessed via the below website:

www.gov.gg/sanctions

1.4. Handbook Purpose

~~12.~~10. This *Handbook* has been issued by *the Commission* and, together with statements and instructions issued by *the Commission*, contains the rules and guidance referred to in: Section 49AA(7) of *the Law*; Paragraph 3(7) of *Schedule 3* to *the Law*; Section 15(8) of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as amended ("*the Terrorism Law*"); Section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007 as amended ("*the Disclosure Law*"); and Section 11 of the Transfer of Funds (Guernsey) Ordinance, 2017, the Transfer of Funds (Alderney) Ordinance, 2017 and the Transfer of Funds (Sark) Ordinance, 2017 ("*the Transfer of Funds Ordinance*").

~~13.~~11. This *Handbook* is issued to assist the firm in complying with the requirements of the relevant legislation concerning *ML* and *FT*, financial crime and related offences to prevent *the Bailiwick's* financial system and operations from being abused for *ML* and *FT*. *The Law* and *the Terrorism Law* as amended state that *the Bailiwick* courts shall take account of rules made and instructions and guidance given by *the Commission* in determining whether or not the firm has complied with the requirements of *Schedule 3*.

~~14.~~12. This *Handbook* has the following additional purposes:

(a) to outline the legal and regulatory framework for AML and CFT requirements and systems;
(b) to interpret the requirements of *the Relevant Enactments* and provide guidance on how they may be implemented in practice;
(c) to indicate good industry practice in AML and CFT procedures through a proportionate, *risk*-based approach; and
(d) to assist in the design and implementation of systems and controls necessary to mitigate the *risks* of the firm being used in connection with *ML* and *FT* and other financial crime.

13. The *Commission* acknowledges the differing approaches adopted by *specified businesses* to achieve compliance with the requirements of *the Relevant Enactments* and *Commission Rules*.

This *Handbook* therefore seeks to adopt a technology neutral stance, allowing the firm to embrace whichever technological solution(s) it deems appropriate to meet its obligations. Further information about the use of technology can be found in Chapter 3 of this *Handbook*.

1.5. Requirements of Schedule 3

~~15.~~14. *Schedule 3* includes requirements relating to:

(a) *risk assessment* and mitigation;
(b) applying *CDD* measures;
(c) monitoring *customer* activity and ongoing *CDD*;
(d) reporting suspected *ML* and *FT* activity;
(e) *employee* screening and training;
(f) record keeping; and
(g) ensuring compliance, corporate responsibility and related requirements.

~~16.~~15. Any paraphrasing of *Schedule 3* within parts of this *Handbook* represents *the Commission's* own explanation of that schedule and is for the purposes of information and assistance only. *Schedule 3* remains the definitive text for the firm's AML and CFT obligations. *The Commission's* paraphrasing does not detract from the legal effect of *Schedule 3* or from its enforceability by the courts. In case of doubt, you are advised to consult a *Bailiwick* Advocate.

1.6. Structure and Content of the Handbook

~~17.~~16. This *Handbook* takes a two-level approach:

(a) Level one ("*Commission Rules*") sets out how *the Commission* requires the firm to meet the requirements of *Schedule 3*. Compliance with the *Commission Rules* will be taken into account by the courts when considering compliance with *Schedule 3* (which is legally enforceable and a contravention of which can result in prosecution); and
(b) Level two ("*guidance*") presents ways of complying with *Schedule 3* and the *Commission Rules*. The firm 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 firm, so long as it can demonstrate that such measures also achieve compliance with *Schedule 3* and the *Commission Rules*.

~~18.~~17. When the requirements~~obligations in~~ of *Schedule 3* are explained or paraphrased in this *Handbook*, the term 'shall' is used and the text is presented in blue shaded boxes for ease of reference. ~~and r~~Reference is also made to the relevant paragraph(s) of *Schedule 3*.

~~19.~~18. Where the *Commission Rules* are set out, the term 'must' is used and the text is presented in red shaded boxes to denote that these are rules.

~~20.~~19. In both cases the terms 'shall' and 'must' indicate that these provisions are mandatory and subject to the possibility of prosecution (in the case of a contravention of *Schedule 3*) as well as regulatory sanction and any other applicable sanctions.

~~21.~~20. In respect of *guidance*, this *Handbook* uses the terms 'should' or 'may' to indicate ways in which the requirements of *Schedule 3* and the *Commission Rules* can be satisfied, but allowing for alternative means of meeting the requirements as deemed appropriate by the firm.

~~22.~~21. *The Commission* will from time to time update this *Handbook* to reflect new legislation, developments in the financial services and *PB* sectors, changes to international standards, good practice and amendments to *Schedule 3* or *the Relevant Enactments*.

~~23.~~22. This *Handbook* is not intended to provide an exhaustive list of appropriate and effective policies, procedures and controls to counter *ML* and *FT*. The structure of this *Handbook* is such that it permits the firm to adopt a *risk*-based approach appropriate to its particular circumstances. The firm should give consideration to additional measures which may be necessary to prevent any exploitation of it and of its products, services and/or delivery channels by persons seeking to carry out *ML* and/or *FT*.

1.7. Significant Failure to Meet the Required Standards

~~24.~~23. For any firm, whether regulated by or registered with *the Commission*, the primary consequences of any significant failure to meet the standards required by *Schedule 3*, the *Commission Rules* and *the Relevant Enactments* will be legal ones. In this respect *the Commission* will have regard to the firm's compliance with the provisions of *Schedule 3*, the *Commission Rules* and *the Relevant Enactments* when considering whether to take enforcement action against it in respect of a breach of any requirements of the aforementioned. In such cases, *the Commission* has powers to impose a range of disciplinary and financial sanctions, including the power to withdraw, restrict or suspend the licence of the firm where applicable.

~~25.~~24. Where the firm is regulated by *the Commission*, *the Commission* is entitled to take such failure into consideration in the exercise of its judgement as to whether the firm and its directors and managers have satisfied the minimum criteria for licensing. In particular, in determining whether the firm is carrying out its business with integrity and skill and whether a natural person is fit and proper, *the Commission* must have regard to compliance with *Schedule 3*, the *Commission Rules* and *the Relevant Enactments*.

~~26.~~25. In addition, *the Commission* can take enforcement action under *the Regulatory Laws* and/or *the Financial Services Commission Law* for any contravention of the *Commission Rules* where the firm is licensed under one or more of ~~*those*~~ *the Regulatory Laws*~~laws and/or under the Financial Services Commission Law~~.

~~27.~~26. Where the firm is not regulated by, but is registered with *the Commission*, *the Commission* is entitled to consider compliance with *Schedule 3*, the *Commission Rules* and *the Relevant Enactments* when exercising its judgement in considering the continued registration of the firm. In this respect *the Commission* can also take enforcement action under *the NRFSB Law* and *the PB Law* where the firm is registered with *the Commission* under those laws.

1.8. Data Protection

27. *The Bailiwick's* AML and CFT legislation requires the firm to collate and retain records and *documentation*. Where such records and *documentation* contain personal data, the firm will need to comply with the Data Protection (Bailiwick of Guernsey) Law, 2017 ("*the Data Protection Law*") which brings *the Bailiwick* into line with the European Union's ("EU") regulation on data protection and privacy for all individuals within the EU.

http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=113397&p=0
https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32016R0679

~~1.8.~~1.9. The Financial Action Task Force

28. The FATF is an inter-governmental body that was established in 1989 by the ministers of its member jurisdictions. The mandate of the FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating *ML*, *FT*, the

financing of the proliferation of weapons of mass destruction and other related threats to the integrity of the international financial system.

29. The *FATF Recommendations* are recognised as the global AML and CFT standard. The *FATF Recommendations* therefore set an international standard which countries should implement through measures adapted to their particular circumstances. The *FATF Recommendations* set out the essential measures that countries should have in place to:

(a) identify risks and develop policies and domestic co-ordination;
(b) pursue ML, *FT* and the financing of proliferation of weapons of mass destruction;
(c) apply preventive measures for the financial sector and other designated sectors;
(d) establish powers and responsibilities for the competent authorities (for example, investigative, law enforcement and supervisory authorities) and other institutional measures;
(e) enhance the transparency and availability of beneficial ownership information of *legal persons* and *legal arrangements*; and
(f) facilitate international co-operation.

~~1.9.~~1.10. The National Risk Assessment

30. In accordance with the *FATF Recommendations*, *the Bailiwick*, led by the States of Guernsey's Policy & Resources Committee, has conducted a National Risk Assessment ("*NRA*"). The *NRA* adopts the International Monetary Fund ("IMF") methodology and in this respect the relevant agencies within *the Bailiwick* have liaised closely with the IMF and industry to ensure a thorough assessment of the *ML* and *FT* risks *the Bailiwick* faces.

31. The assessment of *risks* and vulnerabilities detailed within the *NRA* will naturally cascade through to *specified businesses* within *the Bailiwick*. In this respect, references are made throughout *Schedule 3* and this *Handbook* requiring the firm to have regard to the content of the *NRA* when undertaking certain activities, for example, the formulation of its *business risk assessments* and *risk appetite*.

32. *The Bailiwick* will continue to review the *NRA* on an on-going and trigger-event basis, making changes as necessary taking into account market changes, the advancement of technology and data collected from industry, for example, through various surveys and~~,~~ regulatory returns ~~and other statistical revenues~~.

33. A copy of *the Bailiwick's NRA* can be found on the website of the States of Guernsey's Policy & Resources Committee:

National Risk Assessment [Awaiting Publication]

1.11 MONEYVAL

34. The Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism ("MONEYVAL") is a monitoring body of the Council of Europe. The aim of MONEYVAL is to ensure that its member states have in place effective systems to counter *ML* and *FT* and comply with the relevant international standards in these fields.

35. On 10 October 2012 the Committee of Ministers of the Council of Europe, following a request by the United Kingdom ("UK"), adopted a resolution to allow *the Bailiwick*, the Bailiwick of Jersey and the Isle of Man (the "*Crown Dependencies*") to participate fully in the evaluation process of MONEYVAL and to become subject to its procedures.

36. MONEYVAL's most recent evaluation of *the Bailiwick* was conducted during October 2014 and assessed *the Bailiwick's* compliance with the FATF 2003 Recommendations. In its report, published on 15 January 2016, MONEYVAL concluded that *the Bailiwick* has 'a mature legal and regulatory system' and surpassed the equivalent review by the IMF in 2010.

www.coe.int/en/web/moneyval/jurisdictions/guernesey

Chapter 2
Corporate Governance

Contents of this Chapter

2.1. Introduction

1. Good corporate governance should provide proper incentives for the *board* and senior management to pursue objectives that are in the interests of the firm and its shareholders and should facilitate effective monitoring of the firm for compliance with its AML and CFT obligations.

2. The Organisation for Economic Co-operation and Development ("OECD") describe the corporate governance structure of a firm as the distribution of rights and responsibilities among different participants, such as the *board*, managers and other stakeholders, and the defining of the rules and procedures for making decisions on corporate affairs.

3. The presence of an effective corporate governance system, within an individual company and across an economy as a whole, is key to building an environment of trust, transparency and accountability necessary for fostering long-term investment, financial stability and business integrity and helps to provide a degree of confidence that is necessary for the proper functioning of a market economy.

4. This Chapter, together with *Schedule 3*, provide a framework for the oversight of the policies, procedures and controls of the firm to counter *ML* and *FT*.

5. In accordance with Paragraph 21(2) of *Schedule 3*, references in this Chapter and in the wider *Handbook* to the "*board*" shall mean the board of directors of the firm where it is a body corporate, or the senior management of the firm where it is not a body corporate (but is, for example, a partnership or a branch).

6. With reference to Paragraph 21(3) of *Schedule 3*, where the firm is a sole trader (for example, a personal fiduciary licence holder or a natural person registered as a *prescribed business* operating alone), references to the "*board*" are references to the natural person named in the licence or registration issued by *the Commission*, unless specified otherwise within this *Handbook*.

2.2. GFSC Code of Corporate Governance

~~6.~~7. The firm is expected to maintain good standards of corporate governance. In order to provide locally regulated *FSBs* and individual directors with a framework for sound systems of corporate governance and to help them discharge their duties efficiently and effectively, *the Commission* has issued the Finance Sector Code of Corporate Governance ("*the Code*").

https://www.gfsc.gg/sites/default/files/20160218%20-%20Finance%20Sector%20Code%20of%20Corp%20%20Gov.pdf

~~7.~~8. *The Code* is a formal expression of good governance practice against which *the Commission* can assess the degree of governance exercised over regulated persons. In this regard, *the Commission* is focussed on outcomes based regulation, i.e. *the Code* focuses on high-level principles which allow each firm to meet the requirements in a manner suitable to the specific ~~regulated person's~~*FSB's* business without having to adhere to prescriptive rules.

~~8.~~9. Whilst *the Code* does not apply to firms registered with *the Commission* under *the NRFSB Law* or *the PB Law*, to partnerships, or to *Bailiwick* branches of foreign domiciled companies, ~~the~~ its content can be helpful ~~used~~ as a guide to *the Commission's* expectations when assessing compliance with this Chapter by those businesses.

2.3. Board Responsibility for Compliance

~~9.~~10. The *board* of the firm has effective responsibility for compliance with *Schedule 3* and the *Commission Rules*. References to compliance in this *Handbook* generally are to be taken as references to compliance with *Schedule 3* and the *Commission Rules*.

~~10.~~11. The *board* of the firm is responsible for managing the ~~business~~ firm effectively and is in the best position to understand and evaluate all potential risks to the firm, including those of *ML* and *FT*. The *board* must therefore take ownership of, and responsibility for, the *business risk assessments* and ensure that they remain up to date and relevant.

~~11.~~12. More information on the process and requirements for conducting *business risk assessments* can be found in Chapter 3 of this *Handbook*.

~~12.~~13. The *board* must organise and control the firm effectively, including establishing and *maintaining* appropriate and effective policies, procedures and controls as detailed below, and having adequate resources to manage and mitigate the identified *risks* of *ML* and *FT* taking into account the size, nature and complexity of its business.~~cost effectively.~~

14. Taking into account the conclusions of the *business risk assessments*, in accordance with Paragraph 2(b) of *Schedule 3*, the firm shall have in place effective policies, procedures and controls to identify, assess, mitigate, manage, review and monitor those *risks* in a way that is consistent with the requirements of *Schedule 3*, *the Relevant Enactments*, the *NRA* and the *Commission Rules* in this *Handbook*.

15. In addition to the general duty to understand, assess and mitigate *risks* as set out in Paragraph 2 of *Schedule 3* and the requirement to *maintain* effective policies, procedures and controls contained therein, the firm should be aware that other paragraphs of *Schedule 3* and this *Handbook* also contain more specific requirements in respect of the policies, procedures and controls required to mitigate particular *risks*, threats and vulnerabilities.

~~13.~~16. These policies, procedures and controls should enable the firm to comply with the requirements of *Schedule 3* and the *Commission Rules*, including amongst other things, to:

(a) conduct, document and *maintain business risk assessments*~~, covering all aspects of the firm and its operations,~~ to identify the inherent *ML* and *FT risks* to the firm and to define the firm's AML and CFT *risk appetite* (see Chapter 3);

(b) conduct *risk* assessments of all ~~customers~~ *business relationships* and *occasional transactions* to identify those to which ~~ACDD and/or~~ Enhanced Customer Due Diligence ("*ECDD*") measures and monitoring must be applied, and those to which Simplified Customer Due Diligence ("*SCDD*") measures can be applied where this is considered appropriate (see Chapter 3);

~~(c)~~ apply sufficient Customer Due Diligence ("*CDD*") measures to identify, and verify the identity of, *customers*, *beneficial owners* and other *key principals*, ~~including~~ whether natural persons, *legal persons* and *legal arrangements*, and to ~~understand why the *customer* is using the firm's products and services and that these reasons are consistent with the firm's understanding of the rationale for the arrangement (see Chapters 4-7);~~

~~(d)~~(c) ~~identify *customers* to an extent sufficient to~~ establish ~~the *beneficial owners* and *underlying principals* and~~ the purpose and intended nature of the *business relationship* or *occasional transaction* (see Chapters 4-7);

~~(e)~~(d) apply *ECDD* measures to those ~~customers~~ *business relationships* and *occasional transactions* deemed to pose a high *risk* of *ML* ~~and~~/or *FT* and/or *enhanced measures* to those *business relationships* or *occasional transactions* involving, or in relation to, one or

more of the higher *risk* factors prescribed by Paragraph 5(2) of *Schedule 3*, sufficient to mitigate ~~any~~ the specific *risks* arising (see Chapter 8);

~~(f) apply ACDD measures where the customer falls within the categories listed in paragraph 5(2) of Schedule 3 (see chapter 5);~~

~~(g)~~(e) apply *SCDD* measures in an appropriate manner where the circumstances of a *business relationship* or *occasional transaction* are such that the *ML* and *FT risks* have been assessed as low (see Chapter 9);

~~(h)~~(f) conduct transaction and activity monitoring (see Chapter 11);

~~(i)~~(g) monitor *business relationships* on a frequency appropriate to the assessed *risk* to ensure that any unusual, adverse or suspicious activity is highlighted and given additional attention (see Chapter 11);

~~(j)~~(h) screen *customers*, *payees*, *beneficial owners*~~, and *underlying principals*~~ and other *key principals* ~~at an appropriate frequency~~ to enable the prompt identification of any natural persons, *legal persons* or *legal arrangements* subject to United Nation ("UN"), European Union ("EU") or other sanction (see Chapter 12);

~~(k)~~(i) report promptly to the *FIS* where an *employee*~~the firm~~ knows or suspects, or has reasonable grounds for knowing or suspecting, that ~~a customer or potential customer~~another person is involved in *ML* and/or *FT* (including ~~an~~ in connection with an attempted transaction) (see Chapter 13);

~~(l)~~(j) screen transfers of *funds* for missing or incomplete *payer* and *payee* information where the firm is a payment service provider (*"PSP"*) (see Chapter 14);

~~(m)~~(k) screen potential *employees* to ensure the ~~suitability,~~ probity and competence of *board* and staff members (see Chapter 15);

~~(n)~~(l) provide suitable and sufficient AML and CFT training to all *relevant employees*, identify those *employees* to whom additional training must be provided and provide such additional training (see Chapter 15);

~~(o)~~(m) maintain records for the appropriate amount of time and in a manner which enables the firm to access relevant data in a timely manner (see Chapter 16); and

~~(p)~~(n) ensure that, where the firm is a majority owner or exercises control over a *branch office* or subsidiary established outside *the Bailiwick*, the branch or subsidiary applies controls consistent with the requirements of *Schedule 3* or requirements consistent with *the FATF Recommendations*.

~~(q) ensure that measures are in place to effectively share *CDD* and other information between the firm and its majority owned subsidiaries and *branches* over which it exercises control.~~

2.4. Board Oversight of Compliance

~~14.~~17. In accordance with Paragraph 15(1)(c) of *Schedule 3*, the firm shall establish and *maintain* an effective policy, for which responsibility shall be taken by the *board*, for the review of its compliance with the requirements of *Schedule 3* and this *Handbook*, and such policy shall include provision as to the extent and frequency of such reviews.

~~15.~~18. The *board* must consider the appropriateness and effectiveness of its compliance arrangements and its policy for the review of compliance at a minimum annually, or whenever material changes to the business of the firm or the requirements of *Schedule 3* or this *Handbook* occur. Where, as a result of its review, changes to the compliance arrangements or review policy are required, the ~~firm~~ *board* must ensure that the firm makes those changes in a timely manner.

~~16.~~19. As part of its compliance arrangements, the ~~board~~ firm is responsible for appointing an *ML~~FC~~CO*~~, the function of~~ who~~m~~ is ~~to have~~ responsible~~oversight of~~ for the firm's compliance with its ~~obligations under *Schedule 3* and the *Commission Rules*~~policies, procedures and controls to forestall, prevent and detect *ML* and *FT*. This Section should therefore be read in conjunction with Section 2.8.1. of this *Handbook* which sets out the roles and responsibilities of the *ML~~FC~~CO*.

~~17.~~20. In addition to appointing an *ML~~FC~~CO*, the *board* of the firm must consider periodically whether, based upon the size and *risk* profile of the firm, it would be appropriate to *maintain* an independent audit function to test the *ML* and *FT* policies, procedures and controls of the firm.

21. While neither *Schedule 3* nor this *Handbook* mandate such an appointment, *specified businesses* which are part of a large financial group are likely to have an audit function or be subject to oversight from a group function. Other *specified businesses* may utilise the services of an external auditor or other independent body to test the appropriateness and effectiveness of their policies, procedures and controls.

~~18.~~22. The *board* must ensure that the compliance review policy takes into account the size, nature and complexity of the business of the firm, including the *risks* identified in the *business risk assessments*. The policy must include a requirement for sample testing of the effectiveness and adequacy of the firm's policies, procedures and controls.

~~19.~~23. The *board* should take a *risk*-based approach when defining its compliance review policy and ensure that those areas deemed to pose the greatest *risk* to the firm are reviewed more frequently. In this respect the policy should review the appropriateness, effectiveness and adequacy of the policies, procedures and controls established in accordance with the requirements of *Schedule 3* and this *Handbook*. This includes, but is not limited to:

(a) the application of *CDD* measures, including *ECDD*, ~~ACDD and~~ *SCDD* and *enhanced measures*;
(b) the Management Information ("MI") received by the *board*, including information on any *branch offices* and subsidiaries;
(c) the management and testing of third parties upon which reliance is placed for the application of *CDD* measures, ~~including~~ for example, via an *introducer* relationship~~s together with~~ or under an outsourcing arrangement~~s~~;
(d) the ongoing competence and effectiveness of the ~~FC~~*MLRO*;
(e) the handling of ~~suspicious activity reports ("*SARs*"),~~internal disclosures to the *MLRO* and external disclosures and any production orders or requests for information to or from the *FIS*;
(f) the management of sanctions risks and the handling of sanctions notices;
(g) the provision of AML and CFT training, including an assessment of the methods used and the effectiveness of the training received by *employees*; and
(h) the policies, procedures and controls surrounding bribery and corruption, including both the *employees* and *customers* of the firm, for example, gifts and hospitality policies and registers.

~~20.~~24. In accordance with Paragraph 15(1)(d) of *Schedule 3*, the firm shall ensure that a review of its compliance with *Schedule 3* and this *Handbook* is discussed and minuted at a meeting of the *board* at appropriate intervals, and in considering what is appropriate, the firm shall have regard to the *risk* taking into account –

(a) the size, nature and complexity of the firm,
(b) its *customers*, products and services, and
(c) the ways in which it provides those products and services.

~~21.~~25. The *board* may delegate some or all of its duties but must retain responsibility for the review of overall compliance with the AML and CFT requirements of *Schedule 3*, ~~and~~ this *Handbook* and *the Relevant Enactments*.

~~22.~~26. Where the firm identifies any deficiencies as a result of its compliance review policy, it must take appropriate action to remediate those deficiencies as soon as practicable and give consideration to the requirements of *Commission Rule* 2.49. where the deficiencies identified are considered to be serious or material.

~~23.~~27. Where the firm is managed or administered by another *specified business*, the responsibility for the firm and its compliance with *Schedule 3*, this *Handbook* and *the ~~Commission Rules~~Relevant Enactments* is retained by the *board* and senior management of the managed or administered firm and not transferred to its manager or administrator.

2.5. Outsourcing

~~24.~~28. Where the firm outsources a function to a third party (either within *the Bailiwick* or overseas, or within its group or externally) the *board* remains ultimately responsible for the activities undertaken on its behalf and for compliance with the requirements of *Schedule 3*, ~~and~~ this *Handbook* and *the Relevant Enactments*. The firm cannot contract out of its statutory and regulatory responsibilities to prevent and detect *ML* and *FT*.

29. This section should be read as referring to the outsourcing of any function relevant to the firm's compliance with its obligations under *Schedule 3*, this *Handbook* and *the Relevant Enactments*, for example, the appointment of a third party as the firm's *MLCO* or *MLRO*, or the use of a third party to gather the requisite *identification data* for the firm's *customers* and other *key principals*.

~~25.~~30. Where the firm is considering the outsourcing of functions to a third party, it should:

(a) ~~consider and adhere to~~review *the Commission's* guidance notes on outsourcing;
(b) consider implementing a terms of reference or agreement describing the provisions of the arrangement;
(c) ensure that the roles, responsibilities and respective duties of the firm and the outsourced service provider are clearly defined and documented; ~~and~~
(d) ensure that the *board*, the *ML~~FC~~RO*, the *MLCO*, other third parties and all *employees* understand the roles, responsibilities and respective duties of each party; and~~.~~
~~(d)~~(e) ensure that it has appropriate oversight of the work undertaken by the outsourced service provider.

~~26.~~31. Below are links to *the Commission's* guidance notes on the outsourcing of functions. While the documents are applicable only to those firms licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 ("*the POI Law*"), ~~and~~ the Banking Supervision (Bailiwick of Guernsey) Law, 1994 ("*the Banking Law*") and the Insurance Business (Bailiwick of Guernsey) Law, 2002 ("*the IB Law*") respectively, the principles contained within are relevant across industry and provide a useful reference when considering an outsourcing arrangement:

https://www.gfsc.gg/sites/default/files/Outsourcing-Functions-by-Entities-Licenced-Under-the-POI-Law_0.pdf
https://www.gfsc.gg/sites/default/files/Outsourcing-Risk-Guidance-Note-for-Banks_2.pdf
https://www.gfsc.gg/sites/default/files/20180711%20-%20Outsourcing%20Guidance.pdf

~~27.~~32. Prior to a decision being made to establish an outsourcing arrangement, the firm must make an assessment of the *risk* of any potential ~~risk~~ exposure to *ML* and *FT* and must *maintain* a record of that assessment~~, either~~ as part of its *business risk assessments* ~~or within a separate outsourcing risk assessment~~.

~~28.~~33. The firm should monitor the ~~perceived~~ *risks* identified by its assessment of an outsourcing arrangement and review this ~~risk~~ assessment on an on-going basis in accordance with its *business risk assessment* obligations.

~~29.~~34. The firm should ensure, at the commencement of an outsourcing arrangement and on an ongoing basis, that:

(a) the outsourced service provider:

(i) ha~~i~~s the appropriate~~ly qualified~~knowledge, skill and experience~~,~~;
(ii) is cognisant~~knowledgeable~~ of the applicable AML and CFT requirements; ~~and~~
(iii) is sufficiently resourced to perform the required activities;
(iv) has in place satisfactory policies, procedures and controls which are, and continue to be, applied to an equivalent standard and which are kept up to date to reflect changes in regulatory requirements and emerging *ML* and *FT risks*; and
(v) is screened and subject to appropriate due diligence ~~in accordance with this *Handbook*~~ to ensure the probity of the outsourced service provider;

(b) the work undertaken by the outsourced service provider is monitored to ensure it complies with the requirements of *Schedule 3*, ~~and/or~~ this *Handbook* and *the Relevant Enactments*;
(c) any reports or progress summaries provided to the firm by the outsourced service provider contain meaningful, accurate and complete information about the activities undertaken, progress of work and areas of non-compliance identified; and
(d) the reports received from the outsourced service provider explain in sufficient detail the materials reviewed and other sources investigated in arriving at its conclusions so as to allow the firm to understand how findings and conclusions were reached and to test or verify such findings and conclusions.

~~30.~~35. The fact that the firm has relied upon an outsourced service provider or the report of an outsourced service provider will not be considered a mitigating factor where the firm has failed to comply with a requirement of *Schedule 3*, ~~and/or~~ this *Handbook* or *the Relevant Enactments*. The *board* should therefore ensure the veracity of any reports provided by an outsourced service provider, for example, by spot~~-~~checking aspects of such reports.

~~31.~~36. The firm must ensure that the outsourced service provider has in place procedures which include a provision that knowledge, suspicion, or reasonable grounds for knowledge or suspicion, of *ML* and/or *FT* activity in connection with the outsourcing firm's business will be reported by the outsourced service provider to the *ML*~~*FC*~~*RO* of the outsourcing firm (subject to any tipping off provisions to which the outsourced service provider is subject) in a timely manner.

~~32.~~37. An exception to *Commission Rule* 2.36. would be where the outsourced service provider forms a suspicion that the outsourcing firm is complicit in *ML* and/or *FT* activity. In such cases the outsourced service provider, where it is a *specified business*, must disclose its suspicion to the *FIS* in accordance with Chapter 13 of this *Handbook* and advise *the Commission* of its actions ~~in accordance with *Commission Rule* 2.43~~.

~~33.~~38. Where the firm chooses to outsource or subcontract work to an unregulated entity, it should bear in mind that it remains subject to the obligation to *maintain* appropriate policies, procedures and controls to prevent *ML* and *FT*. In this context, the firm should consider whether such subcontracting increases the *risk* that it will be involved in, or used for, *ML* and/or *FT*, in which case appropriate and effective controls to address that *risk* should be implemented.

2.6. Foreign Branches and Subsidiaries

~~34.~~39. In accordance with Paragraph 15(1)(e) of *Schedule 3*, the firm shall ensure that any of its *branch offices* and, where it is a body corporate, any body corporate of which it is the majority shareholder or control of which it otherwise exercises, which, in either case, is a *specified business* in any country or territory outside *the Bailiwick* (collectively "its subsidiaries"), complies there with:

(i) the requirements of *Schedule 3* and this *Handbook*, and
(ii) any requirements under the law applicable in that country or territory which are consistent with *the FATF Recommendations*,

provided that, where requirements under (i) or (ii) above differ, the firm shall ensure that the requirement which provides the highest standard of compliance, by reference to the *FATF Recommendations*, is complied with.

~~35. Where the firm has any *branch offices*, majority-owned subsidiary companies, or otherwise directly or indirectly exercises control over an *FSB* or *PB* in any country or territory outside *the Bailiwick*, the firm must ensure that its AML and CFT compliance arrangements and programmes are applied to the business of those *branch offices*, subsidiaries or other entities.~~

~~36.~~40. In determining whether the firm exercises control over another entity, examples could include one or more of the following:

(a) where the firm determines appointments to the board or senior management of that entity;
(b) where the firm determines that entity's business model or *risk appetite*; and/or
(c) where the firm is involved in the day-to-day management of that entity.

~~37.~~41. In addition to the entities covered by Paragraph 2.39. above, in accordance with Paragraph 15(1)(g) of *Schedule 3*, where the firm is an *FSB*, it shall ensure that the conduct of any agent that it uses is subject to requirements to forestall, prevent and detect *ML* and *FT* that are consistent with those in *the FATF Recommendations* in respect of such an agent.

~~38.~~42. The AML and CFT programmes should incorporate the measures required under *Schedule 3*, should be appropriate to the business of its subsidiaries and should be implemented effectively at the level of those entities.

~~39.~~43. In accordance with Paragraph 15(1)(f) of *Schedule 3*, the firm shall ensure that it and its subsidiaries effectively implement policies, procedures and controls in respect of the sharing of information (including but not limited to *customer*, *account* and transaction information) between themselves for the purposes of:

(a) carrying out *CDD*:
(b) sharing suspicions relating to *ML* and *FT* that have been formed and reported to the *FIS* (unless the *FIS* has instructed that they should not be so shared), and
(c) otherwise forestalling, preventing and detecting *ML* and *FT*,

whilst ensuring that such policies, procedures and controls protect the confidentiality of such information.

~~40.~~44. ~~The AML and CFT programmes should incorporate policies, procedures and controls for sharing information required for the purposes of *CDD* and *ML* and *FT* risk management. In this respect, group-level compliance, audit and/or AML and CFT functions should be provided with, or have access to, information about *customers*, accounts and *transactions* from *branch offices* and~~

~~majority-owned subsidiaries when necessary for AML and CFT purposes~~The policies, procedures and controls referenced above should ensure that adequate safeguards on the confidentiality and use of information exchanged between the firm and its subsidiaries are in place and that such sharing and use is subject to the provisions of the data protection legislation of the jurisdictions within which its subsidiaries are located.

~~41. The firm must ensure that adequate safeguards on the confidentiality and use of information exchanged are in place between group entities.~~

~~42.~~45. In accordance with Paragraph 15(2) of *Schedule 3*, the obligations in Paragraphs 2.39. and 2.43. above apply to the extent that the law of the relevant country or territory allows and if the law of the country or territory does not so allow in relation to any requirement of *Schedule 3*, the firm shall *notify the Commission* accordingly.

~~43.~~46. ~~Where a branch office or majority-owned subsidiary is unable to observe the appropriate AML and CFT measures because local laws, regulations or other measures prohibit this, *Schedule 3* requires that the firm inform *the Commission*.~~ In addition to advising *the Commission*, t~~T~~he firm should also ensure that appropriate controls are implemented to mitigate any *risks* arising related to the specific areas where compliance with appropriate AML and CFT measures cannot be met.

~~44.~~47. The firm must be aware that the inability to observe appropriate AML and CFT measures is particularly likely to occur in countries or territories which do not, or insufficiently apply, *the FATF Recommendations*. In such circumstances the firm must take appropriate steps to effectively deal with the specific *ML* and *FT risks* associated with conducting business in such a country or territory.

48. Where the firm is a money service provider registered with *the Commission* in accordance with Schedule 4 to *the Law*, it must apply the requirements of this section where it uses agents to provide services on behalf of the firm, whether by contract or under the direction of the firm.

2.7. Liaison with the Commission

~~45.~~49. The *board* of the firm must ensure that *the Commission* is notified of any material failure to comply with the provisions of *Schedule 3* ~~or~~, this *Handbook* or *the Relevant Enactments*, or of any serious breaches of the policies, procedures or controls of the firm.

~~46.~~50. The following are examples of the types of scenarios in which *the Commission* would expect to be notified. This list is not definitive and there may be other scenarios where *the Commission* would reasonably expect to be notified:

(a) the firm identifies, either through its compliance monitoring arrangements or by other means (for example, a management letter from an auditor), areas of material non-compliance where remediation work is required;

(b) the firm receives a report, whether orally or in writing, from an external party engaged to review its compliance arrangements, identifying areas of material non-compliance where remediation work is recommended;

~~(b)~~(c) the firm receives a report from a whistle-blower and an initial or provisional investigation reveals some substance to the concerns raised;

~~(c)~~(d) the firm is aware that an aspect of material non-compliance may have occurred across more than one member its~~of a~~ corporate group, including the firm (or the parent of the firm where it is a *branch office*), ~~of~~ which may have a bearing on the firm's compliance with its AML and CFT obligations and/or the effectiveness of the firm's compliance arrangements~~it is a member~~;

~~(d)~~(e) the firm discovers that the party to whom it has outsourced functions critical to compliance with *Schedule 3*, ~~and~~ this *Handbook* or *the Relevant Enactments* has failed to apply one or more of the requirements of *Schedule 3* ~~and/or~~, this *Handbook* or *the Relevant Enactments* and remediation work is required;

~~(e)~~(f) any aspect of material non-compliance identified involving a *business relationship* or *occasional transaction* with a *relevant connection* to a~~ny~~ country listed in *the Commission's* Business from Sensitive Sources Notices, regardless of the ~~number of *business relationships/occasional transactions* or~~ values involved; or

~~(f)~~(g) any breach of the requirements placed upon the firm by *the Bailiwick's* sanctions framework, regardless of the number of *business relationships*/*occasional transactions* or values involved.

~~47.~~51. In addition to the above, *the Commission* would expect to be notified where the firm identifies a breakdown of administrative or control procedures (for example, a failure of a computer system) or any other event arising which is likely to result in a failure to comply with the provisions of *Schedule 3*, ~~and/or~~ this *Handbook* and/or *the Relevant Enactments*.

~~48.~~52. *The Commission* recognises that from time to time the firm may identify instances of non-compliance as part of its ongoing monitoring or ~~*customer*~~ *relationship risk assessment* review programmes. Provided that a matter meets the following criteria then notification to *the Commission* is not required:

(a) it is isolated in nature;
(b) it is readily resolvable within a short period of time;
(c) it does not pose a significant *risk* to the firm; and
(d) it does not compromise the accuracy of:

(i) the ~~*due diligence*~~*CDD information* held for the *customer*, *beneficial owner* or other *key principal* ~~and *underlying principal*~~;
(ii) the firm's understanding of the beneficial ownership of the *customer*; and
(iii) the firm's understanding of the purpose and intended activity of the *business relationship*.

~~49.~~53. Notwithstanding that notification to *the Commission* is not required in the above circumstances, the firm should document its assessment of a matter and its conclusions as to why it is not considered to be material. *The Commission* reserves the right to enquire about such instances of non-compliance during on-site visits, thematic reviews and other engagements with the firm.

~~50.~~54. Where the firm has determined that a matter warrants notification to *the Commission*, *the Commission* would expect to receive early notice, even where the full extent of the matter is yet to be confirmed or the manner of remediation decided.

~~51.~~55. While not an exhaustive list, the following are examples of what *the Commission* considers to constitute poor practice in relation to a failure to *notify* it under *Commission Rule* 2.49.:

(a) the firm lacks the resources to immediately address the non-compliance or seeks to undertake the necessary remediation work before *notifying the Commission*;
(b) the firm has found no evidence that an actual financial crime has occurred as a result of the non-compliance; or
(c) having identified a widespread weakness within its controls, the *board* decides to delay advising *the Commission* while it undertakes a full audit to assess the extent of the issue.

2.8. Key Persons

2.8.1. ~~Financial~~ Money ~~Crime~~Laundering Compliance Officer

~~52.~~56. In accordance with Paragraph 15(1)(a) of *Schedule 3*, the firm shall, if it comprises more than one individual, appoint a person of at least management level as the Money Laundering Compliance Officer ("*MLCO*") and provide the name, title and email address of that person to *the Commission* as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment.

~~53.~~57. Notifications made in accordance with *Schedule 3* should be submitted via *the Commission's* PQ Portal:

https://online.gfsc.gg

~~54.~~58. The *ML~~FC~~CO* appointed by the firm must:

(a) be a natural person;
(b) be of at least *management level*;
(c) have the~~be~~ appropriate~~ly~~ ~~qualified~~knowledge, skill and experience to fulfil a compliance role within the firm;
(d) be employed by the firm or an entity within the same group as the firm (in the case of managed or administered businesses it is acceptable for an employee of the manager or administrator of the firm to be appointed as the *ML~~FC~~CO*); and
(e) be resident in the *British Islands*.

~~55.~~59. The firm must ensure that the *ML~~FC~~CO*:

~~(a) is appropriately independent from the day-to-day business of the firm, in particular any customer-facing or business-development roles;~~
(a) has timely and unrestricted access to the records of the firm;
(b) has sufficient resources to perform his or her duties;
(c) has the full co-operation of the firm's staff;
(d) is fully aware of his or her obligations and those of the firm; and
(e) reports directly to, and has regular contact with, the *board* so as to enable the *board* to satisfy itself that all statutory obligations and provisions in *Schedule 3* ~~and,~~ this *Handbook* and *the Relevant Enactments* are being met and that the firm is taking sufficiently robust measures to protect itself against the potential risk of being used for *ML* or *FT*.

~~56.~~60. The primary role of the *ML~~FC~~CO* is to have ~~oversight~~ responsibility for~~of~~ the firm's compliance with its ~~obligations under *Schedule 3*, the *Commission Rules* and *the Relevant Enactments*~~policies, procedures and controls to forestall, prevent and detect *ML* and *FT*. As such the functions of the *ML~~FC~~CO* include:

(a) ~~having~~ overseeing~~ight of~~ the monitoring and testing of AML and CFT policies, procedures, controls and systems in place to assess their appropriateness and effectiveness;
(b) investigating any matters of concern or non-compliance arising from the firm's compliance review policy;
(c) establishing appropriate controls to mitigate any *risks* arising from the firm's compliance review policy and to remediate issues where necessary and appropriate in a timely manner;
(d) reporting periodically to the *board* on compliance matters, including the results of the testing undertaken and any issues that need to be brought to ~~its~~the *board's* attention; and
(e) acting as a point of contact with *the Commission* and to respond promptly to any requests for information made.

~~57.~~ While it is not anticipated that the *ML~~FC~~CO* will personally conduct all monitoring and testing, the expectation is that the *ML~~FC~~CO* will have oversight of any monitoring and testing being conducted by the firm, for example, by a compliance team or an outsourcing oversight team, in accordance with the firm's compliance review policy.

~~58.~~61. ~~With regard to Rule 2.8.1.(3)(a), the appropriateness of the *FCCO's* independence should be determined based upon the size, nature and complexity of the firm's operation. In this respect~~

~~59.~~62. The circumstances of the firm may be such that, due to the small number of ~~*persons* *employees*~~d ~~by the firm~~, the ~~*FC*~~*MLCO* holds additional functions or is responsible for other aspects of the firm's operations. Where ~~the *MLCO* holds additional functions or is responsible for other aspects of the firm's operation~~this is the case, the firm must~~should~~ ensure that any conflicts of interest between th~~os~~e ~~additional functions or~~ responsibilities of the *MLCO* role and those of any other functions are ~~subject to appropriate oversight, for example by an independent auditor or member of the *board*, or are subject to periodic independent scrutiny.~~identified, documented and appropriately managed.

~~60.~~63. For the avoidance of doubt, the same individual can be appointed to the positions of Money Laundering ~~FC~~Reporting Officer ("*MLRO*") and *ML~~FC~~CO*, provided the firm considers this appropriate having regard to the respective demands of the two roles and whether the individual has sufficient time and resources to fulfil both roles effectively.

2.8.2. Money ~~Financial~~ Laundering ~~Crime~~ Reporting Officer

~~61.~~64. In accordance with Paragraph 12(1)(a) of *Schedule 3*, the firm shall appoint a person of at least management level as the *MLRO*, provide the name, title and email address of that person to *the Commission* as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment, and ensure that all *employees* are aware of the name of that person.

~~62.~~65. In addition to *notifying the Commission*, in accordance with Paragraph 12(1)(d) of *Schedule 3*, the firm shall provide the name, title and email address of the *MLRO* to *the FIS* as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment.

~~63.~~66. Notifications made in accordance with *Schedule 3* should be submitted via *the Commission's* PQ Portal:

https://online.gfsc.gg

~~64.~~67. The ~~*F*~~*ML~~C~~RO* appointed by the firm must:

(a) be a natural person;
(b) be of at least management level;
(c) have the~~be~~ appropriate~~ly~~ ~~qualified~~knowledge, skill and experience;
(d) be employed by the firm or an entity within the same group as the firm (in the case of a managed or administered business it is acceptable for an *employee* of the manager or administrator to be appointed as the ~~FC~~*MLRO*); and
(e) be resident in *the Bailiwick*.

~~65.~~68. The firm must ensure that the ~~FC~~*MLRO*:

(a) is the main point of contact with the *FIS* in the handling of disclosures;

(b) has unrestricted access to the *CDD* ~~*records*~~ *information* of the firm's *customers*, including the *beneficial owners* thereof;
(c) has sufficient resources to perform his or her duties;
(d) is available on a day-to-day basis;
(e) receives full co-operation from all staff;
(f) reports directly to, and has regular contact with, the *board* or equivalent of the firm; and
(g) is fully aware of both his or her personal obligations and those of the firm under *Schedule 3*, this *Handbook*~~*e Commission Rules*~~ and *the Relevant Enactments*.

~~66.~~69. The firm must provide the *ML*~~*FC*~~*RO* with the authority to act independently in carrying out his or her responsibilities under Part 1 of *the Disclosure Law* or Section 15 or 12 of *the Terrorism Law*. The *ML*~~*FC*~~*RO* must be free to have direct access to the *FIS* in order that any suspicious activity may be reported as soon as ~~is practicable~~possible. The *ML*~~*FC*~~*RO* must also be free to liaise with the *FIS* on any question of whether to proceed with a transaction in the circumstances.

2.8.3. Nominated Officer

~~67.~~70. In accordance with Paragraph 12(1)(b) (where the firm is an *FSB*) or 12(1)(c) (where the firm is a *PB*) of *Schedule 3*, the firm shall, if it comprises more than one individual, nominate a person to –

(a) receive disclosures, under Part I of *the Disclosure Law* and Section 12 or Section 15 of *the Terrorism Law* (a "*Nominated Officer*"), in the absence of the *MLRO, and*
(b) otherwise carry out the functions of the *MLRO* in that officer's absence,

and ensure that all *employees* are aware of the name of that *Nominated Officer*.

~~68.~~71. In accordance with Paragraph 12(1)(d) of *Schedule 3*, the firm shall provide the name, title and email address of any person nominated under Paragraphs 12(1)(b) or 12(1)(c) as set out above to the *FIS* as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment.

~~69.~~72. The *Nominated Officer*~~*(s)*~~ must:

(a) be a natural person; and
(b) have~~be~~ the appropriate~~ly~~ ~~qualified~~knowledge, skill and experience.

~~70.~~73. There is no obligation to advise *the Commission* of the ~~details~~ name, title or email address of the *Nominated Officer*~~*(s)*~~ ~~and in this regard no Form PQ is required~~. However, where the *Nominated Officer* is acting in place of the *ML*~~*FC*~~*RO* to cover an extended period of absence (for example, maternity leave, sabbatical or long-term sick leave) the firm should consider appointing the *Nominated Officer* as the ~~*FC*~~*MLRO* on a temporary basis. Where this occurs~~,~~ ~~a notification should be made to~~ *the Commission* should be notified in accordance with Section 2.8.2. above.

~~71.~~74. The firm must communicate the name of the *Nominated Officer*~~*(s)*~~ to all *employees* of the firm and ensure that all *employees* of the firm are aware of the natural person(s) to whom ~~*SARs*~~internal disclosures are to be made in the absence of the ~~*FC*~~*MLRO*.

For the avoidance of doubt, in accordance with Paragraphs 12(1)(b)-(c) of *Schedule 3*, the requirements of this section do not apply ~~to sole traders~~where the firm comprises one individual, for example, a personal fiduciary licence holder and or a natural person registered as a *PB* and acting alone.

Chapter 3
Risk-Based Approach

Contents of this Chapter

3.1. Introduction

1. This Chapter is designed to assist the firm in taking a *risk*-based approach to the prevention of its products and services being used for the purposes of *ML* and *FT* and is broken down into three main sections:

   (a) Risk-Based Approach - which provides a high-level overview of the *risk*-based approach;
   (b) Business Risk Assessments - which details the relevant requirements of *Schedule 3*, together with the *Commission Rules* and *guidance*, in respect of the firm undertaking's *ML* and *FT business risk assessments* and determining its *risk appetite*; and
   (c) Relationship Risk Assessments - which sets out the relevant obligations of *Schedule 3*, together with the *Commission Rules* and *guidance*, for the conducting of *risk* assessments of new and existing *business relationships* and *occasional transactions*.

Risk-Based Approach

3.2. Definition, Purpose and Benefits

2. A *risk*-based approach towards the prevention and detection of *ML* and *FT* aims to support the development of preventative and mitigating measures that are commensurate with the *ML* and *FT risks* identified by the firm and to deal with those *risks* in the most cost-effective and proportionate way.

3. Paragraph 2 of *Schedule 3* provides a general duty for the firm to understand, assess and mitigate *risks*. In this respect the firm shall:

   (a) understand its *ML* and *FT risks*; and
   (b) have in place effective policies, procedures and controls to:

      (i) identify,
      (ii) assess,
      (iii) mitigate,
      (iv) manage, and
      (v) review and monitor,

      those *risks* in a way that is consistent with the requirements of *Schedule 3*, *the Relevant Enactments*, the requirements of this *Handbook* and the *NRA*.

4. A *risk*-based approach ~~uses~~prescribes the following procedural ~~five~~ steps to manage the *ML* and *FT risks* faced by the firm:

   (a) identifying the specific threats posed to the firm by *ML* and *FT* and those areas of the firm's business with the greatest vulnerability;
   (b) assessing the likelihood of those threats occurring and the potential impact of ~~such~~ them on the ~~business~~firm;
   (c) mitigating the likelihood of occurrence of identified threats and the potential for damage ~~that can~~to be caused, primarily through the application of appropriate and effective policies, procedures and controls;
   (d) managing the residual *risks* arising from the~~,~~ threats and vulnerabilities that the firm has been unable to mitigate; and
   (e) reviewing and monitoring those *risks* to identify whether there have been any changes in the threats posed to the firm which necessitate changes to its policies, procedures and controls.

5. In applying a *risk*-based approach and taking the steps detailed above, it is crucial that, regardless of the specific considerations and actions of the firm, clear documentation is prepared and retained to ensure that the *board* and senior management can demonstrate their compliance with the requirements of *Schedule 3* and the *Commission Rules* in this *Handbook*.

6. A *risk*-based approach starts with the identification and assessment of the *risk* that has to be managed. In the context of *Schedule 3* and this *Handbook*, a *risk*-based approach requires the firm to assess the *risks* of how it might be involved in *ML* and *FT*, taking into account its *customers* (and the~~ir~~ *beneficial owners* of *customers*), countries and geographic areas, the products ~~and/or~~, services and transactions~~,~~ it offers or undertakes, and the ~~ways~~ delivery channels by~~in~~ which it provides those products, ~~and/or~~ services and/or transactions.

7. In determining how the *risk*-based approach should be implemented, the firm should analyse and seek to understand how the identified *ML* and *FT risks* affect its business. This determination should take into account a range of information~~puts~~, including (amongst others) ~~things~~ the type and extent of the *risks* that the firm~~'~~ is willing to accept in order to achieve its strategic objectives (its "*risk appetite*"), its AML and CFT experience and *the Bailiwick's NRA*.

8. Through the *business risk assessments* and determination of a *risk appetite*, the firm can establish the basis for a *risk*-sensitive approach to managing and mitigating *ML* and *FT* risks. It should be noted, however, that a *risk*-based approach does not exempt the firm from the requirement to apply *enhanced measures* where it has identified higher *risk* factors as detailed in Chapter 8 of this *Handbook*.

9. *Schedule 3* and this *Handbook* do not prohibit the offering of any products or services or the acceptance of any *customers*~~s~~, unless ~~they~~ it is known, or there are reasonable grounds to suspect, that the *customer*, or the *beneficial owner* thereof, is~~are~~ undertaking or associated with *ML* ~~and/~~or *FT*. The *risk*-based approach, as defined in *Schedule 3* and this *Handbook*, instead requires that the *risks* posed by *customers* (and the *beneficial owners* of *customers*), countries and geographic areas, products, ~~and~~ services, transactions and delivery channels are identified, assessed, managed and mitigated and that evidence of such is documented and reviewed on an on-going basis.

10. By adopting a *risk*-based approach the firm should ensure that measures to prevent or mitigate *ML* and *FT* are commensurate with the *risks* identified. In this respect, the *business risk assessments* will also serve to enable the firm to make decisions on how to allocate its resources in the most efficient and effective way and to determine its appetite and tolerance for *risk*.

11. No system of checks will detect and prevent all *ML* and *FT*. A *risk*-based approach will, however, serve to balance the cost burden placed upon the firm and its *customers* with a realistic assessment of the threat of the firm being used in connection with *ML* and/or *FT*. It focuses the effort where it is needed and has most impact.

12. The benefits of a *risk*-based approach include:

    (a) recognising that the *ML* and *FT* threats to the firm vary across its *customers*, countries/geographic areas, products/services and delivery channels;
    (b) providing for the *board* to apply its own approach to the policies, procedures and controls of the firm in particular circumstances, enabling the *board* to differentiate between its *customers* in a way that matches the *risk* to its particular business;
    (c) helping to produce a more cost-effective system of *risk* management;
    (d) promoting the prioritisation of effort and activity by reference to the likelihood of *ML* and/or *FT* occurring;
    (e) reflecting experience and proportionality through the tailoring of effort and activity to *risk*;

(f) enabling the application of the requirements of *Schedule 3* and ~~in~~ this *Handbook* sensibly and in consideration of all relevant *risk* factors; and

(g) allowing for the consideration of the accumulation of identified *risks* and the determination of the level of overall *risk*, together with the appropriate level of mitigation to be applied.~~; and~~

~~(h) differentiating the extent of measures, depending on the type and level of *risk* for the various *risk* factors (e.g. in a particular situation, it is possible to apply *normal CDD* for *customer* acceptance measures, but *enhanced CDD* for ongoing monitoring, or vice versa).~~

13. It is important to ~~realise and understand~~acknowledge that various sectors and types of business, whether in terms of products/services, delivery channels or types of *customers*, can differ materially. An approach to preventing *ML* and *FT* that is appropriate in one sector may be inappropriate in another. Appendix D to this *Handbook* provides *guidance* on sector-specific *risk* factors to assist the firm in the development of its *risk* management framework.

3.3. Identification and Mitigation of Risks

14. *Risk* can be seen as a function of three factors and a *risk* assessment involves making judgements about all three of the following elements:

(a) threat – a person or group of persons, an object or an activity with the potential to cause harm;
(b) vulnerability – an opportunity that can be exploited by the threat or that may support or facilitate its activities; and
(c) consequence – the impact or harm that *ML* and *FT* may cause.

15. Having identified where it is vulnerable and the threats that it faces~~its threats and vulnerabilities~~, the firm should take appropriate steps to mitigate the opportunity for those *risks* to materialise. This will involve determining the necessary controls or procedures that need to be in place ~~in relation to a particular part of the firm~~ in order to reduce the *risks* identified. The documented *risk* assessments that are required to be undertaken by *Schedule 3* will assist the firm in developing its *risk*-based approach.

16. In accordance with Paragraph 3(7) of *Schedule 3*, the firm shall have regard to:

(a) any relevant *Commission Rules* and *guidance* in this *Handbook*,
(b) any relevant notice or instruction issued by *the Commission* under *the Law*, and
(c) the *NRA*,

in determining what constitutes high or low *risk*, what its *risk appetite* is, and what constitute appropriate measures to manage and mitigate *risks*.

17. In addition to those noted above, information on *ML* and *FT risk* factors could come from a variety of other sources, whether these are accessed individually or through commercially available tools or databases that pool information from several sources. The sources could include:

(a) national and supranational *risk* assessments, such as those published by the EU, the UK and other countries or territories similar to *the Bailiwick*;
(b) information published by law enforcement agencies (for example, the *FIS*) such as threat reports, alerts and typologies;
(c) information published by *the Commission*, such as warnings and the reasoning set out in enforcement actions taken by it;

(d) information from international standard-setting bodies, such as guidance papers and reports on specific threats or *risks*, as well as mutual evaluation reports when considering the *risks* associated with a particular country or geographic area;
(e) information provided by industry bodies, such as typologies and emerging *risks*;
(f) information published by non-governmental organisations (for example, Global Witness or Transparency International); and
(g) information published by credible and reliable commercial sources, (for example, *risk* and intelligence reports) or open sources (for example, reputable newspapers).

~~17.~~18. Retaining documentation on the results ~~achieved through~~of the firm's *risk* assessment framework will assist the firm to demonstrate how it:

(a) identifies and assesses the *risks* of being used for *ML* and *FT*;
(b) agrees and implements appropriate and effective policies, procedures and controls to manage and mitigate *ML* and *FT risk*;
(c) monitors and improves the effectiveness of its policies, procedures and controls; and
(d) ensures accountability of the *board* in respect of the operation of its policies, procedures and controls.

3.4. Accumulation of Risk

~~18.~~19. In addition to the individual consideration of each ~~stand-alone~~ *risk* factor~~identified within the firm's *business risk assessments*~~, the firm must also consider all such factors holistically to establish whether their concurrent or cumulative effect might increase or decrease the firm's overall *risk* exposure ~~the cumulative effect of a combination of two or more of those *risks*~~ and the dynamic that this could have on the controls implemented by the firm to mitigate ~~those *risks*~~.

~~19.~~20. Such an approach is relevant not only to the firm in its consideration of the *risks* posed to its~~the~~ business as a whole as part of undertaking its *business risk assessments*, but also in the consideration of the *risk* that individual ~~customer *risk*~~*business relationships* or *occasional transactions* pose.

~~20.~~21. There are also other operational factors which may increase the overall level of *risk*. These factors should be considered ~~parallel to, or in combination with,~~in conjunction with the firm's *ML* and *FT risks*. Examples of such factors could be the outsourcing of AML and CFT controls or other regulatory requirements to an external third party or another member of the same group ~~of companies~~ as the firm; or the use of on-line or web-based services and cyber-crime risks which may be associated with those service offerings.

3.4.1. Weighting Risk Factors

22. In considering the *risk* of a *business relationship* or *occasional transaction* holistically, the firm may decide to weigh *risk* factors differently depending on their relative importance.

23. When weighting *risk* factors, the firm should make an informed judgement about the relevance of different *risk* factors in the context of a *business relationship* or *occasional transaction*. This will likely result in the firm allocating varying 'scores' to different factors; for example, the firm may decide that a *customer's* personal links to a country, territory or geographic area associated with higher *ML and/or FT risk* is less relevant in light of the features of the product they seek.

24. Ultimately, the weight given to each *risk* factor is likely to vary from product to product and *customer* to *customer* (or category of *customer*). When weighting *risk* factors, the firm should ensure that:

(a) weighting is not unduly influenced by just one factor;

(b) economic or profit considerations do not influence the *risk* rating;
(c) weighting does not lead to a situation where it is impossible for any *business relationship* or *occasional transaction* to be classified as a *high risk relationship*;
(d) the provisions of Paragraph 5(1) of *Schedule 3* setting out the situations which will always present a high *risk* (for example, the involvement of foreign *PEPs* or *correspondent banking relationships*) cannot be over-ruled by the firm's weighting; and
(e) it is able to override any automatically generated *risk* scores where necessary. The rationale for the decision to override such scores should be documented appropriately.

25. Where the firm uses automated IT systems to allocate overall *risk* scores to *business relationships* or *occasional transactions* and does not develop these in house but purchases them from an external provider, it should understand how the system works and how it combines *risk* factors to achieve an overall *risk* score. The firm should be able to satisfy itself that the scores allocated reflect the firm's understanding of *ML* and *FT risk* and it should be able to demonstrate this.

3.5. Policies, Procedures and Controls

~~21.~~26. In accordance with Paragraph 3(6) of *Schedule 3*, the firm shall –

(a) have in place policies, procedures and controls approved by its *board* that are appropriate and effective, having regard to the assessed *risk*, to enable it to mitigate and manage:

(i) *risks* identified in the *business risk assessments*, and *relationship risk assessments* undertaken under Paragraph 3(4)(a) of *Schedule 3*; and
(ii) *risks* relevant, or potentially relevant, to the firm identified in the *NRA* (which *risks* shall be incorporated into the *business risk assessments*);

(b) regularly review and monitor the implementation of those policies, controls and procedures and enhance them if such enhancement is necessary or desirable for the mitigation and management of those *risks;* and
(c) take additional measures to manage and mitigate higher *risks* identified in the *business risk assessments* and in *relationship risk assessments* undertaken under Paragraph 3(4)(a) of *Schedule 3*.

27. The firm's policies, procedures and controls must take into account the nature and complexity of the firm's operation, together with the *risks* identified in its *business risk assessments*, and must be sufficiently detailed to allow ~~it~~ the firm to demonstrate how the conclusion of each *relationship risk assessment* ~~of each business relationship or occasional transaction~~ has been reached ~~and which take into account the nature and complexity of the firm's operations~~.

Business Risk Assessments

3.6. Introduction

~~22.~~28. A key component of a *risk*-based approach involves the firm identifying areas where its products and services could be exposed to the *risks* of *ML* and *FT* and taking appropriate steps to ensure that any identified *risks* are managed and mitigated through the establishment of appropriate and effective policies, procedures and controls.

29. The *business risk assessments* are designed to assist the firm in making such an assessment and provide a method by which the firm can identify the extent to which its business and its products and services are exposed to *ML* and *FT*. Good quality *business risk assessments* are therefore vital for ensuring that the firm's policies, procedures and controls are proportionate and targeted appropriately.

~~23.~~30. The *board* must ensure that the firm's *business risk assessments*, together with details of the firm's *risk appetite*, are ~~statement is~~ communicated to all *relevant employees*.

31. In communicating the firm's *business risk assessments* and *risk appetite*, the firm ~~It~~ should ~~also~~ ensure that *relevant employees* understand ~~the *risk appetite* and~~ the implications of these on the day-to-day functions of *relevant employees* and their ~~its~~ effect on the strategic objectives of the firm, in particular those *relevant employees* with *customer*-facing or business development roles.

~~24. The format of the *business risk assessments* is a matter to be decided by the firm; however, regardless of the format used, the firm must ensure that its *business risk assessments* are documented in order to be able to demonstrate the basis upon which it has been conducted.~~

3.7. Content and Structure

~~25.~~32. In accordance with Paragraph 3(1)(a) of *Schedule 3*, the firm shall carry out and document a suitable and sufficient *ML business risk assessment*, and a suitable and sufficient *FT business risk assessment*, which are specific to the firm.

33. In carrying out the *business risk assessments* in accordance with Paragraph 3(1) of *Schedule 3*, the firm must ensure that the assessments of the *risks* of *ML* and *FT* are distinct from one another, clearly addressing the different threats posed by each *risk* and should reflect that appropriate steps have been taken in order to identify and assess the specific *risks* posed to the firm.

~~26.~~34. The format of the *business risk assessments* is a matter to be decided by the firm. However, regardless of the format used, it is important that the *business risk assessments* are documented in accordance with Paragraph 3(1)(a) of *Schedule 3* in order to provide clear evidence to demonstrate the basis upon which they have been conducted. Notwithstanding the requirement for the *ML* and *FT* *business risk assessments* to be distinct, there is nothing to prevent them being contained within one over-arching document recording, in its entirety, the firm's ~~business risk~~ assessment~~s~~ of *ML* and *FT risk*~~, together with any other risk assessments (i.e. a technology risk assessment), for record keeping purposes~~.

~~27.~~35. In accordance with Paragraph 3(3) of *Schedule 3*, the *business risk assessments* shall be appropriate to the nature, size and complexity of the firm, and be in respect of:

(a) *customers*, and the *beneficial owners* of *customers*,
(b) countries and geographic areas, and
(c) products, services, transactions and delivery channels (as appropriate), and in particular in respect of the *ML* or *FT risks* that may arise in relation to:

(i) the development of new products and new business practices, before such products are made available and such practices adopted; and
(ii) the use of new or developing technologies for both new and pre-existing products, before such technologies are used and adopted.

~~28. As a minimum the firm's *business risk assessments* must assess the *ML* and *FT* risks posed by the following areas:~~

~~(a) the nature, scale and complexity of the firm's activities;~~
~~(b) the products, services and *transactions* provided, or facilitated, by the firm;~~

~~(c) the countries and geographic areas associated with the business of the firm (e.g. the countries and geographic areas into which the firm markets its products and services; the countries and geographic areas from which its *customers* emanate etc.);~~
~~(d) the *customers* to whom the products and services are provided;~~
~~(e) the manner in which the products and services are provided (delivery channel);~~
~~(f) the use of any third parties through outsourcing/introducer arrangements or similar;~~
~~(g) the use of technology in its products and services and any developments in the technologies used; and~~
~~(h) an assessment of the cumulative effect that the presence of more than one *risk* variable may have.~~

~~29.~~36. The *business risk assessments* must also take account of the findings of the *NRA* and reflect the firm's assessment of whether the *risks* identified in the *NRA* are relevant, or potentially relevant, to the firm, and where ~~so~~they are, identify the measures for mitigating those *risks*.

~~30.~~37. In accordance with Paragraph 3(2) of *Schedule 3*, in carrying out its *business risk assessments*, the firm shall consider all relevant *risk* factors before determining:

(a) the level of overall *risk* to the firm;
(b) the firm's *risk appetite*; and
(c) the appropriate level and type of mitigation to be applied.

~~31.~~38. In addition to identifying any particular areas of vulnerability to the *risks* of *ML* and *FT*, the *business risk assessments* should contain references as to how the firm manages or mitigates the *risks* which it has identified and the policies, procedures and controls which have been established in this regard.

~~32.~~39. Industry sectors will have inherent and/or generic *risk* factors and these should be referenced in the firm's *business risk assessments*. Additionally, the firm will also have *risk* factors particular to its own business which should be analysed in the *business risk assessments*.

~~33.~~40. The firm must not copy the *business risk assessments* prepared by another business, or use 'off-the-shelf' assessments which pre-identify suggested *ML* and *FT risks* without the firm ensuring the assessments have been tailored to its business and the specific *risks* that it faces.

~~34.~~41. Such an approach in adopting an 'off-the-shelf' assessment can lead to the firm failing to accurately identify the *ML* and *FT risks* specific to its business. This in turn can lead to inadequate or inappropriate policies, procedures and controls that are either ill-suited to the firm or fail to appropriately mitigate the firm's *risks*.

~~35.~~42. In addition to the above, the *business risk assessments* should not:

(a) be a "cut and paste" version of the relevant sections of the *Handbook*. This does not demonstrate that the *board* has given serious consideration to the vulnerabilities specific to the products, services and *customers* of the firm;
(b) be generic assessments which have simply been populated with general information. Again, this does not demonstrate that the *board* has given serious consideration to the vulnerabilities particular to its business;
(c) contain unsubstantiated, highly generalised references to the *risks* faced by the firm, for example, a reference to all business being low *risk* or statements such as 'there is a risk that our products could be used to finance terrorism'. Such statements would not be acceptable unless they are backed-up with specific information evidencing how this assessment had been made; or

(d) focus upon isolated *risk* factors, for example, concentrating solely upon a geographic location.

~~36.~~43. There may be occasions where threats span a number of *risk* categories, for example, there may be operational risks associated with a piece of customer-facing technology in addition to *ML* and *FT* or other financial crime risks. Where the firm wishes to combine its *ML* and *FT business risk assessments* with assessments of other risks, such as conduct risk or credit risk, the firm should ensure that the assessments of *ML* and *FT risk* are clearly identified.

3.8. Risk Appetite

~~37.~~44. In accordance with Paragraph 3(2) of *Schedule 3* the firm shall, having considered all relevant risk factors, determine its *risk appetite* as part of carrying out its *business risk assessments*.

~~38.~~45. The determination of the firm's *risk appetite* is an important element in carrying out its *business risk assessments*, setting out the amount of *ML* and *FT risk* it is prepared to accept in pursuing its strategic objectives. Having identified the inherent *ML* and *FT risks* to its business, identifying the amount of such *risk* that it is willing to take on is an integral part of the design and implementation of appropriate and effective policies, procedures and controls to manage and mitigate *risk*.

~~39. As part of its *business risk assessments* the firm must include a risk appetite statement which clearly sets out the type and extent of the *risks* that the firm is willing to accept, or to avoid, in order to achieve its strategic business objectives.~~

~~40.~~46. The *board* is responsible for setting the firm's *risk appetite*, together with the overall attitude of the firm to *risk* taking. The primary goal of the *risk appetite* is to define the amount of *risk* that the firm is willing to accept in the pursuit of its objectives, as well as outlining the boundaries of its *risk* taking, beyond which the firm is not prepared to accept *risk*.

~~41.~~47. In this respect the firm's documented *risk appetite* should include a qualitative statement (for example, detailing those categories of *customer* or country/territory that the firm deems to pose too great a *risk*) as well as quantitative measures to support its *risk appetite*, including the firm's tolerance and capacity to take on *risk*, i.e. the maximum level of *risk* that it is possible to accept without exceeding or overstretching its administrative, operational and resourcing constraints.

48. In determining its *risk appetite* the firm should be realistic in the context of its business model. A firm targeting business from high *risk* countries or territories, offering high *risk* products or services or with a large percentage of *high risk relationships* would consequently have a high *risk appetite* and its *business risk assessments* should be drafted accordingly.

~~42.~~49. The following is a non-exhaustive list of example questions that the firm could consider in developing its *risk appetite*:

(a) What are the strategic objectives of the firm? Are they clear?
(b) What specific *risks* could pursuing these ~~is explicit and what is implicit in those~~ objectives expose the firm to?
(c) What are the significant *risks* the *board* is willing to take?
(d) What are the significant *risks* the *board* is not willing to take?
(e) Is the *board* clear about the nature and extent of the significant *risks* it is willing to take in achieving its strategic objectives?
(f) Have the *board* and senior management reviewed the capabilities of the firm to manage the *risks* that it faces?
(g) What capacity does the firm have in terms of its ability to manage *risks*?

(h) Do *employees* of the firm understand their role and responsibility for managing *risk*?

(i) How much does the firm spend on compliance and *risk* management each year? How much does the firm need to spend to ensure its compliance and *risk* management controls can sufficiently mitigate the identified *risks*?

3.9. Review

~~43.~~50. In accordance with Paragraph 3(1)(b) of *Schedule 3*, the firm shall regularly review its *business risk assessments*, at a minimum annually and more frequently when changes to the business of the firm occur, so as to keep them up to date.

~~44.~~51. Just as the activities of the firm can change, so too can the corresponding *ML* and *FT risks*. Mergers, acquisitions, the purchase or sale of a book of business, the adoption of a piece of technology or technological solution, the introduction of a new product or service, a restructuring or a change of external service provider are just some of the events which can affect both the type and extent of the *risks* to which the firm could be exposed. In light of any such changes the *business risk assessments* should be reviewed to consider whether the *risks* to the firm have changed and to ensure that the controls to mitigate those *risks* remain effective.

~~45.~~52. Other operational changes, for example, a change in *employee* numbers or a change to group policies, can all have an impact upon the resources required to effectively manage *ML* and *FT risks*.

~~46.~~53. Where, as a result of the firm's review, changes to the *business risk assessments* are required, in accordance with Paragraph 3(1)(b) of *Schedule 3* the firm shall make those changes.

~~47.~~54. Where changes to the *business risk assessments* are made, the firm must give consideration to whether the policies, procedures and controls of the firm remain appropriate and effective in light of the revised *business risk assessments* and make any changes it considers appropriate in a timely manner.

3.10. Example Risk Factors

55. Below are example *risk* factors that may be considered by the firm as part of the assessment~~s~~ of its *ML* and *FT risks*. The examples given are not intended to be exhaustive or to be used by the firm as checklists of *risks*.

~~48.~~56. *Customer risk*:

(a) The countries, territories and geographic~~al~~ areas with which *customers* (and the *beneficial owners* of *customers*) ~~origin~~ have a *relevant connection* ~~of customers~~;

(b) The complexity of *customer* and beneficial ownership structures;

(c) The complexity of *legal persons* and *legal arrangements*;

(d) The use of introduced business arrangements;

(e) The use or acceptance of *intermediary relationships*;

(f) The number of *business relationships* assessed as high *risk*;

(g) The countries and geographic areas targeted by the firm and from which the firm will accept new *customers* (including the *beneficial owners* of *customers*);

(h) The number of *customers* and *beneficial owners* assessed as *PEPs* and their associated countries or territories; and

(i) The number of *customers* and *beneficial owners* which are charities or non-profit organisations ("NPOs") and their associated countries or geographic areas.

~~49.~~57. Product/service *risk*:

(a) The nature, scale, diversity and complexity of the products and services of the firm;
(b) The target markets, both in terms of geography and class of *customer*;
(c) The distribution channels utilised by the firm;
(d) Whether the value of transactions is expected to be particularly high;
(e) The nature, scale and countries/geographic areas associated with *funds* sent and received on behalf of *customers*;
(f) Whether payments to any unknown or un-associated third parties are allowed; and
(g) Whether the products/services/structure ~~is~~ are of particular, or unusual, complexity.

~~50.~~58. Other potential sources of *risk* to consider:

(a) Internal and/or external audit findings; and
(b) Typologies and findings of *ML* and *FT* case studies.

3.11. New Products and Business Practices

~~51.~~59. In accordance with Paragraph 3(3)(c)(i) of *Schedule 3*, the firm shall, before~~prior to~~ making available or adopting new products or business practices, ensure that its *business risk assessments* have identified and assessed the *ML* and *FT risks* arising from those products or practices.

~~52. Any *risk* assessment of a new product or business practice undertaken in accordance with Paragraph 3(3)(c)(i) of *Schedule 3* should be included within the firm's wider *ML* and *FT business risk assessments*.~~

60. References to new products should be read as referring to products which the firm has not previously offered and which present new or differing *ML* or *FT risks* to the firm.

61. References to new business practices relate to new ways in which the firm's products or services are offered or delivered. For example, a new business practice could include the development of a *customer*-facing portal or other software where *customers* can interact with the firm.

~~53.~~62. If the firm decides to proceed with the offering or adoption of a new product or business practice, the *board* of the firm must approve the *risk* assessment undertaken in accordance with Paragraph 3(3)(c)(i) of *Schedule 3* and that approval must be documented.

3.12. New Technologies

~~54.~~63. In accordance with Paragraph 3(3)(c)(ii) of *Schedule 3*, the firm shall, before adopting and using a new or developing technology for a new or pre-existing product, ensure that its *business risk assessments* have identified and assessed the *risks* arising from the technology's use or adoption.

64. ~~Any *risk* assessment of new or developing technology adopted or used by the firm can either be conducted as a standalone *risk* assessment or included within the firm's wider *ML* and *FT business risk assessments*.~~ These ~~is includes new or developing~~ technologies ~~in both the~~are likely to fall within the Financial Technology ("FinTech") ~~and Regulatory Technology ("RegTech")~~ arena~~s~~, which includes technology aimed at disrupting the delivery or transaction channels of traditional products and services, as well as the creation of new products or services utilising enhancements in technology. Examples of such technologies include the use of distributed ledger technology in the delivery of traditional securities through to the trading or safekeeping of virtual assets.

~~though the content and focus of the assessments will differ depending on whether the technology is used within the firm's financial services products or services, its delivery channels, or in business processes such as *customer* take-on.~~

~~55. It should be borne in mind that the *risks* presented by FinTech and RegTech differ. In contrast to the largely *customer* facing FinTech products and services, the majority of RegTech operates in support of a firm's middle and back-office operations. In this respect, while RegTech can also present *risks* to the firm, those *risks* are likely to present themselves differently and require different methods of management and mitigation.~~

~~56. The requirements of Paragraph 3(3)(c)(ii) of *Schedule 3* apply to the adoption of FinTech and RegTech technologies which significantly impact upon the AML and CFT controls of the firm and not to minor technologies used to support the day-to-day running of the business, for example, anti-virus software, office tools.~~

~~57. The focus of the firm should be on those technologies which expose the firm to the greatest *risk* of financial crime, including its susceptibility to being used for *ML* or to facilitate *FT*. Examples of such technologies include *customer* facing portals or other software where *customers* can interact with the firm, such as online trading platforms, banking applications or mobile payment solutions.~~

65. The *risk* assessment of a new or developing technology must include, as a minimum, an assessment of the *ML* and *FT risks* and vulnerabilities inherent in the use or adoption of the technology in order that appropriate controls can be implemented. This includes evaluating the technology itself, together with the anticipated use of the technology and the threats posed by this use.

~~58.~~66. It is not essential that the *risk* assessment of a technology extends to a highly technical, comprehensive report on the specifications and functionality. The objective of the *risk* assessment is to evaluate the *ML* and *FT risk*s and vulnerabilities inherent in the use of the technology~~ical method or system~~ and to identify the controls necessary to mitigate and limit the firm's exposure.

67. If the firm decides to proceed with the adoption or use of a new or developing technology for a new or pre-existing product, the *board* of the firm must approve the *risk* assessment undertaken in accordance with Paragraph 3(3)(c)(ii) of *Schedule 3* and that approval must be documented.

~~59.~~68. Following the initial *risk* assessment of a new or developing technology, t~~T~~he firm should~~must~~ periodically review its ~~its *risk*~~ assessment ~~of a technology~~ in conjunction with its responsibility for the review of its wider *ML* and *FT business risk assessments* as described in Section 3.9. of this *Handbook*.

~~60. Notwithstanding the requirement for the firm to review its assessment of any technology on an ongoing basis, such *risk* assessment need only be updated when significant changes to the technological product or system are implemented.~~

Relationship Risk Assessment

3.13. Introduction

~~61.~~69. The purpose of this section is to set out the *Commission Rules* and *guidance* surrounding the assessment of *risk* in a ~~new customers~~ *business relationship* or *occasional transaction* ("*relationship risk assessment*") at the point of take-on, as well as the ongoing requirement to ensure that any *relationship risk assessment* remains appropriate and relevant as the relationship ~~with the customer~~ evolves.

~~62.~~70. The firm's *business risk assessments* and its defined *risk appetite* will assist in determining the take-on of any new business. The *relationship risk assessment* is the assessment of a new or existing *business relationship* or *occasional transaction* against the parameters determined within the *risk appetite* and the *ML* and *FT risks* identified in the *business risk assessments*.

~~63.~~71. There may be circumstances where the *risks* of *ML* and *FT* are high and *ECDD* measures are to be applied. Similarly, there may be circumstances within which the firm can apply *SCDD* measures because ~~the~~ it has assessed the *risk* of the *business relationship* or *occasional transaction* as being low. Further information on the *relationship risk assessment* process, including examples of high and low *risk* factors, can be found in this section.

3.14. Management and Mitigation

~~64.~~72. In order to consider the extent of its potential exposure to the *risks* of *ML* and *FT*, in accordance with Paragraph 3(4) of *Schedule 3* the firm shall -

(a) prior to the establishment of a *business relationship* or the carrying out of an *occasional transaction*, undertake a *relationship risk assessment*, and
(b) regularly review any *relationship risk assessment* carried out under (a) so as to keep it up to date and, where changes to that *relationship risk assessment* are required, it shall make those changes.

~~65.~~73. Based on the outcome of its *relationship risk assessment*, the firm should decide whether or not to accept (or continue) a *business relationship* or whether or not to carry out an *occasional transaction*.

~~66.~~74. When undertaking or reviewing a *relationship risk assessment*, in accordance with Paragraph 3(5)(a) of *Schedule 3* the firm shall take into account its *risk appetite* and *risk* factors relating to:

(a) the type or types of *customer* (and the *beneficial owners* of the *customer*);
(b) the country or geographic area; and
(c) the product, service, transaction and delivery channel that are relevant to the *business relationship* or *occasional transaction*.

~~67.~~75. In addition to the *risk* factors set out above, the firm must also give consideration to the following when undertaking or reviewing a *relationship risk assessment*:

(a) where the product or service provided by the firm is a life insurance policy, the type or types of beneficiary of that policy;
(b) the purpose and intended nature of the *business relationship* or *occasional transaction*, including the possibility of *legal persons* and *legal arrangements* forming part of the relationship;
(c) the type, volume, value and regularity of activity expected; and
~~(d) the expected duration (if a *business relationship*).; and~~
(d) ~~whether cumulatively these factors increase or decrease the potential *risk*.~~

~~68.~~76. For the purposes of Paragraph 3(5)(a) of *Schedule 3* and *Commission Rule* 3.75.(a) above, the firm's consideration of the type or types of the *customer*, *beneficial owner* or beneficiary should incorporate whether they are a natural person, *legal person* or *legal arrangement*, as well as their identity and background.

~~69.~~77. In accordance with Paragraph 3(5)(b) of *Schedule 3*, when undertaking or reviewing a *relationship risk assessment*, the firm shall understand that the *risk* factors noted in Paragraph 3(5)(a) of *Schedule 3* as set out above and any other *risk* factors, either singly or in combination,

may increase or decrease the potential *risk* posed by the *business relationship* or *occasional transaction*.

~~70.~~78. In light of the above, when ~~assessing the risk of a proposed *business relationship* or *occasional transaction*~~undertaking a *relationship risk assessment* the firm must ensure that all relevant *risk*~~s~~ factors are considered, both singly and in combination, before making a determination as to the level of overall assessed *risk*.

~~71.~~79. Consideration of the purpose and intended nature of a *business relationship* or *occasional transaction* in accordance with *Commission Rule* 3.75.(c) should include an assessment of the economic or other commercial rationale for the *business relationship* or *occasional transaction*.

~~72.~~80. The firm's procedures may provide for standardised profiles to be used for *relationship risk assessments* where the firm has *satisfied* itself, on reasonable grounds, that such an approach effectively manages the *risk* for each particular *business relationship* or *occasional transaction*. However, where the firm has a diverse *customer* base, or where a wide range of products and services are offered, it must develop a more structured and rigorous system to show that judgement has been exercised on an individual basis rather than on a generic or categorised basis.

~~73.~~81. Whatever method is used to assess the *risk* of a *business relationship* or *occasional transaction*, the firm must maintain clear documented evidence as to the basis on which the *relationship risk assessment* ~~of risk of that customer~~ has been made~~, assessing each risk factor/variable on a singular basis, as well as the cumulative effect of those risk factors/variables~~.

~~74.~~82. Where, despite there being high *risk* factors ~~or variables~~ identified, the firm does not assess the overall *risk* as high because of strong and compelling mitigating factors, the firm must identify the mitigating factors and, along with the reasons for the decision, document them and retain them on the relevant ~~customer~~ *business relationship* or *occasional transaction* file.

83. Based upon the results of the *relationship risk assessment*, the firm must determine, on the basis of *risk*:

(a) the extent of the identification information~~, including *CDD*, *ACDD* and *ECDD* (as applicable),~~ to be obtained on the *key principals* to the *business relationship* or *occasional transaction* in accordance with Paragraphs 4 and 5 of *Schedule 3* and Chapters 4 to 8 of this *Handbook*;

(b) how and to what extent that information will be verified using *identification data*;

(c) whether to apply *SCDD* measures where the *business relationship* or *occasional transaction* has been assessed as being low *risk* and displays one or more of the characteristics in Chapter 9 of this *Handbook*; and

~~(c)~~(d) the extent to which the resulting *business relationship* will be monitored on an ongoing basis.

3.15. Business from Sensitive Sources Notices, Instructions, etc.

~~75.~~84. From time to time *the Commission* issues Business from Sensitive Sources Notices, Advisory Notices, Instructions and Warnings which highlight potential *risks*, including those arising from particular countries, territories and geographic areas. The information contained within these notices, together with sanctions legislation applicable in *the Bailiwick*, must be considered when undertaking or reviewing a *relationship risk assessment*.

https://www.gfsc.gg/commission/financial-crime/business-sensitive-sources-notices

~~76.~~85. Further information on *the Bailiwick's* sanctions regime and legislation can be found in Chapter 12 of this *Handbook*.

3.16. Mandatory High Risk Factors

~~77.~~86. In accordance with Paragraph 5(1) of *Schedule 3*, where the firm is required to carry out *CDD* measures, it must also carry out *ECDD* measures in relation to high *risk business relationships* and *occasional transactions*, including, without limitation -

(a) a *business relationship* or *occasional transaction* in which the *customer* or any *beneficial owner* is a foreign *PEP*;

(b) where the firm is an *FSB*, a *business relationship* which is –

(i) a *correspondent banking relationship*, or

(ii) similar to such a relationship in that it involves the provision of services, which themselves amount to financial services business or facilitate the carrying on of such business, by one *FSB* to another;

(c) a *business relationship* or an *occasional transaction* –

(i) where the *customer* or *beneficial owner* has a *relevant connection* with a country or territory that -

(A) provides funding or support for terrorist activities, or does not apply (or insufficiently applies) *the FATF Recommendations*, or

(B) is a country otherwise identified by the FATF as a country for which such measures are appropriate,

(ii) which the firm considers to be a *high risk relationship*, taking into account any notices, instructions or warnings issued from time to time by *the Commission* and having regard to the *NRA*,

(d) a *business relationship* or an *occasional transaction* which has been assessed as a *high risk relationship*, and

(e) a *business relationship* or an *occasional transaction* in which the *customer*, the *beneficial owner* of the *customer*, or any other *legal person* in the ownership or control structure of the *customer*, is a *legal person* that has *bearer shares* or *bearer warrants*.

~~78.~~87. Chapter 8 of this *Handbook* sets out the requirements of *Schedule 3* and the *Commission Rules* in relation to *high risk relationships* and includes details of sources which may assist in the assessment of *risk*.

~~3.17. Potential High Risk Indicators~~

~~79. The *risk* indicators included within the following sections are purely guidance and provided as examples of *risk* factors that the firm might consider when undertaking a *risk assessment* of a business relationship or occasional transaction. The lists are not definitive and they are not prescribed as checklists. It is for the firm to assess and decide what is appropriate in the circumstances of the customer and the example indicators do not diminish or remove the ability of the firm to apply a *risk* based approach.~~

~~80. If it is determined through a *risk assessment* that there are types of *customer*, activity, business or profession that are at *risk* of abuse from *ML* and/or *FT* then the firm should apply higher AML and CFT requirements to such sectors.~~

3.17.1. Geographic – Connected Countries or Territories

81. A *customer* with a connection to a country or territory:

(a) with known higher levels of bribery and corruption;
(b) with known higher levels of organised crime;
(c) involved in illegal drug production, processing and/or distribution; or
(d) with known higher levels of other criminal activity;

other than those countries or territories falling within points (c) to (e) in Paragraph 3.16.(1) above where a mandatory high *risk* rating must be applied.

3.17.2. Relationship

82. A *customer* that exhibits one or more of the following characteristics:

(a) the *customer's* source of wealth and/or source of funds cannot be easily verified or where the audit trail has been deliberately broken and/or unnecessarily layered;
(b) the *customer's* affairs are structured in a complex manner, making it easier to conceal underlying *beneficial owners* and beneficiaries;
(c) the *customer's* structure has no apparent legitimate economic purpose or rationale;
(d) the *customer* requests the adoption of undue levels of secrecy within a *relationship* and/or *transaction*;
(e) the *customer* has been the subject of a SAR;
(f) the *customer* requests products or services in one country or territory when there are very similar products or services in his home country or territory and where there is no legitimate economic or other rationale for requiring the product or service abroad;
(g) the *customer* makes or holds high value balances or investments which are disproportionately large to that particular *customer*, product or service set;
(h)
(i) the *customer* uses companies which have, or have the power to, issue bearer shares or other bearer instruments; or
(j) the *customer* has inappropriately delegated authority.

3.17.3. Connection to Industry

83. A *customer* with a connection to one or more of the following:

(a) arms trading;
(b) gambling and casinos;
(c) pharmaceuticals;
(d) charities and NPOs with substantial operations in high-*risk* jurisdictions;
(e) construction and infrastructure (in particular projects funded by government);
(f) development and other types of overseas assistance;
(g) mining and natural resource extraction;
(h) the provision of public goods and/or utilities;
(i) dealing in precious metals and precious stones, or other luxurious goods;
(j) dealing in luxury vehicles (such as sports cars, ships, helicopters and planes);
(k) dealing in high-end real estate; or
(l) other cash intensive businesses.

3.17.4. Product, Service or Delivery Channel

84. A *customer* provided with one or more of the following by the firm:

(a) private banking services;
(b) (for example, cash or pseudonymous (i.e. crypto-currency) *transactions*);
(c) the establishment of *legal persons* or *legal arrangements* to act as personal asset-holding vehicles;
(d) hold mail or retained mail arrangements; or
(e) safe custody arrangements (for example, custody of physical assets or chattels).

3.18. Lower Risk Indicators

85. The following is a non-exhaustive list of lower *risk* indicators for *customers* which the firm may consider when preparing a profile:

(a) a business subject to, and which effectively implements, the requirements to combat ML and FT as set out within *the FATF Recommendations* and which is effectively supervised or monitored to ensure compliance with those *FATF Recommendations*;a public company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means) which impose requirements to ensure adequate transparency of beneficial ownership;
(a) a public administration or enterprise;
(a) a *customer* whose funds are part of a pooled client money account held in the name of an *Appendix C business*;
(a) a natural person who is actively employed with a regular source of income which is consistent with the employment being undertaken;
(a) a *Bailiwick* resident natural person, or *legal person* owned by a *Bailiwick* resident, with a *business relationship* which is understood by the firm;
(a) a *customer* represented by those whose appointment is subject to court approval or ratification, for example, an executor or liquidator;
(a) a product or service where the provider does not permit investment or payment other than from the *customer* or repayment other than to the *customer*;
(a) a retirement scheme (which for the avoidance of doubt includes pension, superannuation or similar schemes that provide retirement/savings benefits to employees) where contributions are made by way of deduction from wages or from the sponsoring company's revenues and where the scheme rules do not permit the assignment of a member's interest under the scheme;
(a) a life insurance policy where the annual premium is no more than £1,000 or a single premium of no more than £2,500;
(a) an insurance policy for a pension scheme where there is no surrender clause and the policy cannot be used for collateral;
(a) a *customer* based in a country or territory identified by credible sources, such as mutual evaluation or detailed assessment reports, as having effective AML and CFT systems; or
(a) a *customer* based in a country or territory identified by credible sources as having a low level of corruption or other criminal activity.

86. The existence of one of the above characteristics must not automatically lead to an overall low *risk* rating. The above *risk* factors must be considered in conjunction with any other *risk* factors identified in respect of the *customer*, both singularly and in combination, prior to determining an overall *risk* rating.

3.17. Risk Factors

88. The *risk* factors included within the following sections are purely for guidance and are provided as examples of factors that the firm might consider when undertaking a *relationship risk assessment*. The following factors are not exhaustive and are not prescribed as a checklist. It is

for the firm to assess and decide what is appropriate in the circumstances of the *business relationship* or *occasional transaction* and it is not expected that all factors will be considered in all cases.

89. The example indicators do not remove the ability of the firm to apply a *risk*-based approach. In this respect the firm should take a holistic view of the *risk* associated with each *business relationship* or *occasional transaction* as set out in Section 3.4. of this Chapter. The presence of isolated *risk* factors does not necessarily move a *business relationship* or *occasional transaction* into a higher or lower *risk* category; however, in accordance with Section 3.4.1. above, certain *risk* factors could have a bigger contribution to the overall *risk* assessment than others.

90. If it is determined, through a *relationship risk assessment*, that there are types of *customer*, activity, business or profession that are at *risk* of abuse from *ML* and/or *FT*, then the firm should apply higher AML and CFT requirements as dictated by the relevant *risk* factor(s).

3.17.1. Customer Risk Factors

91. When identifying the *risk* associated with its *customers*, including the *beneficial owners* of *customers*, the firm should consider the *risk* related to:

(a) the *customer's* (and *beneficial owner's)* business or professional activity;
(b) the *customer's* (and *beneficial owner's*) reputation; and
(c) the *customer's* (and *beneficial owner's*) nature and behaviour.

92. *Risk* factors that may be relevant when considering the *risk* associated with a *customer's* or *beneficial owner's* business or professional activity include:

(a) Does the *customer* or *beneficial owner* have links to sectors that are commonly associated with higher corruption risk, such as construction, pharmaceuticals and healthcare, the arms trade and defence, the extractive industries or public procurement?
(b) Does the *customer* or *beneficial owner* have links to sectors that are associated with higher *ML* and/or *FT risk*, for example, certain money service providers ("MSPs"), casinos or dealers in precious metals?
(c) Does the *customer* or *beneficial owner* have links to sectors that involve significant amounts of cash?
(d) Where the *customer* is a *legal person* or *legal arrangement*, what is the purpose of their establishment? For example, what is the nature of their business?
(e) Does the *customer* have political connections, for example, are they a *PEP*, or is the *beneficial owner* a *PEP*? Does the *customer* or *beneficial owner* have any other relevant links to a *PEP*, for example, are any of the *customer's* directors *PEPs* and, if so, do these *PEPs* exercise significant control over the *customer* or *beneficial owner*? In line with Paragraph 5(1) of *Schedule 3*, where a *customer* or the *beneficial owner* is a *PEP* the firm shall always apply *ECDD* measures.
(f) Does the *customer* or *beneficial owner* hold another prominent position or enjoy a high public profile that might enable them to abuse this position for private gain? For example, are they senior local or regional public officials with the ability to influence the awarding of public contracts, decision-making members of high-profile sporting bodies or individuals who are known to influence the government and other senior decision-makers?
(g) Is the *customer* a *legal person* subject to enforceable disclosure requirements that ensure reliable information about the *customer's beneficial owner* is publicly available, for example, public companies listed on stock exchanges that make such disclosure a condition for listing?
(h) Is the *customer* an *FSB* acting on its own *account* from a country or territory listed in Appendix C to this *Handbook*? Is there evidence that the *customer* has been subject to

supervisory sanctions or enforcement for failure to comply with AML and CFT obligations or wider conduct requirements in recent years?

(i) Is the *customer* a public administration or enterprise from a country or territory with low levels of corruption?

(j) Is the *customer's* or the *beneficial owner's* background consistent with what the firm knows about their former, current or planned business activity, their business's turnover, the source of funds and the *customer's* or *beneficial owner's* source of wealth?

93. The following *risk* factors may be relevant when considering the *risk* associated with a *customer's* or *beneficial owners'* reputation:

(a) Are there adverse media reports or other relevant sources of information about the *customer*, for example, are there any allegations of criminality or terrorism against the *customer* or the *beneficial owner*? If so, are these reliable and credible? The firm should determine the credibility of allegations on the basis of the quality and independence of the source of the data and the persistence of reporting of these allegations, among other considerations. The firm should note that the absence of criminal convictions alone may not be sufficient to dismiss allegations of wrongdoing.

(b) Has the *customer*, *beneficial owner* or anyone publicly known to be closely associated with them had their assets frozen due to administrative or criminal proceedings or allegations of terrorism or *FT*? Does the firm have reasonable grounds to suspect that the *customer* or *beneficial owner* or anyone publicly known to be closely associated with them has, at some point in the past, been subject to such an asset freeze?

(c) Does the firm know if the *customer* or *beneficial owner* has been the subject of an internal or external disclosure in the past?

(d) Does the firm have any in-house information about the *customer's* or the *beneficial owner's* integrity, obtained, for example, in the course of a long-standing *business relationship*?

94. The following *risk* factors may be relevant when considering the *risk* associated with a *customer's* or *beneficial owner's* nature and behaviour The firm should note that not all of these *risk* factors will be apparent at the outset, they may emerge only once a *business relationship* has been established:

(a) Does the *customer* have legitimate reasons for being unable to provide robust evidence of their identity, for example, because they are an asylum seeker?

(b) Does the firm have any doubts about the veracity or accuracy of the *customer's* or *beneficial owner's* identity?

(c) Are there indications that the *customer* might seek to avoid the establishment of a *business relationship*? For example, does the *customer* look to carry out one transaction or several one-off transactions where the establishment of a *business relationship* might make more economic sense?

(d) Is the *customer's* ownership and control structure transparent and does it make sense? If the *customer's* ownership and control structure is complex or opaque, is there an obvious commercial or lawful rationale?

(e) Does the *customer* issue *bearer shares* or does it have *nominee shareholders*?

(f) Is the *customer* a *legal person* or *legal arrangement* that could be used as a personal asset holding vehicle?

(g) Is there a sound reason for changes in the *customer's* ownership and control structure?

(h) Does the *customer* request transactions that are complex, unusual or unexpectedly large or have an unusual or unexpected pattern without an apparent economic or lawful purpose or a sound commercial rationale? Are there grounds to suspect that the *customer* is trying to evade specific thresholds, such as those subject to mandatory reporting, either in *the Bailiwick* or the *customer's* home country or territory?

(i) Does the *customer* request unnecessary or unreasonable levels of secrecy? For example, is the *customer* reluctant to share *identification data*, or do they appear to want to disguise the true nature of their business?

(j) Can the *customer's* or *beneficial owner's* source of *funds* or source of wealth be easily established, for example, through their occupation, inheritance or investments?

(k) Does the *customer* use the products and services they have taken out as expected when the *business relationship* was first established?

(l) Is the *customer* an NPO whose activities could be abused for *FT* purposes?

3.17.2. Countries and Territories Risk Factors

~~87.~~95. When identifying the *risk* associated with countries and territories, the firm should consider the *risk* related to those countries and territories with which the *customer* or *beneficial owner* has a *relevant connection*.

96. The firm should note that the nature and purpose of the *business relationship* will often determine the relative importance of individual country and geographical *risk* factors. For example:

(a) Where the *funds* used in the *business relationship* or *occasional transaction* have been generated abroad, the level of predicate offences to *ML* and the effectiveness of a country's or territory's legal system will be particularly relevant.

(b) Where *funds* are received from, or sent to, countries or territories where groups committing terrorist offences are known to be operating, the firm should consider to what extent this could be expected to, or might give rise to, suspicion based on what the firm knows about the purpose and nature of the *business relationship* or *occasional transaction*.

(c) Where the *customer* is an *FSB*, the firm should pay particular attention to the adequacy of the country's or territory's AML and CFT regime and the effectiveness of AML and CFT supervision.

(d) Where the *customer* or *beneficial owner* is a *legal person* or *legal arrangement*, the firm should take into account the extent to which the country or territory in which the *customer* or *beneficial owner* is registered effectively complies with international tax transparency standards.

97. *Risk* factors the firm should consider when identifying the effectiveness of a country's or territory's AML and CFT regime include:

(a) Has the country or territory been identified by a mutual evaluation as having strategic deficiencies in its AML and CFT regime? In accordance with Paragraph 5(1)(c)(i) of *Schedule 3*, *ECDD* measures shall be applied where the *customer* or *beneficial owner* has a *relevant connection* to a country or territory that does not apply (or insufficiently applies) *the FATF Recommendations*. Further information can be found in Section 3.15. of this Chapter.

(b) Is there information from more than one credible and reliable source about the quality of the country's or territory's AML and CFT controls, including information about the quality and effectiveness of regulatory enforcement and oversight? Examples of possible sources include mutual evaluation reports by the FATF or FATF-style regional bodies (in particular Recommendations 10, 26 and 27 and Immediate Outcomes 3 and 4), the FATF's list of high-risk and non-cooperative jurisdictions, International Monetary Fund ("IMF") assessments and Financial Sector Assessment Programme reports. The firm should note that membership of the FATF or a FATF-style regional body (for example, MONEYVAL) does not, of itself, mean that the country's or territory's AML and CFT regime is adequate and effective.

98. *Risk* factors the firm should consider when identifying the level of *FT risk* associated with a country or territory include:

(a) Is there information (for example, from law enforcement or credible and reliable open media sources) suggesting that a country or territory provides funding or support for terrorist activities or that groups committing terrorist offences are known to be operating in the country or territory?
(b) Is the country or territory subject to financial sanctions, embargoes or measures that are related to terrorism, financing of terrorism or proliferation issued by, for example, the UN or the EU?

99. *Risk* factors the firm should consider when identifying a country's or territory's level of transparency and tax compliance include:

(a) Is there information from more than one credible and reliable source that the country has been deemed compliant with international tax transparency and information sharing standards? Is there evidence that relevant rules are effectively implemented in practice? Examples of possible sources include reports by the Global Forum on Transparency and the Exchange of Information for Tax Purposes of the OECD, which rate jurisdictions for tax transparency and information sharing purposes; assessments of the country's or territory's commitment to automatic exchange of information based on the Common Reporting Standard; assessments of compliance with Recommendations 9, 24 and 25 and Immediate Outcomes 2 and 5 of the *FATF Recommendations* by the FATF or FATF-style regional bodies; and IMF assessments (for example, IMF staff assessments of offshore financial centres).
(b) Has the country or territory committed to, and effectively implemented, the Common Reporting Standard on Automatic Exchange of Information, which the G20 adopted in 2014?
(c) Has the country or territory put in place reliable and accessible beneficial ownership registers?

100. *Risk* factors the firm should consider when identifying the *risk* associated with the level of predicate offences to *ML* in a country or territory include:

(a) Is there information from credible and reliable public sources about the level of predicate offences to *ML* in the country or territory, for example, corruption, organised crime, tax crime and serious fraud? Examples include corruption perceptions indices; OECD country reports on the implementation of the OECD's anti-bribery convention; and the UN Office on Drugs and Crime World Drug Report.
(b) Is there information from more than one credible and reliable source about the capacity of the country's or territory's investigative and judicial system effectively to investigate and prosecute these offences?

3.17.3. Products, Services and Transactions Risk Factors

101. When identifying the *risk* associated with its products, services or transactions, the firm should consider the *risk* related to:

(a) the level of transparency, or opaqueness, the product, service or transaction affords;
(b) the complexity of the product, service or transaction; and
(c) the value or size of the product, service or transaction.

102. *Risk* factors that may be relevant when considering the *risk* associated with a product, service or transaction's transparency include:

(a) To what extent do products or services allow the *customer* or *beneficial owner* structures to remain anonymous, or facilitate hiding their identity? Examples of such products and

services include *bearer shares*, fiduciary deposits, personal asset holding vehicles, and legal entities such as foundations that can be structured in such a way as to take advantage of anonymity and allow dealings with shell companies or companies with nominee shareholders.

(b) To what extent is it possible for a third party that is not part of the *business relationship* to give instructions, for example, in the case of certain *correspondent banking relationships*?

103. *Risk* factors that may be relevant when considering the *risk* associated with a product, service or transaction's complexity include:

(a) To what extent is the transaction complex and does it involve multiple parties or multiple countries or territories, for example, in the case of certain trade finance transactions? Are transactions straightforward, for example, are regular payments made into a pension fund?

(b) To what extent do products or services allow payments from third parties or accept overpayments where this would not normally be expected? Where third party payments are expected, does the firm know the third party's identity, for example, is it a state benefit authority or a guarantor? Or are products and services funded exclusively by *fund* transfers from the *customer's* own *account* at another *FSB* that is subject to AML and CFT standards and oversight that are comparable to those in *the Bailiwick*?

(c) Does the firm understand the *risks* associated with its new or innovative product or service, in particular where this involves the use of new technologies or payment methods?

104. *Risk* factors that may be relevant when considering the *risk* associated with a product, service or transaction's value or size include:

(a) To what extent are products or services cash intensive, for example, many payment services and certain current *accounts*?

(b) To what extent do products or services facilitate or encourage high-value transactions? Are there any caps on transaction values or levels of premium that could limit the use of the product or service for *ML* and *FT* purposes?

3.17.4. Delivery Channel Risk Factors

105. When identifying the *risk* associated with the way in which the *customer* obtains the products or services they require, the firm should consider the *risk* related to:

(a) the extent to which the *business relationship* is conducted on a non-face-to-face basis; and

(b) any introducers of business or other intermediaries the firm might use and the nature of their relationship with the firm.

106. When assessing the *risk* associated with the way in which the *customer* obtains the products or services, the firm should consider a number of factors including:

(a) Is the *customer* physically present for identification purposes? If they are not, has the firm used a reliable form of *identification data*? Has it taken steps to prevent impersonation or identity fraud?

(b) Has the *customer* been introduced by another part of the same financial group and, if so, to what extent can the firm rely on this introduction as reassurance that the *customer* will not expose the firm to excessive *ML* or *FT risk*? What has the firm done to satisfy itself that the group entity applies *CDD* measures equivalent to those of the firm?

(c) Has the *customer* been introduced by a third party (for example, a *FSB* that is not part of the same group)? What has the firm done to be satisfied that:

(i) the third party applies *CDD* measures and keeps records to a standard equivalent to *the FATF Recommendations*;

(ii) the third party will provide, immediately upon request, relevant copies of *identification data* in accordance with Paragraph 10 of *Schedule 3* and Chapter 10 of this *Handbook*; and

(iii) the quality of the third party's CDD measures is such that it can be relied upon?

(d) Has the *customer* been introduced through a tied agent, that is, without direct firm contact? To what extent can the firm be *satisfied* that the agent has obtained enough information so that the firm knows its *customer* and the level of *risk* associated with the *business relationship*?

(e) If independent or tied agents are used, to what extent are they involved on an ongoing basis in the conduct of business? How does this affect the firm's knowledge of the *customer* and ongoing *risk* management?

~~(b)~~(f) Where a firm uses an *intermediary*, are there any indications that the *intermediary's* level of compliance with applicable AML legislation or regulation is inadequate, for example, has the *intermediary* been sanctioned for breaches of AML or CFT obligations?

Chapter 4
Customer Due Diligence

Contents of this Chapter

4.1. Introduction

1. The application of *CDD* measures to *business relationships* and *occasional transactions* is important for two key reasons:

   (a) to help the firm, at the time that *CDD* measures are applied, to be satisfied that *customers* (and the *beneficial owners* of *customers*) are who they say they are; to know whether the *customer* is acting on behalf of another; and that there is no legal barrier (for example, government sanctions) to providing them with the product or service requested; and
   (b) to enable the firm to assist law enforcement, by providing available information on *customers*, *beneficial owners* or activities being investigated.

~~1.~~2. This Chapter sets out the *Commission Rules* and provides *guidance* in respect of the *CDD* measures to be applied to *business relationships* and *occasional transactions*, including details of the policies, procedures and controls required by the firm in order to meet the relevant requirements of *Schedule 3* and this *Handbook*.

~~2.~~3. The content of this Chapter should be read in conjunction with the following three Chapters: 5. Natural Persons; 6. Certification; and 7. Legal Persons and Legal Arrangements. These Chapters specify the *CDD* measures to be applied based upon the~~requirements by~~ type of *customer* (or *beneficial owner* ~~or underlying principal~~) with which the firm is entering into a *business relationship* or undertaking an *occasional transaction*.

~~3.~~4. Reference should also be made to Chapters 8. Enhanced Customer Due Diligence and 9. Simplified Customer Due Diligence which~~. These chapters~~ provide details of the *ECDD* ~~and ACDD obligations~~measures to be applied to *high risk relationships* and the *enhanced measures* for those with specific higher *risk* factors, together with the circumstances in which the firm can apply *SCDD* measures and the details of such measures.

4.2. Overriding Obligations

~~4.~~5. In accordance with Paragraph 4(2) of *Schedule 3*, the firm shall apply *CDD* measures when:

(a) establishing a *business relationship*,
(b) carrying out an *occasional transaction*,
(c) the firm knows or suspects or has reasonable grounds for knowing or suspecting -

   (i) that, notwithstanding any exemptions or thresholds pursuant to *Schedule 3*, any party to a *business relationship* is engaged in *ML* or *FT*, or
   (ii) that it is carrying out a transaction on behalf of a person, including a *beneficial owner*, who is engaged in *ML* or *FT*, and

(d) the firm has doubts about the veracity or adequacy of previously obtained *identification data*.

~~5.~~6. In accordance with Paragraph 4(5) of *Schedule 3*, where the firm:

(a) forms a suspicion of *ML* or *FT* by a *customer* or other person, and
(b) reasonably believes that carrying out the steps in Paragraphs 4(3), 5(3) or 11 of *Schedule 3* would tip off that *customer* or person,

it shall not carry out those steps, but shall instead make a disclosure pursuant to Part I of *the Disclosure Law*, or Section 15 or 15A, or Section 12 (as appropriate) of *the Terrorism Law*.

~~6.~~7. Where the firm is a *PSP*, it is also required to~~shall also~~ apply *CDD* measures when carrying out *occasional transactions* which are *wire transfers* in the circumstances detailed in Chapter 14 of this *Handbook*.

~~7.~~8. In accordance with Paragraphs 8(1) and 8(2) of *Schedule 3*, in relation to all *customers* the firm shall:

(a) not set up or keep anonymous *accounts* or *accounts* in fictitious names;
(b) maintain *accounts* in a manner which facilitates the meeting of the requirements of *Schedule 3* and the relevant *Commission Rules* and *guidance* in this *Handbook*;
(c) not enter into, or continue, a *correspondent banking relationship* with a *shell bank*; and
(d) take appropriate measures to ensure that it does not enter into, or continue, a *correspondent banking relationship* where the respondent *bank* is known to permit its *accounts* to be used by a *shell bank.*

~~8.~~9. Sound *CDD* policies and procedures are a key component of an effective AML and CFT framework and are vital for the firm because they:

(a) constitute an essential part of *risk* management, providing the basis for identifying, assessing, mitigating and managing *risk*;
(b) help to protect the firm and the integrity of *the Bailiwick* by reducing the likelihood of the firm becoming a vehicle for, or a victim of, financial crime and/or *FT*;
(c) help the firm, at the time *CDD* is carried out, to take comfort that the *customer* and other parties included in a *business relationship* or *occasional transaction* are who they say they are and that it is appropriate to provide them with the product or service requested; and
(d) help the firm 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 the parties involved in a *business relationship* or *occasional transaction* may be carrying out *ML* or *FT*.

~~9.~~10. ~~The verification of a *customer*~~Accordingly, *CDD* is an on-going and cumulative process, the extent of which is determined by both the *risk* attributed to, and the particular circumstances of, a *business relationship* or *occasional transaction*.

4.3. Key Principals

11. Paragraph 4(3) of *Schedule 3* defines the four categories of party which may be associated with a *business relationship* or *occasional transaction* (collectively referred to in the *Handbook* as "*key principals*") and sets out the extent of the *CDD* measures that are to be applied to each of them, specifically:

(a) the *customer*;
(b) any person purporting to act on behalf of the *customer*;
(c) the *beneficial owner* of the *customer*; and
(d) any person on behalf of whom the *customer* is acting.

4.3.1. The Customer

~~10.~~12. In accordance with Paragraph 4(3)(a) of *Schedule 3*, the *customer* shall be identified and the identity of the *customer* verified using *identification data*.

13. Chapters 5 and 7 of this *Handbook* provide for the *CDD* measures to be applied where the *customer* is a natural person, or a *legal person* and *legal arrangement* respectively.

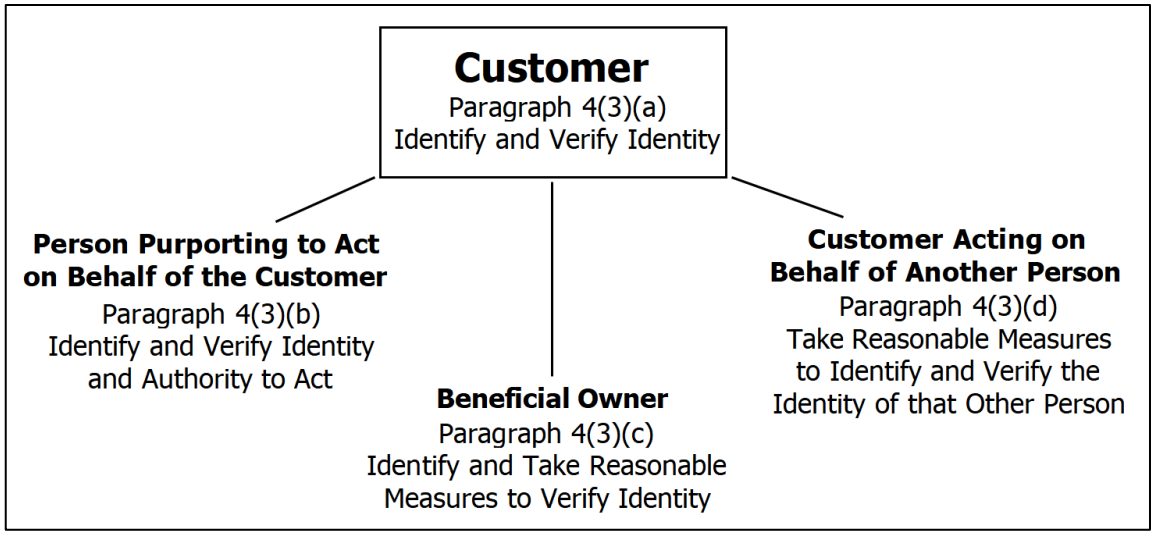


Fig. 1 – CDD Measures for Key Principals

4.3.2. A Person Purporting to Act on Behalf of the Customer

~~11.~~14. In accordance with Paragraph 4(3)(b) of *Schedule 3*, any person purporting to act on behalf of the *customer* shall be identified and that person's identity and authority to so act shall be verified.

15. Examples of such persons will include a guardian of a natural person, the authorised signatories (or equivalent) acting for or on behalf of a *legal person* or *legal arrangement*, those to whom powers of attorney have been granted, the directors (or equivalent) who are acting on behalf of a *legal person*, and any other person acting on behalf of the *customer* within a *business relationship* or *occasional transaction*.

16. In taking measures to verify the identity of any person purporting to act on behalf of the *customer*, the firm should take into account the *risk* posed by the *business relationship* or *occasional transaction*, the materiality of the authority delegated to the individual and the likelihood of that person giving the firm instructions concerning the use or transfer of *funds* or assets.

17. Examples of the measures the firm could take to verify the authority of a person to act could include obtaining a copy of the authorised signatories list, power of attorney or other authority or mandate providing the person with the authority to act on behalf of the *customer*.

18. The identification and verification of the identity of any person identified in accordance with Paragraph 4(3)(b) of *Schedule 3* should be undertaken in accordance with Chapter 5 of this *Handbook*.

4.3.3. The Beneficial Owner of the Customer

~~12.~~19. In accordance with Paragraph 4(3)(c) of *Schedule 3*, the *beneficial owner* shall be identified and reasonable measures shall be taken to verify such identity using *identification data* and such measures shall include, in the case of a *customer* which is a *legal person* or *legal arrangement*, measures to understand the ownership and control structure of the *customer*.

20. Paragraph 22 of *Schedule 3* sets out the definition of *beneficial owner*. It should be noted that the definition varies based upon the type of *legal person* or *legal arrangement* involved in a *business relationship* or *occasional transaction*. Further detail can be found in Chapter 7 of this *Handbook*.

21. For the purposes of Paragraph 4(3)(c) of *Schedule 3*, "reasonable measures" should be read as referring to the taking of measures, which are commensurate with the *ML* and *FT risks* which have been identified within the *business relationship* or *occasional transaction*, to understand the ownership and control structure of the *customer* and to verify that the *beneficial owner* of the *customer* is who he or she is claimed to be.

22. ~~–~~Where the *business relationship* or *occasional transaction* is a *high risk relationship*, the measures to understand the ownership and control structure of the *customer* will be greater than for low or standard *risk* relationships and may require the firm to ask more questions of the *customer* and require additional information about the *customer's* beneficial ownership. Similarly the extent of the measures considered to be reasonable to verify the identity of the *beneficial owner* will be greater for *high risk relationships* and may require the firm to undertake more rigorous checks on the *beneficial owner* or obtain more robust forms of *identification data* to *satisfy* the firm that it has accurately verified the *beneficial owner's* identity.

4.3.4. A Person on Behalf of Whom the Customer is Acting

~~13.~~23. In accordance with Paragraph 4(3)(d) of *Schedule 3*, a determination shall be made as to whether the *customer* is acting on behalf of another person and, if the *customer* is so acting, reasonable measures shall be taken to identify that other person and to obtain sufficient *identification data* to verify the identity of that other person.

24. For the purposes of Paragraph 4(3)(d) of *Schedule 3*, "reasonable measures" should be read as referring to the taking of measures, which are commensurate with the *ML* and *FT risks* which have been identified within the *business relationship* or *occasional transaction*, to establish the identity of any natural person on whose behalf the firm has determined the *customer* to be acting. Where the *risk* of the *business relationship* or *occasional transaction* is high, the extent of the measures considered to be reasonable will naturally be greater than those applied to *low risk relationships*.

25. The firm should refer to the requirements of Chapters 5 and 7 of this *Handbook* which provide the *CDD* measures which the firm should take reasonable measures to apply to any natural person which the firm determines to fall within Paragraph 4(3)(d) of *Schedule 3*.

4.4. Policies, Procedures and Controls

~~14.~~26. The firm must have ~~customer~~ take-on policies, procedures and controls in place which ~~provide~~ explain how~~scope~~ to identify, and verify the identity of, the *customer*, *beneficial owner* and other *key principals* identified by Paragraph 4(3) of *Schedule 3* to a ~~depth~~ level appropriate to the characteristics and assessed *risk* of the *business relationship* or *occasional transaction*.

~~15.~~27. The firm must ~~judge~~assess, on the basis of *risk*, how much identification ~~and verification~~ information to ~~ask for~~request, what to verify, and how to verify it, in order to be satisfied as to the identity of a *customer*, ~~or~~ *beneficial owner* or other *key principal* ~~or underlying principal~~.

~~16.~~28. The firm's policies, procedures and controls in respect of its *CDD* measures must:

(a) be *risk*-based to differentiate between what is expected in *low risk relationships*, what is expected in *high risk relationships* and what is expected in situations which are neither high *risk* nor low *risk*;

(b) provide for ~~*ACDD*~~*enhanced measures* to be applied in the circumstances where such measures are required in accordance with Paragraph 5(2) of *Schedule 3*;

(c) impose the least necessary burden on *customers*, ~~and~~ *beneficial owners* ~~and *underlying principals*~~ and other *key principals* consistent with meeting the requirements of *Schedule 3* and the *Commission Rules*;

(d) not constrain access to financial services (for example, by those without driving licences or passports); and

(e) deal sensibly and sensitively with special groups for whom special processes may be appropriate (for example, the elderly and students studying overseas).

~~17.~~29. *Identification data* ~~Verification methods~~ providing evidence to verify~~of~~ identity and address can come from a range of sources, including physical or digital *documents*, databases and electronic data sources. These sources may differ in their integrity, suitability, reliability and independence, for example, some *identification data* is issued by governments after due diligence has been undertaken on an individual's identity, i.e. national identity cards and passports, while other *identification data* may be issued with few or no checks undertaken on the subject.

~~18.~~30. In light of this, t~~T~~he firm should consider the suitability of *identification data* prior to its acceptance, including its source and whether underlying identity checks have been undertaken by the issuing body or authority. The firm should also consider the susceptibility of a *document* or source to forgery when determining its acceptability.

~~19.~~31. Where the firm does not receive, or have sight of, the original ~~versions of~~ physical *documentation* used to verify identity and where instead copy documentation is provided, the firm ~~it~~ must ensure that the copy *documentation* ~~provided to the firm~~ has been certified by a suitable third party.

~~20.~~32. Further information on the policies, procedures and controls required in respect of certification can be found within Chapter 6 of this *Handbook*.

~~21.~~33. Where the firm is not familiar with the form of the *identification data* obtained to verify identity or address, appropriate measures should be undertaken by the firm to *satisfy* itself that the *identification data* is genuine. Evidence of the steps taken by the firm should be retained as proof of its understanding and conclusions in respect of the *documents* received.

~~22.~~34. All key *documents* (or parts thereof) must be understood by an *employee* of the firm and that understanding must be recorded and retained with the relevant *document*.

~~23.~~35. The translation of *documents* should be considered on a case by case basis as it may be obvious to the firm or an *employee* in certain instances what a *document* is and what it means. In all cases the firm should record its understanding of the *document* and where relevant the reason why it has not sought to translate a *document*.

~~24.~~36. Notwithstanding the above, the firm must translate all key *documents* (or parts thereof) into English at the reasonable request of *the Commission* or the *FIS*.

~~25.~~37. Where *identification data* accepted by the firm to verify identity contains the *customer's* signature and/or a photograph of the *customer*, the firm should ensure that the photograph and/or signature is clearly legible on the copy or scan of the *document* retained by the firm.

~~4.5. CDD Utilities~~

~~1. As part of the drive of firms to streamline compliance resources, a number of first and third-party products and services have emerged which leverage digital technologies in order to achieve compliance with one or more of the various strands of AML and CFT obligations. The area where technology is having the greatest impact is in the gathering of CDD for customers, and any beneficial owners and underlying principals.~~

26. In light of this technology drive, a number of products and services are available which provide various approaches to customer on-boarding, including identifying and verifying the customer, and beneficial owner and underlying principal, understanding the customer and the nature and purpose of the business relationship or occasional transaction.

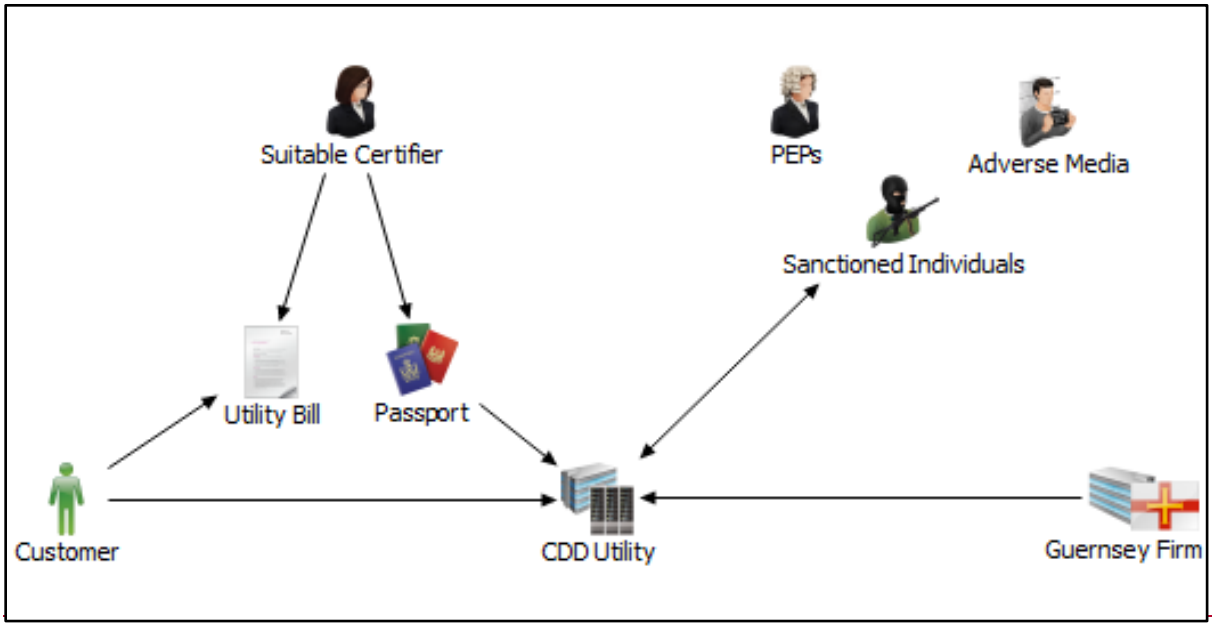
27. While the majority of these products and services simply provide for a more efficient, technology based solution to the more traditional or paper-based processes, there are some which introduce new concepts for conducting CDD, the biggest of which is the emergence of the CDD utility.

28. The purpose of this section is to provide an overview of the concept of a CDD utility and the expectations of the Commission where the firm utilises such a service. The use of electronic methods or systems for the verification of a natural person are not covered within this section and are considered separately (see section 5.6. of this Handbook); however a CDD utility may utilise electronic verification for natural persons as part of its wider processes.

29. Section 3.11. of this Handbook sets out the requirements for the firm where it wishes to utilise a new technology within its compliance processes. This includes the undertaking of an assessment of the ML and FT risks and vulnerabilities arising from the technology's use prior to its adoption by the board of the firm.

30. In addition to the risk assessment obligations set out above, a key requirement for the firm prior to using a CDD utility is to understand the procedures utilised by the system. Part of this understanding is establishing the process by which identification data is received by the utility and the controls utilised to ensure the validity and veracity of the CDD received by the firm.

31. Two examples of CDD utilities are included below and reflect that the obligations of the firm vary depending on the processes used by the utility, e.g. if the firm is establishing a formal outsourcing arrangement with the CDD utility, or if the firm is placing reliance on the CDD utility to gather due diligence on the customer (and any beneficial owner and underlying principal).

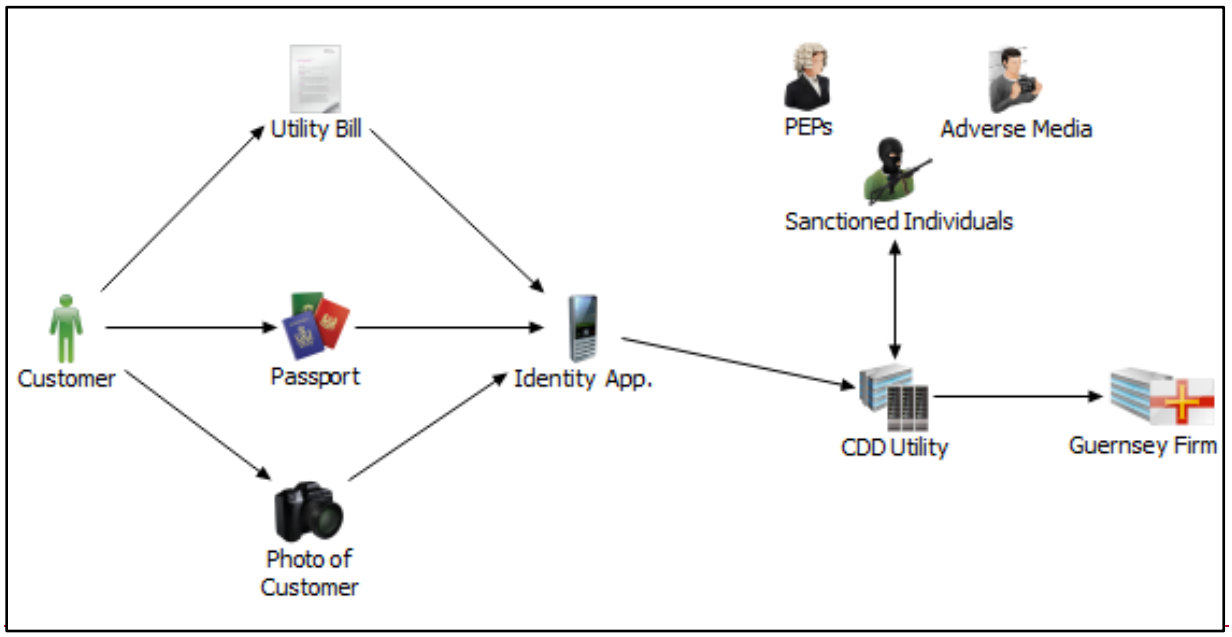


32. In the first example the customer creates an account with the CDD utility and provides information about his identity. The customer uploads copies of his identity and address verification documentation and the physical copies of these documents are provided to a suitable

certifier who independently confirms to the CDD utility that he has met the individual and seen the documents in question.

33. Following completion of the on-boarding process, the identity information and digitally certified identification data of the customer are then stored within the CDD utility under the ownership of the customer. The firm has real-time access to the CDD utility and can review the CDD information about each of its customers.

34. In the second example the CDD utility includes a front-end application or other method by which the customer can provide his CDD directly to the CDD utility without the need to use a suitable certifier. The requirements for electronic verification and the controls required within such systems are set out within section 5.6. of this Handbook.



35. In this example the CDD utility holds a digitally certified package of CDD gathered directly from the customer. This CDD package can then be provided to any number of underlying firms, each of whom can independently verify the digital certification to validate the authenticity of the CDD.

36. The CDD utility may also undertake ancillary services in relation to the customers within the system, e.g. ongoing sanctions, PEP and/or adverse media screening. Where this is the case, the firm should take measures to establish the accuracy of the screening undertaken and the process by which the firm is advised where a match against one of its customers is identified.

37. Where the firm wishes to use the services of a CDD utility, whether structured similar to the examples provided previously or not, the firm must give consideration to the risk factors set out in section 3.11.1. of this Handbook, together with the following CDD utility-specific points, before deciding whether to use such a service:

(f) the level of reliance, if any, being placed on the CDD utility by the firm, to have identified and verified the identity of the customer, or any beneficial owner or underlying principal of a customer (see chapter 10 of this Handbook);
(g) whether the firm is establishing a formal outsourcing arrangement with the CDD utility for the purposes of any processes contributing to the firm's compliance with one or more aspect of Schedule 3 or this Handbook;

~~(h) the ownership of the data held within the utility and the process by which the firm is updated by the customer or the utility where the circumstances of a customer change, e.g. the customer's residential address.~~

~~38. With regard to Rule 4.5.13(a) above, the firm must not place reliance on a CDD utility where it is in turn relying on copy documentation received from another entity (see sections 6.7. and 10.7. of this Handbook).~~

~~39. When utilising the services of a CDD utility, the firm should consider how its record keeping obligations under Schedule 3 and chapter 16 of this Handbook will be met. This is important so as to enable the firm to meet its record keeping obligations, e.g. being able to provide CDD to the FIS upon request, particularly in the event of the firm's relationship with the CDD utility being terminated.~~

~~4.6.~~4.5. Timing

~~40.~~38. In accordance with Paragraph 7(1) of *Schedule 3*, the identification and verification of the identity of any person or *legal arrangement* pursuant to Paragraphs 4 to 6 of *Schedule 3* shall, subject to Paragraphs 4(1)(b) and 7(2) of *Schedule 3*, be carried out before or during the course of establishing a *business relationship* or before carrying out an *occasional transaction*.

~~41.~~39. There will be occasions when the ~~It is accepted that~~ circumstances are~~may be~~ such that the verification of the identity of a *customer*~~,~~ or ~~or any~~ *beneficial owner* ~~or *underlying principal*~~, cannot commence or be completed until such time as a *business relationship* has been established. This may be acceptable in certain circumstances, provided the firm is *satisfied*~~has no suspicion~~ as to the reasons causing the delay.

~~42.~~40. In this respect, Paragraph 7(2) of *Schedule 3* provides that the verification of the identity of a *customer* and any of the *beneficial owners* may be completed following the establishment of a *business relationship* provided that to do so would be consistent with the *risk* assessment of the *business relationship* conducted pursuant to Paragraph 3(4)(a) of *Schedule 3*, and:

(a) the verification is completed as soon as reasonably practicable thereafter;
(b) the need to do so is essential not to interrupt the normal conduct of business; and
(c) appropriate and effective policies, procedures and controls are in place which operate so as to manage *risk*, including, without limitation, a set of measures, such as a limitation of the number, types and/or amount of transactions that can be performed or the monitoring of large or complex transactions being carried outside the expected norms for that *business relationship*.

~~43.~~41. Paragraph 7(2) of *Schedule 3* does not, however, permit the retrospective identification of a *customer*~~,~~ or ~~or any~~ *beneficial owner* ~~or other key principal *underlying principal*,~~ after the establishment of a *business relationship*, save in the circumstances detailed in Chapter 7 of this *Handbook*, for example, where beneficiaries are identified by class and are therefore unknown to the firm at the commencement of a *business relationship*.

~~44.~~42. Where the verification of the identity of a *customer*~~,~~ or ~~or any~~ *beneficial owner* ~~or *underlying principal*,~~ takes place after the establishment of a *business relationship*, the firm must have appropriate and effective policies, procedures and controls in place so as to manage the *risk* arising from the delay. These policies, procedures and controls must include:

(a) establishing that it is not a *high risk relationship*;
~~(b) obtaining senior management approval to establish the relationship and for any subsequent activity until verification is complete;~~

~~(c)~~(b) monitoring by senior management of the~~se~~ *business relationship~~s~~* to ensure verification of identity is completed as soon as reasonably practicable; and

~~(d)~~ ensuring *funds* received are not passed to third parties.~~; and~~

~~(e)~~(c) ~~establishing limits to the number, type and/or amount of *transactions* that can be undertaken prior to completion of verification.~~

~~45.~~43. The firm should be aware that there may be occasions where the circumstances are such that a *business relationship* has been established or an *occasional transaction* has been carried out and the identification and verification procedures cannot be completed. In these circumstances the firm should refer to Section 4.7. of this *Handbook*.

~~46.~~44. With regard to *occasional transactions*, if the identity of the *customer* is known, verification of identity is not required in the case of ~~occasional~~any transactions (whether singly or linked) below the £10,000 threshold for *occasional transactions* as set out in ~~the~~ *Schedule 3*, 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.

~~4.7.~~4.6. Acquisition of a Business or Block of Customers

~~47.~~45. There may be circumstances where the firm acquires another *specified business* with established *business relationships* or acquires from a *specified business*, or non-*Bailiwick* business, a block of *customers*~~, e.g. by way of asset purchase from another *specified business* or from a non-*Bailiwick* firm~~ that it will be servicing from *the Bailiwick*.

~~48.~~46. Before acquiring a business or block of *customers*, the firm must conduct enquiries on the vendor sufficient to establish the level and the appropriateness of *identification data* held in relation to the *customers* of the business to be acquired.

~~49.~~47. Where deficiencies in the *identification data* held are identified (either at the time of transfer or subsequently), the firm must determine and implement a programme to remedy any such deficiencies in a timely manner. The firm must also give consideration to notifying *the Commission* in accordance with the requirements of *Commission Rule* 2.49.

~~50.~~48. In addition to conducting due diligence on the vendor, the firm may consider it appropriate to rely on the information and ~~*documentation*~~ *identification data* previously obtained by the vendor for its *customers* and *business relationships* where the following criteria are met:

(a) the vendor is an *Appendix C business*;

(b) the firm has assessed that the *CDD* policies, procedures and controls operated by the vendor were satisfactory, including consideration of the findings of any relevant reviews by *the Commission*, an overseas regulatory body (where applicable) or other third party; and

(c) the firm has obtained from the vendor, *identification data* (or copies thereof) for each ~~*customer*~~ *business relationship* acquired.

49. Where the firm disposes of a book of business, it should ensure that the record keeping requirements of Paragraph 14 of *Schedule 3* and the *Commission Rules* in Chapter 16 of this *Handbook* are met in respect of the business being disposed of.

~~4.8.~~4.7. Failure to Complete Customer Due Diligence

~~51.~~50. In accordance with Paragraph 9 of *Schedule 3*, where the firm can not comply with any of Paragraph 4(3)(a) to (d) or Paragraph 11(1)(a) to (b) of *Schedule 3* it shall:

(a) in the case of an existing *business relationship*, terminate that *business relationship*;
(b) in the case of a proposed *business relationship* or *occasional transaction*, not enter into that *business relationship* or carry out that *occasional transaction* with the *customer*; and
(c) consider whether a disclosure must be made pursuant to Part I of *the Disclosure Law*, or Sections 15 or 15A, or Section 12 (as appropriate) of *the Terrorism Law*.

~~52. Where the firm has been unable, within a reasonable time frame, to complete *CDD* measures in accordance with the requirements of *Schedule 3* and this *Handbook*, it must assess the circumstances and ensure that appropriate action is taken as required by Paragraph 9 of *Schedule 3*.~~

~~53.~~51. It is recognised that the immediate termination of a *business relationship* may not be possible due to contractual or legal reasons outside the control of the firm. The timing of the termination of an established *business relationship* will also depend upon the nature of the underlying products or services. As an example, while a *bank* can close an *account* and return deposited *funds* to a *customer* relatively easily, the compulsory redemption of an investment in a CIS, particularly where it is closed-ended or where valuation dates are infrequent, may be more problematic.

~~54.~~52. Where termination of a *business relationship* cannot be completed (for example, because the firm has lost contact with the *customer*) the firm should have procedures and controls in place to ensure that assets or *funds* held are 'blocked' or placed on a 'suspense' *account* until such time as contact with the *customer* is re-established or the firm has otherwise dealt with the *funds* or assets in accordance with its policy for dormant *accounts*.

~~55.~~53. Where the immediate termination of a *business relationship* is not possible for whatever reason, the firm must ensure that the *risk* is managed and mitigated effectively until such time as the *business relationship* can be terminated ~~and any associated funds returned to the *customer*~~.

~~56.~~54. The firm must ensure that where *funds* have already been received, they are returned to the source from which they originated, regardless of whether the source is the *customer* or a third party. Where the firm has been unable to return the *funds* to the *account* from which they were received~~this is not possible~~, for instance because the originating *bank account* has been closed, the firm must take appropriate steps to return the *funds* to the same party in another form~~must be paid to an account in the name of the *customer*~~.

55. Where this is not possible (for example, if the relevant party no longer exists) the firm should take appropriate steps to return any *funds* to an appropriate third party and document the reasoning for the steps taken.

~~57.~~56. Where the firm has terminated, or not proceeded with establishing, a *business relationship* or *occasional transaction*, it must consider the circumstances giving rise to the failure to complete *CDD* measures and whether these warrant a disclosure to the *FIS*.

~~4.9.~~4.8. Collective Investment Schemes

~~4.9.1.~~4.8.1. Responsibility for Investor CDD

~~58.~~57. As part of the process of applying to *the Commission* for the authorisation or registration of a closed-ended CIS ("CECIS") or open-ended CIS ("OECIS"), the board of the CIS (or General Partner ("GP") of a Limited Partnership ("LP"); trustee of a unit trust; or *foundation official* of a *foundation* as appropriate) ~~must~~ will nominate a firm (the "*nominated firm*") which is licensed under *the POI Law* and contracted to, or connected with, the CIS to be responsible for meeting

the requirements of *Schedule 3* and this *Handbook* for ~~all~~ investors into the CIS, in addition to its own obligations.

~~59.~~58. The *nominated firm* must advise *the Commission* that it has been so nominated during the course of the application process, and in any case prior to the ~~CIS being~~ authorisation~~ed~~ or registration~~ered~~ of the CIS.

~~60.~~59. The *nominated firm* must treat all investors into the CIS as if they were its *customers* and ensure that the relevant provisions of *Schedule 3* and this *Handbook* are met, for example conducting ~~customer~~ *relationship risk assessments* and identifying, and ~~taking reasonable measures to~~ verifying the identity of, the investors, including the ~~*any*~~ *beneficial owners* and other *key principals* thereof~~or *underlying principal* of each investor~~.

~~61.~~60. Whilst the application of *CDD* measures (including ~~ACDD and~~ *ECDD* and *enhanced measures* as necessary) may be undertaken by another party (for example, under an outsourcing arrangement) the *nominated firm* will be responsible for ensuring that appropriate ~~CDD~~ *identification data* is held on all investors, including the *beneficial owners* thereof, which meets the relevant requirements of *Schedule 3* and this *Handbook*.

~~62.~~61. Where the *nominated firm* provides services to ~~shares of~~ a CIS, the ~~for~~ shares of which ~~the firm has been nominated~~ are traded on a stock exchange, the *nominated firm* should refer to the provisions of Section 4.8.3. of this *Handbook*:

~~63.~~62. Where the firm provides services to a CIS and has not been nominated under Paragraph 4.57. above, the firm should treat the CIS as its *customer* and conduct *CDD* in accordance with the requirements for a CIS authorised or registered by *the Commission*.

~~64.~~63. There may be occasions where the *nominated firm* will change throughout the life of a CIS, for example, as a result of a change of designated manager. Where the firm becomes the nominated firm for a CIS which has already been authorised or registered by *the Commission*, it must advise *the Commission* in writing that it has been so nominated as soon as reasonably practicable ~~that~~ after its ~~has been so~~ nomination~~ed~~.

64. Where the firm becomes nominated for a CIS with existing investors, the firm should give consideration to the requirements of Section 4.6. of this *Handbook.*

65. Notifications made in accordance with *Commission Rule* 4.63. should be submitted via the Commission's Online Submissions Portal, through the completion of a Form 235.

https://submit.gfsc.gg/

~~4.9.2.~~4.8.2. Identifying and Verifying the Identity of Investors in Collective Investment Schemes

66. This section details the obligations for the application of *CDD* measures to investors, including the *beneficial owners* thereof, and applies where the ~~to those~~ firm~~s~~:

(a) has been nominated under Paragraph 4.57. of this *Handbook;* or
(b) is acting in the capacity of the administrator or *transfer agent* of a non-Guernsey CIS ("NGCIS"), unless the contractual arrangements for the services provided by the firm require otherwise.~~and details the obligations for the collection of *CDD* for investors, including the *beneficial owners* and *underlying principals* thereof.~~

67. Fundamental to understanding the *CDD* obligations for CIS investors is a recognition that the overall arrangements by which interests in a CIS are offered to investors, together with the ~~and~~

~~the overall~~ arrangements under which a CIS consequently deals with investors, will determine the *CDD* measures to be applied.

68. When undertaking its responsibilities, the *nominated firm* should be mindful of the vulnerabilities of CISs and the methods by which CISs may be used by persons or entities for *ML* and/or *FT* purposes. For example:

(a) CISs are often distributed on a non-face-to-face basis, with access to those CISs (particularly where they are OECISs) relatively quick and easy to achieve, together with an ability for holdings to be transferred between different parties;
(b) OECISs, particularly those with frequent (i.e. daily or weekly) dealing, can provide the ability for short holding periods and the high turnover of share/unit purchases/redemptions; and
(c) Notwithstanding the often medium to long-term nature of CISs, which can contribute to limiting the attractiveness of these products for *ML* purposes, they may still appeal to money launderers on the basis of their ability to generate growth and income.

~~65.~~69. Investments into a CIS will generally fall into one of four broad categories, each presenting its own *risks* and having its own obligations in respect of the *CDD* measures to be applied. *Commission Rule* 4.70. below sets out the party to be treated as the *customer* and the *CDD* measures to be applied to that *customer* (including the *beneficial owner* thereof) for each category of investment.

70.	Method of Investment	Party to be Treated as the Customer
(a)	A natural or *legal person* or *legal arrangement* directly purchasing units of, or shares in, a CIS on their own *account*, and not on behalf of other, underlying parties.	The *nominated firm* must treat the investor as if it were its *customer* and apply *CDD* measures (including *ECDD* and/or *enhanced measures* as applicable) to the investor, including the *beneficial owner* of that investor, in accordance with the requirements of *Schedule 3* and this *Handbook*.
(b)	An investor that, as part of its economic activity, directly purchases the units of, or shares in, a CIS in its own name and exercises control over the investment for the ultimate benefit of one or more third parties who do not control the investment or investment decisions and where *funds* (and any related income) arising from the investment in the CIS will only be returned to the registered owner of the shares or units in the CIS.	In both scenarios (b) and (c), where the investor is an *Appendix C business* acting as an *intermediary* for one or more third parties, the *nominated firm* can treat the investor (i.e. the *intermediary*) as the *customer*, provided the relationship has been assessed as low *risk* and the requirements of Section 9.8. of this *Handbook* are met. Where the *intermediary relationship* has been assessed as being other than low *risk*, the *nominated firm* cannot treat the *intermediary* as its *customer* and *CDD* measures (including *ECDD* and/or *enhanced measures* as applicable) must be applied to the underlying investors (i.e. the *intermediary's* customers), including the *beneficial owners* thereof, in accordance with the requirements of *Schedule 3* and this *Handbook*.
(c)	An investor, for example a financial intermediary, that acts in its own name and is the registered owner of the shares or units but acts on the *account* of, and pursuant to specific instructions from, one or more third parties and where *funds* (and any related income) arising from the investment in the CIS will only be returned to the registered owner of the shares or units in the CIS.	
(d)	A business' *customer*, for example a financial intermediary's *customer*, where the business is not the registered owner of the shares or units (for example, because the	The *nominated firm* must treat the underlying investor, i.e. the intermediary's customer, as if it were its *customer* and apply *CDD* measures (including *ECDD* and/or *enhanced measures* as

	CIS uses a financial intermediary to distribute fund shares or units, and the investor purchases units or shares through the business and the business does not become the legal owner of the units or shares).	applicable) to the investor, including the *beneficial owner* thereof, in accordance with the requirements of *Schedule 3* and this *Handbook*. Where the intermediary meets the definition of an *Appendix C business*, the *nominated firm* could consider treating the intermediary as an *introducer*, provided the requirements of Chapter 10 of this *Handbook* are met.

~~4.9.2.1. Direct Investments~~

~~In the case of a direct investment, the investor will ultimately be investing in their personal capacity, i.e. in their own name or through a personal asset vehicle. By virtue of being nominated under paragraph 4.7.1.(1), the firm is likely to have a direct relationship with that investor and may receive/process the investor's application.~~

~~1. When dealing with a direct investment, the firm must treat the investor as if it were its *customer* and identify and verify the identity of the investor, including identifying, and taking reasonable measures to verify the identity of, the *beneficial owner* and any *underlying principal*, in accordance with the identification and verification requirements of *Schedule 3* and this *Handbook* for natural persons, legal persons and *legal arrangements*.~~

~~4.9.2.2. Indirect Investments~~

~~(1) There may be occasions where the firm does not have a direct relationship with an underlying investor and interests in the CIS are instead distributed by or through FSBs such as banks, broker-dealers, insurance companies/agents, investment advisors, financial planners, regulated platforms, or other financial institutions.~~

~~(1) In such circumstances shares may be held by or through an FSB in multi-client pooled/omnibus-type accounts or other arrangements used to collect together funds from a variety of sources for onward investment under the direct control of the FSB (collectively referred to as an "omnibus account").~~

~~(2) Omnibus accounts are used when an FSB acquires the shares in a CIS on behalf of its customers, i.e. the ultimate underlying investors. In such cases the shares are usually acquired in the name of the FSB; however there may be cases where that business establishes an account with the CIS which specifies sub-accounts on behalf of named investors.~~

~~(3) Where an Appendix C business is investing in a CIS on behalf of one or more underlying investors, the firm may utilise the measures set out in section 10B. of this Handbook provided the criteria set out in section 10.10. are met.~~

~~4.9.3.~~4.8.3. Collective Investment Scheme Traded on a Recognised Stock Exchange

~~66. There are fundamental differences between authorised and registered open-ended and closed-ended CISs technically listed on a stock exchange and closed-ended CISs ("CECISs") that are traded on a stock exchange.~~

~~67. Traded CECISs do not operate in the same manner as listed CISs. Other than during an offer period, e.g. an initial public offering, traded CECISs do not directly open accounts for investors, while listed CISs will.~~

71. This section relates to authorised and registered CECISs, constituted as companies, whose shares are listed and traded on recognised stock exchanges like those of other publicly held companies ("traded CECISs").

~~68.~~72. Thi~~ese fundamental differences are~~approach is recognised by IOSCO in its Anti-Money Laundering Guidance for Collective Investment Schemes issued in October 2005, which states:

> "Closed-ended exchange-listed CISs are just like any other public company that lists its shares on an exchange, and public companies – other than financial institutions – do not have specific anti-money laundering responsibilities".

~~69.~~73. The shares of a traded CECIS are not sold or traded directly with investors, but are issued, distributed and traded through placing agents, broker/dealers and other market intermediaries to individual and corporate investors. As such, a traded CECIS~~s~~ and the *nominated firm* thereof do not have the same opportunity to engage with investors prior to accepting an investment, approving a transfer or undertaking a corporate action such as a share buy-back or dividend distribution~~, while listed CISs do~~.

~~70.~~74. Where the shares of a CECIS are traded on a recognised stock exchange ~~prescribed by the *Stock Exchange Regulations*~~within the meaning of *the Beneficial Ownership Regulations*, in accordance with Paragraph 4(4) of *Schedule 3* it is not necessary for the firm nominated by that CECIS under Paragraph 4.54. to identify, and verify the identity of, the investors in that scheme.

~~71. Notwithstanding the above, the remaining obligations within *Schedule 3* and this *Handbook* in respect of a CECIS apply, including the requirement to file disclosures where suspicious activity is suspected or identified. *The Commission's* expectations of the *nominated firm* are set out in the paragraphs that follow.~~

~~72. For authorised and registered open-ended and closed-ended CISs technically listed on a stock exchange, the firm should follow the requirements for identifying and verifying investors in accordance with section 4.7.2. of this *Handbook*.~~

~~4.9.3.1.~~4.8.3.1. Initial Offering

~~73.~~75. Where the firm has been nominated under Paragraph 4.57., at the time of the initial offering it must make sure that it understands all routes that investors could use to subscribe into the authorised or registered CECIS and the likely *business relationships* which will be established in each case so identified.

~~74.~~76. The *nominated firm* must then undertake ~~customer~~ *relationship risk assessments* and apply *CDD* measures to each placing agent, broker/dealer and other market intermediary, together with any direct investor relationships in relation to any open offer for subscription in accordance with *Commission Rule* 4.70.(a).

~~4.9.3.2.~~4.8.3.2. Secondary Market Trading

77. After the initial offering is completed, an investor will generally purchase or sell shares through ~~their~~ a broker/dealer or market intermediary which will in turn execute a transaction on the stock exchange and not with the traded CECIS or *nominated firm*. As a consequence, following the initial offering the *nominated firm* will not enter into any new *business relationships* with investors.

~~75.~~78. The firm's relationship with the traded CECIS will then fall within Paragraph 4(4) of *Schedule 3*, as a *legal person* listed on a recognised stock exchange within the meaning of *the Beneficial*

Ownership Regulations. Accordingly, the *nominated firm* is not required to identify, or verify the identity of, the investors or the *beneficial owners* thereof.

~~76. The nominated firm is therefore not required to conduct CDD on any underlying investors in a traded CECIS. The responsibility for CDD is placed upon the established broker/dealer or market intermediary to a transaction.~~

~~1. The firm must therefore treat a traded CECIS like any other legal person whose shares are listed on a stock exchange in accordance with subparagraph 4(5) of *Schedule 3*.~~

~~2.~~79. Notwithstanding the above, there may be occasions when an investor buys or sells shares directly with an authorised or registered CECIS in an off-market transaction. In such a scenario the *nominated firm* must treat the investor as if it were its *customer* and apply *CDD* measures (including *ECDD* and/or *enhanced measures* as applicable) to the investor, including ~~identifying, and taking reasonable measures to verify the identity of,~~ the *beneficial owner* ~~and any *underlying principal*~~thereof, in accordance with the identification and verification requirements of *Schedule 3* and this *Handbook* for natural persons, *legal persons* and *legal arrangements*.

Chapter 5
Natural Persons

Contents of this Chapter

5.1. Introduction

1. The purpose of this Chapter is to set out the information to be obtained, as a minimum, for a natural person who acts as a *key principal* in one or more of the following capacities within a *business relationship* or *occasional transaction*:

   (a) the *customer*;
   (b) the *beneficial owner* of the *customer*;
   (c) a natural person purporting to act on behalf of the *customer*; or
   (d) a natural person on behalf of whom the *customer* is acting.

~~1.~~2. Establishing that a~~ny~~ natural person ~~*customer*, *beneficial owner*, or *underlying principal*~~ falling within Paragraph 4(3) of *Schedule 3* as set out above is the person that he or she claims to be is a combination of being satisfied that:

   (a) the person exists, based on the accumulation of information about the person's identity; and
   (b) the *customer*, *beneficial owner*~~, or *underlying principal*~~ or other *key principal*~~,~~ is that person, by verifying from *identification data*, satisfactory confirmatory evidence of that person's identity.

3. This Chapter sets out the aspects of a natural person's identity which must be established, together with the characteristics of that natural person's identity to be verified using *identification data* ~~to be gathered to verify the identity of that natural person~~, in order to comply with the requirements of *Schedule 3*.

4. The requirements of this Chapter apply:

   (a) when establishing a *business relationship;*
   (b) when carrying out an *occasional transaction*; and
   (c) where any of the parties set out above to a *business relationship* change throughout the life of that relationship ~~with a natural person, or for any natural person who is the *beneficial owner* or *underlying principal* of a *customer* which is a legal person or *legal arrangement*~~.

5.2. Identifying Natural Persons

~~2.~~5. Where the firm is required to identify a natural person falling within Paragraph 5.1. above, ~~who is the customer (or beneficial owner or underlying principal),~~ it must collect relevant information on the identity of that natural person which includes:

   ~~For all customers:~~

   (a) legal name;
   (b) any former names (such as maiden name) and any other names used;
   (c) principal residential address; ~~and~~
   (d) date and place of birth;~~.~~

   ~~For customers other than low risk, additionally:~~

   ~~(e) place of birth;~~
   ~~(f)~~ nationality (including all nationalities where the individual holds more than one); and
   (e) ~~a government issued personal identification number or other government issued unique identifier.~~
   ~~(g)~~(f) any occupation, public position held and, where appropriate, the name of any employer.

~~3.~~6. In accordance with Paragraph 4(3)(f) of *Schedule 3*, as part its *CDD* measures the firm shall make a determination as to whether the *customer* or *beneficial owner* is a *PEP* and, if so, whether he or she is a foreign *PEP*, a domestic *PEP* or *international organisation PEP*.

~~4.~~7. Further information on the identification and treatment of *PEPs* can be found in Section 8.5. of this *Handbook*.

5.3. Verifying the Identity of Natural Persons

~~5.~~8. Subject to Section 9.3. of this *Handbook*, the firm must verify a natural person's identity using *identification data*, the extent of which is to be determined based on the ~~basis~~conclusion of the *relationship risk assessment*~~rating attributed to the relationship~~. As a minimum, the firm must verify:

For all ~~*customers*~~natural persons:

(a) legal name;
(b) date of birth; and
(c) residential address.

For ~~standard risk customers~~natural persons connected with *business relationships* or *occasional transactions* which are other than low *risk*, additionally:

(d) place of birth; and
~~(e)~~ nationality (including all nationalities where the individual holds more than one).

~~For high risk customers, additionally:~~

~~(f)~~(e) ~~a government issued personal identification number or other government issued unique identifier.~~

~~6.~~9. In order to verify the above and other information collected, the following *identification data* is considered to be the best possible:

(a) current passport~~, including the passport number~~, bearing a photograph of the natural person;
(b) current national identity card, ~~including the identity number,~~ bearing a photograph of the natural person;
(c) armed forces identity card, bearing a photograph of the natural person;
(d) driving licence, ~~including driving licence number,~~ bearing a photograph of the natural person; or
(e) independent data sources (including electronic sources) (see Section 5.7. below).

~~7.~~10. The examples quoted above are not exclusive. There may be other forms of *identification data* of an equivalent nature which may be produced as satisfactory evidence of the identity of a natural person.

11. Regardless of its form, the firm must be *satisfied* as to the validity and veracity of the *identification data* used to verify the identity of a natural person and its evidential value should be based on the assessed *risk* of the *business relationship* or *occasional transaction*. In this respect, the firm should be aware that certain *documents* may be more susceptible to fraud than others, or have less robust controls in respect of their issue, for example, some jurisdictions may issue driving licences without due diligence being undertaken on the holder.

~~8.~~12. When changes occur which result in a modification to a natural person's profile (for example, a change of name) the firm should apply a *risk*-based approach to updating that person's *CDD* records and consider what, if any, additional *identification data* is required to verify the change.

~~9.~~13. In addition to the measures set out above, where the firm has determined that a *business relationship* or *occasional transaction* is high *risk*, in accordance with Paragraph 5(3) of *Schedule 3* the firm shall also apply *ECDD* measures to that *business relationship* or *occasional transaction*. Those *ECDD* measures shall include, inter alia, taking one or more steps as would be appropriate to the particular *business relationship* or *occasional transaction* and could include, in accordance with Paragraph 5(3)(a)(v)(B) of *Schedule 3*, verifying additional aspects of the *customer's* identity.

~~This could include obtaining further *identification data* for a natural person who is the *customer* (or any *beneficial owner* or *underlying principal*) as would be appropriate in the circumstances, such as:~~

~~(a) the *customer's* occupation;~~
~~(a) the extent of the *customer's* assets; and~~
~~(a) publicly available information about the *customer*.~~

14. Examples of additional aspects of the *customer's* identity that the firm could verify, where that *customer* is a natural person, include his or her occupation or any former name(s). Further detail in respect of *ECDD* measures can be found in Chapter 8 of this *Handbook*.

5.4. Verification of Residential Address

~~10.~~15. The following are examples of ~~considered to be~~ suitable methods to verify the residential address of a natural person:

(a) a recent *bank*/credit card statement or utility bill;
(b) correspondence from an independent source such as a central or local government department or agency (in *the Bailiwick* and the Bailiwick of Jersey this will include States departments and parish authorities);
(c) commercial or electronic data sources;
(d) a letter from an *Appendix C business* with which the individual has an existing *business relationship* and which confirms residential address;
(e) a tenancy agreement;
(f) a personal visit to the residential address; or
(g) an electoral roll.

~~11.~~16. Where a natural person's principal residential address changes during the course of a *business relationship*, the firm is considered to have verified the new address where it has maintained on-going written correspondence with the natural person at that new address (i.e. it has sent and subsequently received responses to written correspondence addressed and sent by post to the new address).

5.4.1. Overseas Natural Persons

~~12.~~17. There may be occasions when a natural person who is not resident in *the Bailiwick* is unable to provide evidence of his or her residential address using the means set out in Paragraph 5.15. above. Examples of such individuals include residents of countries without postal deliveries or street addresses who rely on post office boxes or an employers' addresses for the delivery of mail.

18. Notwithstanding the above, it is essential for law enforcement purposes that a record of a natural person's residential address (or details of how that person's place of residence can be reached) is

held by the firm. As such, it is not acceptable to simply record details of a post office box number as a natural person's address.

~~13.~~19. Where the firm has determined that an individual has a valid reason for being unable to produce more usual *documentation* to verify their residential address and who would otherwise be excluded from establishing a *business relationship* or undertaking an *occasional transaction* with the firm, ~~satisfactory~~ the residential address can be verified~~cation of address may be established~~ by other means, ~~e.g.:~~provided the firm is *satisfied* that the method employed adequately verifies the address of the natural person and any additional *risk* has been appropriately mitigated.

~~14.~~20. An example of such an alternative method could be a letter from a director or officer of a reputable overseas employer confirming residence at a stated overseas address (or providing detailed directions to locate a place of residence)~~.; or~~

~~(h) any of the means provided in section 5.4. without regard to any restrictions imposed on such documents.~~

5.5. Online Bank Statements or Utility Bills

21. Where the residential address of a natural person is to be verified through the use of a *bank*/credit card statement or utility bill, the default option is to obtain a form of verification which has been delivered to that natural person by post. However, the receipt of such items via the traditional postal system is being replaced by the use of online billing or the delivery of *bank* or utility statements via e-mail (an "electronic statement").

~~15.~~22. Examples of electronic statements include:

(a) an online statement from a recognised *bank*, building society, credit card company or recognised lender bearing the name and residential address of the natural person; or

(b) an online bill in relation to rates, council tax or utilities bearing the name and residential address of the natural person.

~~16.~~23. Where the firm wishes to accept an electronic statement as verification of a natural person's address, it must be *satisfied* as to the validity and veracity of the electronic statement presented.

24. The firm should recognise that some electronic sources may be more easily tampered with, i.e. the data contained within them subject to amendment, than others. If suspicions are raised in relation to the integrity of any electronic statement obtained, the firm should take whatever practical and proportionate steps are available to establish whether these suspicions are substantiated, and if so, whether the relevant electronic statement should be accepted.

~~17.~~25. An example ~~undertake one~~ of ~~the following~~ a step~~s~~ the firm could take where it has concerns over ~~and~~the veracity of a *document* ~~the result of the action taken:~~is to corroborate the content of that *document* using an independent source, for example, ~~making a telephone call to the relevant natural person via a landline telephone number that has been independently verified as belonging to the address in question;~~a ~~corroborating the address of the natural person using independent~~ commercial or electronic data source~~s, for example,~~ such as a land registry, electoral roll or similar~~.; or~~

~~(c) have a representative of the firm present with the customer while they log onto the website of the bank/credit card or utility provider and watch while they request or download an electronic statement and witness the receipt or downloading of the electronic statement.~~

5.6. Electronic Verification

~~18.~~26. Electronic verification is the use of an electronic method or system to verify, in whole or in part, the identity of a natural person by matching specified personal information against electronically captured physical *documentation* and/or independent electronic data sources.

~~19.~~27. Electronic verification can be used to verify all or any combination of the mandatory data points required by *Commission Rule* 5.8. Where an electronic verification system does not fulfil all of these requirements, the firm must use one or more other methods to ensure that a natural person is fully verified in accordance with~~meet~~ the requirements ~~-~~of this *Handbook*.

~~20.~~28. Electronic verification systems range in scope from the electronic capture of identity information and *identification data* ~~and documentation~~ on a face-to-face basis through to the self-capture of uncertified *documentation* by a natural person using an interactive application ("App") on a tablet or mobile phone. In the latter example, a photograph (or a series of photographs or a video) of the natural person are obtained through the App, together with photographs of *identification data* and address verification *documents*. The photographs are then independently reviewed and corroborated.

~~21.~~29. Whilst the use of electronic verification can help to reduce the time and cost involved in gathering information and *identification data* for a natural person, the firm should be mindful of any additional *risks* posed by placing reliance on an electronic method or system~~., e.g.~~ This should include understanding the method and level of review and corroboration within the system~~,~~ and the potential for the system to be abused. ~~These *risks* should be considered as part of the firm's technology *risk assessment*.~~

~~22.~~30. Knowledge and understanding of the functionality and capabilities of a system can help provide assurance of its suitability. In particular, there should be certainty of the methods applied to corroborate *identification data*. The use of more than one confirmatory source to match data enhances the assurance of authenticity.

31. Further information on the certification of *identification data* received via an electronic verification system can be found in Section 6.5. of this *Handbook*.

5.7. Independent Data Sources

~~23.~~32. *Identification data* does not have to be in paper form. Independent data sources can provide a wide range of confirmatory material on natural persons and are becoming increasingly accessible, for example, through improved availability of public information and the emergence of commercially available data sources such as electronic databases and research firms. Sources include:

(a) electoral roll;
(b) telephone directories;
(c) credit reference agency checks;
(d) business information services; and
(e) electronic checks provided by commercial agencies.

~~24.~~33. Where the firm is seeking to verify the identity of a natural person using an independent data source, whether by accessing the source directly or by using an independent third party organisation (such as a credit reference agency), an understanding of the depth, breadth and quality of the data is important in order to determine that the method of verification does in fact provide satisfactory evidence of identity.

~~25.~~34. Independent data sources can be used to verify all or any combination of the mandatory data points required by *Commission Rule* 5.8. Where an independent data source does not ~~provide for the verification of~~fulfil all of these requirements ~~data points required by *Commission Rule* 5.8.~~, the firm must use one or more other methods to ensure that a natural person is fully verified in accordance with the requirements of this *Handbook*.

~~26.~~35. When relying on independent data sources to verify identity, the firm should ensure that the source, scope and quality of that data is suitable and sufficient and that the process provides for the information to be captured and recorded. ~~For example, where the firm utilises the services of a credit reference agency to verify the identity of a natural person, the reliance placed on a verification report with only corroborative checks should be less than a report for a natural person with multiple primary checks.~~

5.8. Guarding Against the Financial Exclusion of Bailiwick Residents

~~27.~~36. There may be occasions when a *Bailiwick* resident natural person encounters difficulties in providing evidence of his or her *Bailiwick* residential address using the sources identified previously in this Chapter. Examples of such circumstances include:

(a) a Short-Term Employment Permit holder ~~seasonal worker~~ who does not have a permanent residential address in *the Bailiwick*;
(b) a natural person living in *the Bailiwick* in accommodation provided by that person's employer, with family (for example, in the case of minors), or in care homes, who may not pay directly for utility services; or
(c) a *Bailiwick* student living in university, college, school, or shared accommodation, who may not pay directly for utility services.

~~28.~~37. Where a natural person has a valid reason for being unable to produce the requested *documents* and who would otherwise be excluded from accessing the firm's products and services, identification procedures should provide for alternate means of verifying a natural person's *Bailiwick* residential address. The following are examples of alternate methods of verifying an address:

(a) a letter from the head of the household at which the natural person resides confirming that the applicant lives at that *Bailiwick* address, setting out the relationship between the natural person and the head of the household, together with evidence that the head of the household resides at the address;
(b) a letter from the residential home or care home confirming residence of the natural person;
(c) a Resident Certificate or Resident Permit;
(d) a letter from a director or manager of *the Bailiwick* employer confirming residence at a stated *Bailiwick* address and indicating the expected duration of employment. In the case of a Short-Term Employment Permit holder ~~seasonal worker~~, the worker's residential address in his or her country of origin should also be obtained and reasonable measures taken to verify that address; or
(e) in the case of a *Bailiwick* student, a letter from a *Bailiwick* resident parent or a copy of the acceptance letter for a place at the college/university. The student's residential address in *the Bailiwick* should also be obtained and reasonable measures taken to verify that address.

Chapter 6
Certification

Contents of this Chapter

6.1. Introduction

1. Certification is the process whereby, instead of a natural person presenting his/her self and *identification data* in person to the firm, the individual uses a suitable trusted third party to confirm a positive link between his/her identity and *identification data*. The certified *identification data* is then provided to the firm as verification of that natural person's identity.

2. The use of third party certification serves to mitigate the *risk* arising from a *business relationship* or *occasional transaction* where the firm has had no face-to-face contact with a natural person who is a *key principal* within that relationship~~the customer, beneficial owner, or underlying principal~~. It also guards against the risk that *identification data* provided is fraudulent or misleading and does not correspond to the individual whose identity is to be verified.

3. Certification has two purposes:

   (a) to provide assurance to the firm that a natural person is who he or she purports to be; and
   (b) to confirm that the natural person is the owner of the *identification data* used for the purpose of the firm verifying identity.

4. Until recently certification has required that trusted third parties are natural persons of sufficient standing and subject to appropriate ongoing requirements in respect of their integrity. However, with developments in technology the trusted third party could now take the form of an electronic ~~means~~ system which, through the integration of controls such as those detailed later in this Chapter, can provide sufficient corroboration equivalent to that provided by a natural person~~of~~ certifier~~cation~~.

5. This Chapter is split into three sections and provides distinct requirements for certification depending upon the method of certification to be used:

   (a) natural persons certifying hard-copy *identification data*;
   (b) natural persons electronically certifying scanned *identification data*; and
   (c) electronic methods of certifying *identification data*.

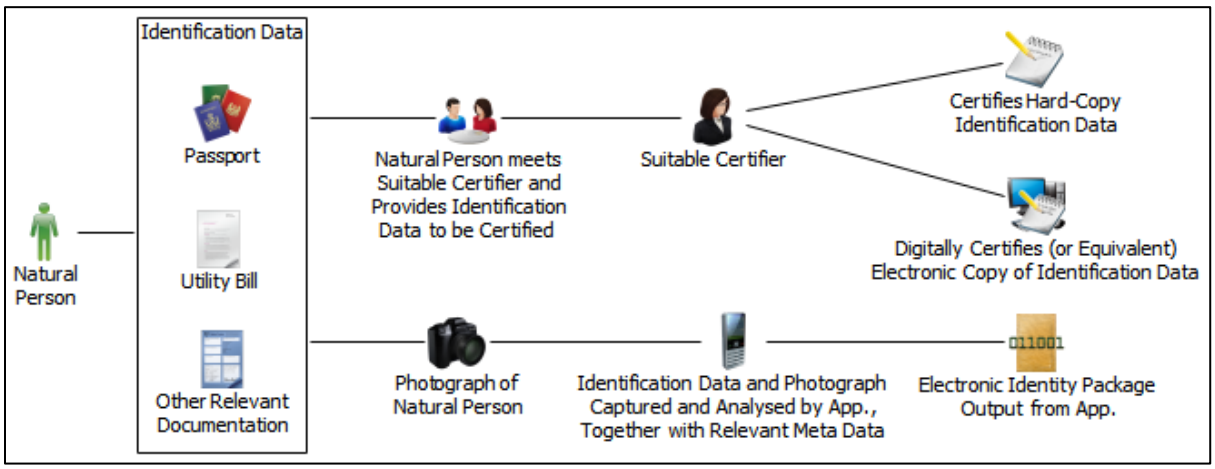


Fig. 2, Process of Certification

6.2. Obligations

6. For certification to be effective, the certifier ~~that the firm is relying on~~ should be a trusted third party who, in the case of natural person certification, has seen the original *identification data* and, where that *identification data* includes a photograph, met the individual in person. Only following these two steps can the certifier provide the necessary~~ing~~ assurance to the firm about

the individual's identity ~~that the *identification data* verifying aspects of the *customer's* identity (or that of a *beneficial owner* or *underlying principal*) is a true copy of an original document (or extract thereof)~~.

7. In order to ensure this effectiveness, the firm should have as part of its compliance arrangements:

   (a) a policy and/or procedures which reflect the firm's *risk* appetite towards relying upon certified *identification data*;
   (b) a policy in relation to those ~~categories of~~ third parties considered by the firm to constitute suitable certifiers; and
   (c) procedures allowing for the firm to verify the suitability of those third parties who have certified *identification data* upon which the firm intends to rely.

8. The firm must exercise caution when accepting certified ~~copy~~ *identification data*, especially where such *identification data* originates from a country or territory perceived to represent a high *risk*, or from unregulated entities in any country or territory.

6.3. Requirements for Natural Person Certifiers

9. Whilst there is no specific wording to be used by the certifier, the firm must ensure that the certifier signs and dates the certification and provides sufficient information to confirm the following:

   (a) that he/she has seen the original *identification data* verifying identity or residential address;
   (b) that he/she has met the natural person who is the subject of the *identification data;* and
   (c) adequate information about the certifier in order that the firm can undertake the required assessment of the suitability of the certifier and so that contact can be made with the certifier in the event of a query.

10. The certification should be provided by the certifier either on a copy of the ~~the certified~~ *identification data* which is the subject of the certification or attached to that *document* by way of a covering letter or other record which accompanies the *identification data*.

11. For the purposes of *Commission Rule* 6.9.(c) 'adequate information' ~~should be provided by the certifier either on the certified document or attached to that document by way of a covering letter or other record which accompanies the certified document and~~ should include:

    (a) the full name of the certifier;
    (b) the professional position or capacity held by the certifier (including professional body membership details where relevant); and
    (c) details of at least one contact method (for example, postal address, contact telephone number and/or e-mail address).

12. Certification by a natural person can take two forms;

    (a) paper-based certification where the certification is stamped or written onto a photocopy of the *identification data* or attached thereto; or
    (b) electronic certification where ~~paper~~hard-copy~~based~~ *identification data* is scanned and ~~validated~~ certified electronically by the natural person.

13. The process for utilising electronic certification as set out in Paragraph 6.12.(b) above mirrors that ~~set out~~ for paper-based documentation. If the certifier accepts the *identification data* presented by the *customer*, then using digital encryption or a suitably robust alternative, the certifier will apply a digital signature (or equivalent) to an electronic copy of the *identification data*. This encrypted file is then provided electronically to the firm.

14. Where the firm utilises a system allowing for natural persons to certify *identification data* electronically, or otherwise receives *identification data* which has been certified by a natural person electronically, it must *satisfy* itself as to the veracity of the certification process prior to accepting *identification data* certified in such a manner.

15. Where the firm wishes to accept soft-copy certified *identification data*, the preference should be to receive digitally certified (or equivalent) *identification data* using the process set out in Paragraphs 6.12.(b) to 6.14. above. However, there may be situations where the certifier does not have access to such technology, or is otherwise unable to digitally certify *documents*, and where the provision of hard-copy documentation via the postal system is unfeasible or uneconomical.

16. Where the firm receives *identification data* covered by Paragraph 6.12.(a) in scanned, soft-copy form, the firm must ensure that the following criteria are met in respect of that *identification data*:

(a) the soft-copy *identification data* is provided to the firm by the certifier or a representative thereof, for example, attached to an e-mail sent to the firm by the certifier or a person representing the certifier, such as their secretary; and
(b) the firm is *satisfied* as to the veracity of the *identification data* provided and that the receipt of such *identification data* in soft-copy form does not pose an increased *risk* to the firm.

6.4. Assessing the Suitability of Natural Person Certifiers

~~15.~~17. Where copy *identification data* certified by a natural person is accepted, regardless of the manner or form of the *identification data*, the firm must *satisfy* itself that the certifier is a suitable and appropriate person to provide validation of the *identification data* based on the assessed *risk* of the *business relationship* or *occasional transaction*, together with the level of reliance being placed on the certified *documents*.

~~16.~~18. The firm should, as part of its compliance arrangements, have in place a policy which enables~~explains~~ its ~~assessment process~~to determine whether an individual is suitable to certify *documents* and therefore whether reliance can be placed upon the certified *identification data* provided. The ~~*risk* appetite of the firm should inform its policy in this regard and the~~ policy should take account of factors including whether the certifier:

(a) is closely related or otherwise connected to the person whose identity is being certified;
~~(a)~~(b) holds an appropriate public position with a high level of trust and for which background checks or similar vetting of the certifier's fitness and propriety will have been undertaken;
~~(b)~~(c) is a member of a professional body which undertakes independent oversight of compliance with its own rules or standards of professional conduct;
~~(c)~~(d) is required to satisfy criteria similar to the 'fit and proper' requirements of the minimum licensing criteria in *the Bailiwick* and is required to be vetted or approved as part of the regulation in the jurisdiction in which it operates;
~~(d)~~(e) is employed by another business forming part of a group of which the firm is also a member where the same or equivalent AML and CFT policies, procedures and controls apply; or
~~(e)~~(f) is subject to other professional rules or a member of an industry body (or equivalent) providing for the integrity of the certifier's conduct.

~~17.~~19. The firm's policy for assessing the suitability of a certifier should include consideration of the circumstances where the firm deems it appropriate to validate the credentials of the certifier.

~~18.~~20. As part of the steps taken to validate the credentials of a certifier, the firm may also include the consideration of factors such as:

(a) the reputation and track record of the certifier;
(b) the firm's previous experience of accepting certified *documents* from persons in the same profession or country or territory;
(c) the adequacy of the framework to counter *ML* and *FT* applicable in the country or territory in which the certifier is located; and
(d) the extent to which the framework applies to the certifier.

6.5. Certification Requirements for Electronic System Certifiers

~~19.~~21. In addition to the traditional paper-based method of identity verification, the firm can also utilise electronic means of gathering natural person *identification data*, details of which are provided in Section 5.6. of this *Handbook*.

~~20.~~22. As technology has evolved and software enhanced, greater controls have been incorporated into the validation process which have effectively negated the need for natural person certification. These electronic controls can provide an equally robust ~~allowing for the~~ confirmation of a natural person's identity, together with the corroboration between the natural person and the *identification data* used, and examples include:

(a) a requirement for photographs to be taken at the time of the system's use (for example, the App takes control of the device's camera and automatically captures images of the *identification data* and natural person);
(b) the inclusion of anti-impersonation measures (for example, a requirement for the natural person to verbally repeat words, phrases or passcodes dictated by the firm during a video call);
(c) the corroboration of the images within *identification data* (both physically and/or stored on the Radio-Frequency Identification ("RFID") chip), together with a self-taken photograph of the natural person;
(d) a process whereby the images taken are independently verified, either by a suitably trained individual or computer system, to confirm the authenticity of the *identification data* used to verify identity (for example, that the ~~*documents*~~ *identification data* has~~ve~~ not been fraudulently altered, is~~are~~ listed on a missing/stolen *documents* list, etc.);
(e) the corroboration of biometric information (for example, finger prints, voice identification, etc.); and/or
(f) geotagging/geolocation (i.e. the inclusion of geographical identification metadata to confirm the location in which the user interacted with the system).

~~21.~~23. Where the firm adopts a system providing for the electronic verification of natural person identity, the firm must assess the veracity of the controls inherent within the system in order to determine whether the firm can place reliance on the results produced, or if additional steps are necessary to complement the existing controls.

~~22.~~24. The additional steps undertaken by the firm could include:

(a) requiring a representative of the firm to be present with the natural person when the on-boarding software is being used; and/or
(b) issuing each relevant natural person with a code or similar unique identifier which ~~must~~ is ~~be~~ then included within the photographs taken of the natural person and/or *identification data*.

6.6. Certification of Documentation for Legal Persons and Legal Arrangements

~~23.~~25. Where the firm is provided with *documents* to verify the identity of a *legal person* which are copies of the originals, the firm must ensure they have been certified by the company secretary, director, manager or equivalent officer, or by a suitable third party certifier.

~~24.~~26. Where the firm is provided with *documents* to verify the identity and legal status of a *foundation* which are copies of the originals, the firm must ensure they are certified by a *foundation official* or by a suitable third party certifier.

~~25.~~27. Where the firm is provided with *documents* to verify the identity and legal status of a trust or other *legal arrangement* which are copies of the originals, the firm must ensure they are certified by a representative of the trustee (or equivalent) or by a suitable third party certifier.

~~26.~~28. Certification ~~can~~ should be provided in a similar form to that set out under Section 6.3. of this Chapter, either through the certifying of a hard-copy *document*, or through the use of a digital signature (or equivalent) applied to an electronic copy of the *document*.

~~27.~~29. While there are no specific requirements in respect of the wording used, the firm must *satisfy* itself that the natural person certifying the *document* is a suitable and appropriate person within the specific circumstances of the *business relationship* or *occasional transaction*.

6.7. Chains of Copy Certified Documentation

30. As detailed previously, the acceptance of original *identification data*, or *identification data* which has been certified in accordance with this ~~c~~Chapter, serves to protect the firm from the *risk* of it relying upon *identification data* which is fraudulent or misleading, or which does not correspond to the individual whose identity is to be verified. The benefits of this mitigation are limited, however, where *documents* have passed through a chain of certifiers (for example, other *FSBs*) and the link between the *customer* (or other *key principal*) and the firm has become distant.

~~28.~~31. Noting this concern, the firm should not place reliance upon copies of ~~previously~~ certified copies of original *identification data*, other than in justifiable instances. The firm should always consider the risk of placing reliance upon copies of certified copies of *identification data*~~*the documentation*~~ and consider whether it would be more appropriate to obtain the original, or original certified copies of, *identification data*.

32. Where t~~T~~he firm ~~must only~~ accepts copies of certified copy ~~*documentation*~~ *identification data*, the following criteria must be met:

(a) the copy *identification data* has been provided by an *Appendix C business*;
(b) the *Appendix C business* has confirmed that the copy provided is a true copy of the *identification data* which it holds;
(c) the *Appendix C business* has seen the original *identification data* that it has copied to the firm, or the *identification data* that has been copied to the firm was provided to the *Appendix C business* by a suitable certifier, and in the case of the latter, the firm is *satisfied* that the individual who certified the *identification data* accepted by the *Appendix C business* which it is copying to the firm would qualify as a suitable certifier under the firm's policies and procedures; and
~~(a)~~(d) where the *identification data* copied by the *Appendix C business* to the firm relates to the verification of a natural person's identity, the firm is *satisfied* that the copy *identification data* provides evidence that the natural person is who he or she is said to be~~when it can be verified that the current certifier (i.e. the third party certifying the copy *documentation*~~

~~provided to the firm) has actually seen the original or originally certified *documentation* or met the individual in question~~.

33. For the purposes of Paragraph 6.29. above, examples of justifiable instances include:

(a) the provision of copies of *identification data* held by the trustee of a trust in respect of the *beneficial owners* of that trust (i.e. the settlor(s), beneficiaries etc.) to a *bank* for the purposes of opening an *account* on behalf of that trust; or

(b) the provision of copies of *identification data* held by an *Appendix C business* to a legal professional engaged by the *Appendix C business* to provide advice in connection with a *customer* of, and at the request of, the *Appendix C business*.

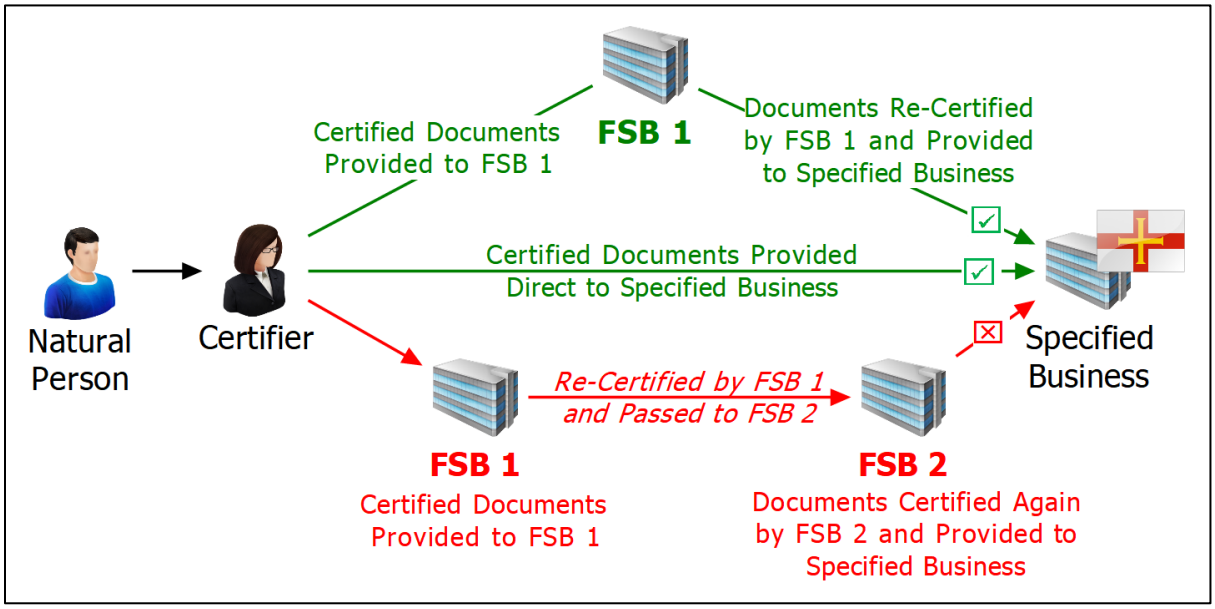


Fig. 3, Chains of Certification

34. For the avoidance of doubt this ~~s~~Section does not apply in respect of *business relationships* or *occasional transactions* falling within the introduced business provisions of Chapter 10 of this *Handbook* or where the firm acquires a business or block of *customers* in accordance with Paragraph 4.45. of this *Handbook*. In such circumstances, the firm places reliance upon a third party to have applied *CDD* measures to a *customer*, *beneficial owner* or other *key principal* in accordance with its own policies, procedures and controls. As such, the firm may accept copies of certified copy documentation either as part of the testing of that third party or through its acquisition of a block of *customers*.

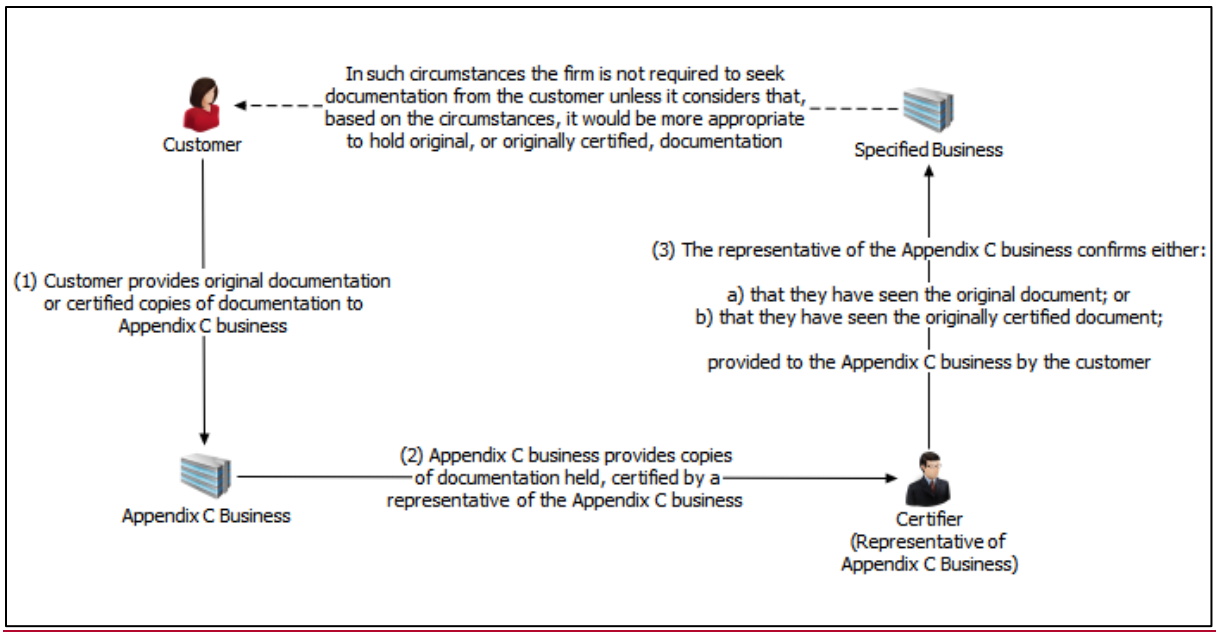


Fig. 4, Flow of Copy Certified Documentation

Chapter 7
Legal Persons and Legal Arrangements

Contents of this Chapter

7.1. Introduction

1. The purpose of this Chapter is to set out the information ~~which the firm must~~ to be obtained, as a minimum, for a *legal person* or *legal arrangement* which ~~customer, or beneficial owner or underlying principal of a customer, which is a legal person or legal arrangement~~acts as a *key principal* in one or more of the following capacities within a *business relationship* or *occasional transaction* as set out in Paragraph 4(3) of *Schedule 3*:

   (a) the *customer*;
   (b) the *beneficial owner* of the *customer*;
   (c) a *legal person* or *legal arrangement* purporting to act on behalf of the *customer*; or
   (d) a *legal person* or *legal arrangement* on behalf of which the *customer* is acting.

2. The identification and verification requirements in respect of ~~customers who are~~ *legal persons* and *legal arrangements* are different from those for natural persons. While a *legal person* or *legal arrangement* has a legal status which can be verified, each ~~customer~~*business relationship* or *occasional transaction* involving a *legal person* or *legal arrangement* will also ~~involves~~contain a number of associated natural persons, ~~whether~~ for example, as *beneficial owners* ~~(or equivalent), directors (or equivalent) or *underlying principals*, who have the power to direct the movement of a customer's funds or assets~~. This Chapter should therefore be read in conjunction with Chapters 4 and 5 which set out the *CDD* measures to be applied to natural persons acting for or on behalf of, or otherwise associated with, a *customer* which is a *legal person* or *legal arrangement*.

3. *Legal person* refers to any entity, other than a natural person, which is treated as a person for limited legal purposes, i.e. it can sue and be sued, it can own property and it can enter into contracts in its own right. This can include companies, other bodies corporate, *foundations*, anstalts, associations, or other similar entities which are not *legal arrangements*.

4. *Legal arrangements* do not have separate legal personality and therefore form *business relationships* through their trustees (or equivalent). With regard to trusts, i~~I~~t is the trustee of the trust who will enter into a *business relationship* or *occasional transaction* on behalf of the trust and should be considered, along with the trust, as the firm's *customer*.

5. There are a wide variety of trusts and other similar 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.

6. The firm should be alive to, and take measures to prevent, the misuse of *legal persons* and *legal arrangements* for *ML* and *FT*. It is imperative that when compiling a *relationship risk assessment*, the firm considers the breadth of *ML* and *FT risks* that the differing size, scale, activity and structure of the *legal person* or *legal arrangement* could pose. Less transparent and/or more complex structures present higher *risks* which could require additional information or research to determine an appropriate *risk* classification.

7. Based on the outcome of its *relationship risk assessment*~~assessed *ML* and *FT risks* of the particular *customer*/product/service combination~~, the firm must consider how ~~the identity of~~ the *customer* and ~~connected persons~~ any other *legal persons* or *legal arrangements* falling within the requirements of Paragraph 4(3)(a)-(d) of *Schedule 3* are to~~must~~ be ~~verified~~ identified and the *identification data* in respect of those *legal persons* or *legal arrangements* which must be obtained to verify that identity, including ~~*ACDD* and/or~~ *ECDD* measures and/or *enhanced measures* where necessary.

8. Where the firm acts as resident agent for a *legal person* established in *the Bailiwick*, it is also subject to *the Beneficial Ownership Law* and *the Beneficial Ownership Regulations* and the reporting requirements contained therein.

Beneficial Ownership of Legal Persons (Guernsey) Law, 2017
Beneficial Ownership (Definition) Regulations, 2017

7.2. Transparency of Beneficial Ownership

9. It is crucial that the firm has a full picture of its *customer*, including those natural persons with ownership or control over the *customer's* affairs. This is important so as to identify, firstly the various legal obligations that fall due within *the Bailiwick* and beyond and, secondly, whether the *legal person* or *legal arrangement* is being abused for criminal purposes. As financial crime legislation, including tax legislation, becomes ever more sophisticated, so too do the ways in which a person may structure his, her or its affairs in order to mask the true beneficial ownership.

10. When applying *CDD* measures in relation to *customers* that are *legal persons* or *legal arrangements*, in accordance with Paragraph 4(3)(c) of *Schedule 3* the firm shall identify and take reasonable measures to verify the identity of the *beneficial owner* of the *legal person* or *legal arrangement*.

~~10.~~11. The definition of *beneficial owner* in the context of *legal persons* is to~~must~~ be distinguished from the concepts of legal ownership and control. On one hand, legal ownership means the natural or *legal person(s)* who, according to applicable law, own the *legal person*. On the other hand, control refers to the ability to make relevant decisions within the *legal person*, for example, by owning a controlling block of shares.

~~11.~~12. An essential element of the definition of *beneficial owner* is that it extends beyond legal ownership and control and focusses on ultimate (actual) ownership and control. In other words, the definition identifies the natural (not legal) persons who actually own and take advantage of the capital or assets of the *legal person*, as well as those who really exert effective control over it (whether or not they occupy formal positions within that *legal person*), rather than just the natural or legal persons who are legally (on paper) entitled to do so.

~~12.~~13. In the context of a trust, beneficial ownership includes both the natural persons receiving benefit from the trust (for example, a beneficiary, those in a class of beneficiaries or any other person who benefits from the trust) as well as ~~*underlying principals* being~~those connected with, or having control over, the trust's affairs, including the *settlor(s)*, trustee(s), *protector(s)* and~~,~~ enforcer(s) ~~and any other natural person(s) exercising control over that trust~~.

~~13.~~14. Paragraph 4(3)(c) of *Schedule 3* also requires that, in the case of a *business relationship* or *occasional transaction* within which the *customer* is a *legal person* or *legal arrangement*, that the firm shall take measures to understand the ownership and control structure of that *customer*.

~~14.~~15. When taking measures to understand the ownership and control structure of a *customer* in accordance with Paragraph 4(3)(c) of *Schedule 3*, it is not necessary to verify the identity of every *legal person* or *legal arrangement* within a structure. However, the firm must take reasonable measures to gather sufficient information on the identity of any intermediate entities to allow it to identify those natural persons falling within the definition of ~~a~~ *beneficial owner* ~~or *underlying principal*~~ and to ~~understand the ownership and control of the *customer*.~~identify whether any intermediate entity has issued *bearer shares* or *bearer warrants*.

~~15.~~16. Further detail is provided within this Chapter in relation to identifying the *beneficial owner* in the particular types of *legal persons* and *legal arrangements* with which the firm could enter a *business relationship* or undertake an *occasional transaction*.

17. When identifying, and taking reasonable measures to verify the identity of, the *beneficial owner* of a *legal person* or *legal arrangement* as required by the sections of this Chapter, the firm must act in accordance with the identification and verification requirements of *Schedule 3* and this *Handbook* for natural persons, *legal persons* and *legal arrangements*.

18. Where a *key principal* is a *legal person* or *legal arrangement* authorised or registered by *the Commission* as a CIS under *the POI Law*, the *CDD* measures to be applied to that *legal person* or *legal arrangement* are set out in Section 9.5. of this *Handbook*.

~~16. Where the firm has been unable to verify the identity of the *legal person* using any of the methods listed on Paragraph 7.39. above, it must:~~

~~(a) document the reasons why the methods set out in Paragraph 7.39. have not achieved the required level of verification;~~
~~(b) document the alternative measures taken to verify the identity of the *legal person*;~~
~~(c) document how the firm considers the steps taken to be sufficient to satisfy the requirements of *Schedule 3* and the *Commission Rules*; and~~
~~(d) have approval from the *board* of the firm to establish or maintain the *business relationship* or *occasional transaction* and confirming its satisfaction with the measures taken.~~

~~17.~~19. Where ~~the~~ a *business relationship* or *occasional transaction* involving a *legal person* or *legal arrangement* (taking into account ~~its~~ the *beneficial owner(s)* of such ~~and any *underlying principal*~~) presents a high *risk* and/or requires the application of ~~ACDD~~*enhanced measures*, the firm should refer to the obligations set out within Chapter 8 of this *Handbook*.

7.3. Measures to Prevent the Misuse of Nominee Shareholders and Nominee Directors

~~18.~~20. The use of *nominee shareholders* and *nominee directors* can provide a means to obscure ultimate ownership and control of a *legal person* or *legal arrangement*. To minimise the risk to the firm of providing products or services to a *customer* using such arrangements, it is critical that legal and beneficial ownership is recorded thoroughly and that appropriate steps are taken to ~~identify~~ establish the true identity of those persons with ultimate ownership and control of a *customer*.

~~19.~~21. ~~The firm must ensure that it considers whether a customer, or beneficial owner or any underlying principal, which is a legal person could have nominee shareholders and/or nominee directors.~~ The firm must ~~also~~ have appropriate and effective procedures ~~which~~ to prevent the misuse of *nominee shareholders* and *nominee directors*. These must include~~ing~~ a requirement to consider whether a *legal person* has *nominee shareholders* and/or *nominee directors* and the means to ~~ensure that the firm~~ identify~~ies~~, and take~~s~~ reasonable measures to verify the identity of, any natural person who ultimately controls a *legal person* or *legal arrangement* for which *nominee shareholders* and/or *nominee directors* are identified in the ownership and control structure.

~~20.~~22. Where the firm identifies that the *customer* is a *legal person* with *nominee shareholders*, or is owned by a *legal person* with *nominee shareholders*, in accordance with Paragraph 5(2)(d) of *Schedule 3* it shall apply *enhanced measures* as set out in Section 8.12. of this *Handbook*, regardless of the *risk* rating attributed to the *business relationship* or *occasional transaction*.

~~21.~~23. For the purposes of identifying the *beneficial owner* of a *legal person* or *legal arrangement*, a *nominee shareholder* or *nominee director* would not be considered to have ultimate ownership or control of the *customer*. The firm must therefore look through the *nominee shareholder* or

nominee director and identify from whom instructions are being taken by a nominee director and for whom shares or interests are held by the *nominee shareholder*~~and take reasonable measures to verify the identity of the natural person(s) who ultimately control the *customer*~~.

7.3.1. Nominee Shareholders

~~22.~~24. A *nominee shareholder* is a natural or *legal person* recorded in the share register as the shareholder of a *legal person* who holds the shares or interest in that *legal person* on behalf of another ~~on trust~~. ~~As a consequence t~~The identity of the true~~ultimate~~ *beneficial owner(s)~~hip~~* is not ~~remains un~~disclosed on the register. In this instance the *nominee shareholder* cannot be considered the *beneficial owner*.

~~23.~~25. *Nominee shareholders* can be used to hide or obscure the beneficial ownership of a *legal person* ~~*customer* or corporate *underlying principal*~~, for example, a natural person may indirectly hold a majority interest in a *legal person* through the use of *nominee shareholders* who each hold a minimal interest and thereby obscure the identity of the natural person who actually holds effective control.

~~24. In determining effective control, the firm should also consider the types of ownership interests and the power of these interests (for example, the issue of voting shares or non-voting shares).~~

~~25.~~26. To mitigate the increased *risk* posed by *nominee shareholders*, t~~T~~he provision of, or acting as, a *nominee shareholder* in *the Bailiwick* by way of business is an activity which requires licensing under *the Fiduciaries Law* and is therefore subject to the requirements of *Schedule 3* and the *Commission Rules* in this *Handbook*. A similar approach is adopted in a number of other jurisdictions, such as the Bailiwick of Jersey and the Isle of Man. While this factor may reduce the inherent *risk* with *nominee shareholders*, it does not provide for the disapplication of *Commission Rule* 7.23.

7.3.2. Nominee Directors

~~26.~~27. A *nominee director* is a natural or *legal person* who acts on behalf of another. A *nominee director* therefore cannot be considered to be the~~a~~ *beneficial owner* ~~or *underlying principal*~~ on the basis that they are being used by someone else who can ultimately exercise effective control over that *legal person*.

~~27.~~28. Steps have been taken within *the Bailiwick*~~, and by other jurisdictions,~~ to counter the risk of natural or *legal persons* acting as *nominee director* by requiring that those who provide or act as director to be licensed under *the Fiduciaries Law* and is therefore subject to the requirements of *Schedule 3* and the *Commission Rules* in this *Handbook*. However, the firm should remain alert in respect of *legal persons* from all jurisdictions for indications that a director might be acting on the instructions of another person.

~~28.~~29. Further guidance is provided in *the Commission's* Codes of Practice for Company Directors and Corporate Service Providers:

https://www.gfsc.gg/sites/default/files/Code-of-practice-Directors-2009.pdf
https://www.gfsc.gg/sites/default/files/Code-of-practice-CSPs-2009.pdf

30. Factors which may indicate that a person is acting as a director on behalf of an undisclosed party could include:

(a) where the individual's credentials, such as their occupation, are inconsistent with the *legal person's* activity and purpose;
(b) where the individual holds other unrelated board appointments; or

(c) there are indications in communications the firm has with the *legal person* that the director could be taking instructions from another person whose relationship with that *legal person* is unclear.

~~Where the firm believes that a person may be acting as a director on behalf of an undisclosed party, it should satisfy itself that the director's credentials for acting are consistent with the *legal person's* purpose, for example, the firm should consider if a directorship is consistent with a natural person's occupation, or whether a director holds other unrelated board appointments.~~

7.4. Legal Persons

7.4.1. Identifying and Verifying the Identity of Legal Persons

~~29.~~31. Where a *legal person* is ~~the *customer*~~a *key principal* to a *business relationship* or *occasional transaction*, ~~or the *beneficial owner* or *underlying principal* of a *customer*,~~ the firm must identify~~,~~ and verify the identity of~~,~~ that *legal person* (or take reasonable measures to do so in accordance with Paragraph 4(3)(c) or (d) of *Schedule 3*), including as a minimum:

(a) the name of the *legal person*, including any trading names;
(b) any official identification number;
(c) the legal form and law to which~~status of~~ the *legal person* is subject;
(d) the date and country/territory of incorporation/registration/establishment (as applicable);
(e) the registered office address and principal place of business (where different from the registered office); and
~~the powers that regulate and bind the *legal person*, as well as ;~~
(f) the names of the natural persons having a senior management position (for example, the directors (or equivalent)) in the *legal person*~~any natural persons, e.g. *underlying principals*, directors, authorised signatories or equivalent, with ultimate effective control over the capital or assets of the *legal person*; and any person purporting to act on behalf of the *legal person*, including his authority to so act~~.

~~30.~~32. The following non-exhaustive list provides examples of *documents*~~are~~ considered suitable to verify one or more aspect of the identity of a *legal person*:

(a) a copy of the Certificate of Incorporation (or equivalent);
(b) a copy of the Memorandum and Articles of ~~Association~~ Incorporation (or equivalent);
(c) a copy of the latest audited financial statements~~ which show the company name, the identity of the directors and the registered address~~;
(d) a copy of the latest annual return;
(e) a copy of the register of directors;
(f) a copy of the register of shareholders;
(g) a company registry search including confirmation that the *legal person* has not been, and is not in the process of being, dissolved, struck off, wound up or terminated;
(h) independent information sources, including electronic sources;
(i) a copy of the board resolution authorising the opening of any ~~bank~~ *account* and recording the *account* signatories; and/or
(j) a personal visit to the principal place of business.

~~31.~~33. Where the *documents* obtained are copies of the originals, the firm should refer to the requirements of Section 6.6. of this *Handbook*.

~~32.~~34. In seeking to identify and verify the names of the natural persons having a senior management position in accordance with *Commission Rule* 7.31.(f), the firm should obtain information on the identity of the directors of the legal person or equivalent positions who impose binding

obligations upon a *legal person*, including authorised signatories, and verify that those positions are held.

35. Where one or more directors (or equivalent) or authorised signatories act for or on behalf of the *legal person* in a *business relationship* or *occasional transaction* with the firm, those persons should be identified, and their identity verified, in accordance with Section 4.3.2 of this *Handbook*. Where this is through a corporate director of a *legal person*, the firm should identify and verify the names of the directors of the corporate director and identify and verify the natural persons who will be representing the corporate director acting for the legal person. Where an individual authorised to act on behalf of the *legal person* is acting in the course of employment with a *transparent legal person* it is not necessary to identify and verify the identity of the person, providing that confirmation has been received from the *transparent legal person* that the individual is authorised to act.

36. It may be the case that not all directors (or equivalent) of a *legal person* will be acting for it within the relationship with the firm. The firm will have to identify and verify that the individual holds that position but if that person does not act for the *legal person* in an executive capacity in the relationship with the firm, the firm does not need to identify and verify the identity of director.

7.4.2. Identifying and Verifying the Identity of the Beneficial Owners of Legal Persons

~~33.~~37. Paragraph 22(2) of *Schedule 3* defines *beneficial owner* for the purposes of identification and verification as being:

Step 1. the natural person who ultimately controls the *legal person* through ownership; or, if no such person exists or can be identified,
Step 2. the natural person who ultimately controls the *legal person* through other means; or, if no such person exists or can be identified,
Step 3. the natural person who holds the position of a senior managing official of the *legal person*.

38. The ~~measures~~ steps set out in Paragraph 7.37. above are not alternative options. Establishing the beneficial ownership of a *legal person* ~~should be~~is ~~considered~~ a cascading process, beginning with Step 1.~~ and moving to Step 2 and ultimately Step 3 where the previous measure has been applied and has not identified a natural person falling within the definition of *beneficial owner*~~ If no *beneficial owner* is identified at Step 1 or there are doubts as to the accuracy of the natural person identified as the *beneficial owner*, the firm should move to Step 2 and where no natural person is identified under either Steps 1 and/or 2, ultimately Step 3.

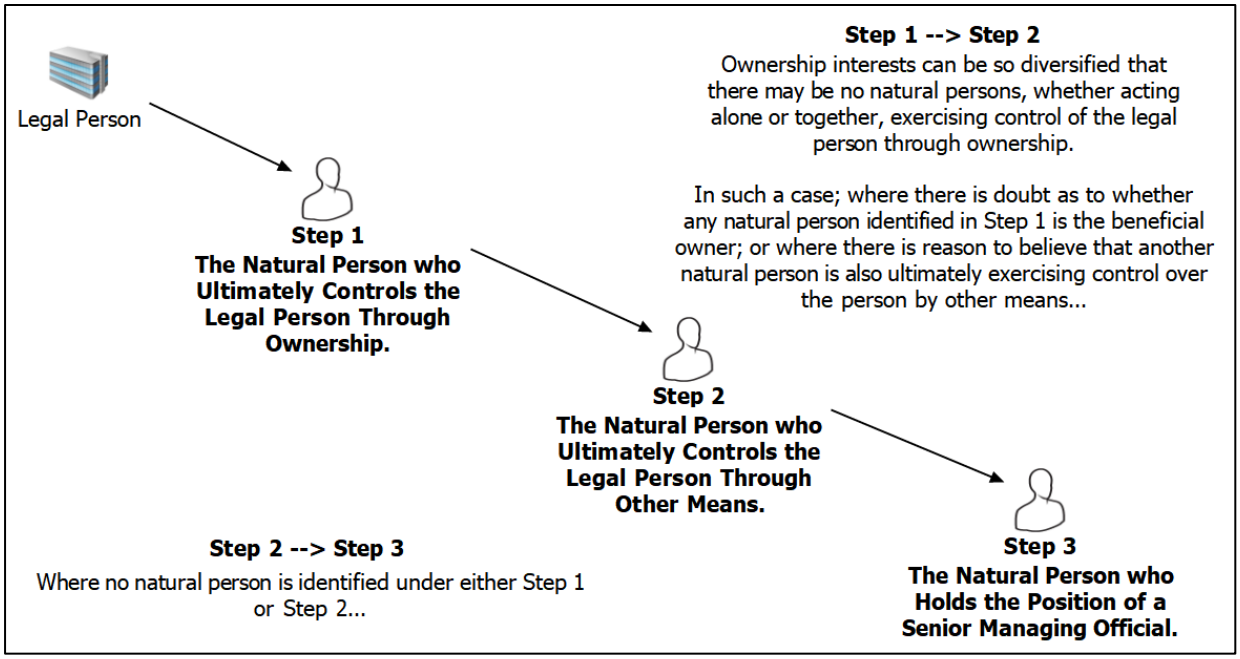


Fig. 5 – Three Step Test of Beneficial Ownership

~~34.~~39. For the purposes of Step 1, in accordance with Paragraph 22(6) of *Schedule 3*, a person has control of a *legal person* through ownership if that person holds, directly or indirectly, any of the following:

(a) if the *legal person* is a company,

(i) more than 25% of the shares in the company,
(ii) more than 25% of the voting rights in the company, or
(iii) the right to appoint or remove directors holding a majority of voting rights on all or substantially all matters at meetings of the board,

(b) if the *legal person* is any other form of *legal person* other than a *foundation*,

(i) more than 25% of the shares in the *legal person* or an interest equivalent to a shareholding of more than 25%, including but not limited to an entitlement to more than 25% of the assets of the *legal person* in the event of its winding up or dissolution,
(ii) more than 25% of the voting rights in the conduct or management of the *legal person*, or
(iii) the right to appoint or remove a majority of the managing officials of the *legal person* holding a majority of voting rights on all or substantially all matters at meetings of the *legal person* that are equivalent to board meetings.

~~35.~~40. For the purposes of Paragraph 7.39. above, in accordance with Paragraph 22(6) of *Schedule 3* holding more than 25% of the shares in a company means holding a right or rights to share in more than 25% of the capital or, as the case may be, the profits of the company.

~~36.~~41. It should be noted that, in accordance with Paragraph 22(7) of *Schedule 3*, a person holds shares or rights for the purposes of Paragraphs 7.39. and 7.40. above if:

(a) those shares or rights constitute *joint interests*;
(b) those shares or rights are held under a *joint arrangement*;
(c) those shares or rights are held on behalf of that person by a nominee;

(d) in the case of rights, that person controls their exercise;
(e) in the case of rights only exercisable in certain circumstances, those rights are to be taken into account; or
(f) in the case of rights attached to shares held by way of security provided by a person, the rights are still exercisable by that person.

~~37.~~42. In accordance with Paragraph 22(11) of *Schedule 3*, for the purposes of *Schedule 3* and this *Handbook*, references (however expressed) to,

(a) a person controlling the exercise of a right,
(b) taking rights into account, or
(c) rights being exercisable by a person,

shall be construed consistently with Paragraphs 10(2), 11 and 12(a)-(b) of *the Beneficial Ownership Regulations* respectively.

~~38.~~43. It should be borne in mind that a natural person could also indirectly hold an ownership interest in a ~~*customer* which is a~~ *legal person*. This situation could arise where, for example, a person holds their ownership in the *legal person* through a *legal arrangement*.~~the *legal person* holds the share(s) in question; where the natural person is the *beneficial owner* of a second *legal person* which in turn has a majority stake in the relevant *legal person*; or through other ownership interests, for example, shareholders' agreements or the holding of convertible stock or any other outstanding debt convertible into shares in the *legal person*.~~ In all cases it is important to note that, if a natural person ~~features~~is identified within an ownership structure in more than one way, the value of each of that person's holdings will be looked at cumulatively in order to assess that person's overall holding.

~~39.~~44. In accordance with Paragraph 22(4) of *Schedule 3*, in any case where a trust or other *legal arrangement* controls a *legal person* through ownership, the *beneficial owners* of that *legal person* are the *beneficial owners* of that trust or other *legal arrangement* as detailed in Section 7.10. of this Chapter.

~~40.~~45. In accordance with Paragraph 22(5) of *Schedule 3*, in any case where a *transparent legal person* has control of a *legal person* through ownership ("the controlled *legal person*"), that *transparent legal person* shall be treated as a natural person for the purposes of *Schedule 3* and *this Handbook*, and therefore (for the avoidance of doubt) as the *beneficial owner* of the controlled *legal person*.

46. A *transparent legal person* is defined in Paragraph 21 of *Schedule 3* as being:

(a) a company that is listed on a recognised stock exchange within the meaning of *the Beneficial Ownership Regulations*, or a majority owned subsidiary of such a company;
(b) a States trading company within the meaning of the States Trading Companies (Bailiwick of Guernsey) Law, 2001;
(c) a *legal person* controlled by the States of Alderney through ownership within the meaning of the Beneficial Ownership (Alderney) (Definition) Regulations, 2017 (or any successor regulations made under Section 25 of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017; or
(d) a regulated person within the meaning of Section 41(2) of *the Beneficial Ownership Law*, being a person who:

(i) holds or is deemed to hold a licence granted to it by *the Commission* under *the Regulatory Laws*;
(ii) carries on a *PB* for the purposes of *the PB Law*; or

(iii) carries on a registered *FSB* for the purposes of *the NRFSB Law*.~~.~~

47. Ownership interests can be so diversified that there may be no natural person~~s~~, whether acting alone or together with another, who ultimately controls a *legal person* through ownership. Where this is the case, the firm should move to Step 2 and seek to identify and verify the identity of the natural person who ultimately controls the *legal person* through other means.

48. As set out in Paragraph 22(3) of *Schedule 3*, there may also be a case where:

(a) the natural person who controls the *legal person* through ownership has been identified in accordance with Step 1,
(b) there are reasonable grounds to believe that the *legal person* is also ultimately controlled by another natural person through other means, and
(c) that other natural person can be identified.

49. In the above situation, or where there is doubt as to whether a natural person identified in Step 1 is the *beneficial owner*, the *beneficial owners* in relation to the *legal person* are the person with the controlling ownership interest and the other natural person believed to be ultimately exercising control over the *legal person* by other means (i.e. the persons identified within both Steps 1 and 2).

~~41.~~50. Whether or not this situation arises will depend on the specific factors of each case. By way of example, it may arise where the natural person with the controlling ownership interest is dominated by another because of a familial, employment, historical or contractual association, or where another natural person holds certain powers in relation to the *legal person* which are being or are likely to be used in practice to affect decisions taken by the natural person with the controlling ownership interest.

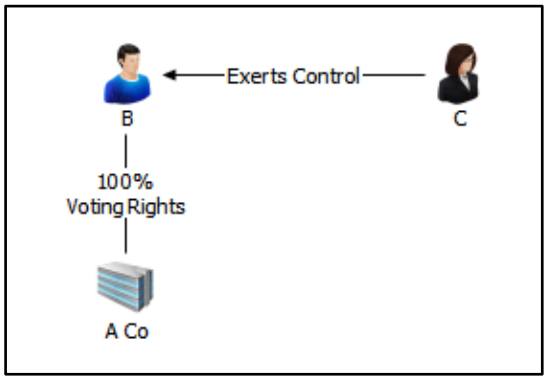


Fig. 6 – Control Through Other Means

In this example, A Co is a *legal person* which is the *customer* to a *business relationship* with the firm. B holds 100% of the voting rights in A Co.

Although B works as a gardener with no other source of income, A Co has considerable assets. B's employer, C, is a well-known international businesswoman who is famous for her desire for privacy, in particular about the location of her assets.

The firm therefore has reason to believe that, although B controls A Co through ownership, C is also ultimately controlling A Co through other means, i.e. her relationship with B, and both B and C are to be treated as *beneficial owners* of A Co.

51. For the purposes of Steps 1 and 2 in Paragraph 7.37., a natural person holds a share or right directly when that share or right is held in that person's own name. This may be held by the natural person alone or jointly with another. Direct holdings will generally be recorded in the constitutional documents of a *legal person* (for example, a register of shares). However, the firm should be mindful that the information in the constitutional documents may not be definitive (for example, there may be persons controlling that *legal person* through other means as in Fig. 6 above).

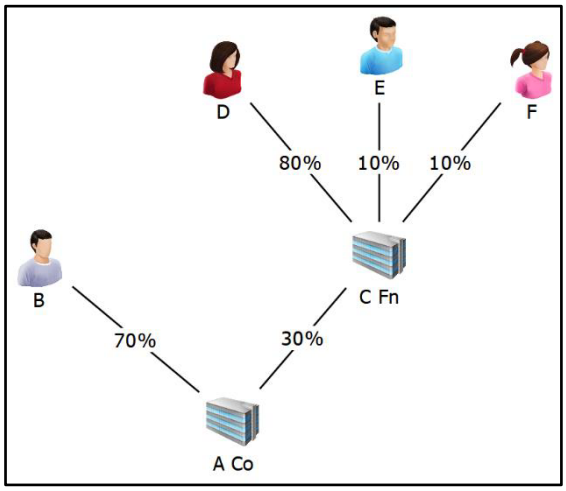
~~42.~~52. Conversely, a natural person holds a share or right indirectly where the ownership structure of a *legal person* involves one or more other entities, i.e. a chain of ownership. Where this is the case the firm should look through the chain of ownership to establish the ownership interests in each

entity to ensure that all natural persons with an indirect holding of more than 25% of the shares or rights in the *legal person* are identified. The ownership interests within a chain that need to be quantified are most likely to be shares or rights (or possibly vested beneficial interests in the case of a foundation). However, the relevance of an ownership interest will depend on the particular features of the intermediate entities, some of which may be established under the laws of other jurisdictions.

~~43.~~53. An indirect holding within a chain of ownership may arise in one of two ways. The first is when an entity holds more than 25% of the shares or rights in the *legal person* and an individual has a majority stake (i.e. a greater than 50% shareholding or similar) in that entity so can control those shares or rights. The majority stake may be held directly, but it may also be held through a chain of ownership with the individual holding a majority stake in each intervening entity.

54. The second is where the overall value of an individual's holding in shares or rights in the *legal person*, when quantified back through the ownership chain, amounts to more than 25%. An individual who has indirect ownership in either or both of these ways is a *beneficial owner* of the *legal person*.

Fig. 7 – Direct Holding vs. Indirect Holding



In this example, A Co is a *legal person* which is the *customer* to an *occasional transaction* with the firm. B holds 70% of the shares in A Co through a direct holding and is therefore a *beneficial owner* of A Co. The remaining ~~5~~30% of the shares are held by C Fn, a foreign foundation.

D holds 80% of the shares in C Fn so has an indirect holding in A Co quantified at 24% overall (i.e. 80% of 30%). This means D does not have an overall holding in A Co of more than 25% under the quantification test, but does hold a majority stake in an entity which holds more than 25% of the voting rights in A Co, therefore D is a *beneficial owner* in A Co.

E and F each hold 10% of the shares in C Fn, so each has an indirect holding in the shares of A Co of 3% overall (i.e. 10% of 30%). As they have neither an overall holding in A Co of more than 25% under the quantification test, nor a majority stake in an entity which holds more than 25% of the voting rights in A Co, they are not *beneficial owners* of A Co.

~~44.~~55. Finally, where no natural person is identified under either of Step 1 or Step 2 in Paragraph 7.37., in accordance with Step 3 the firm would identify and take reasonable measures to verify the identity of the natural person who holds the position of a senior managing official of the *legal person*.

56. The senior managing official could be the natural person responsible for strategic decisions that fundamentally affect the business or general direction of the *legal person* (for example, a director (or equivalent)) or the natural person exercising executive control over the daily or regular affairs of the *legal person* through a senior management position (for example, the chief executive officer or chief finance officer). In both cases, this would not normally include a person who does not have executive functions, such as a non-executive director.

~~45.~~57. In situations where there is more than one official of a *legal person* with strategic decision making powers and none is senior to the others, for the purposes of *Schedule 3* and this *Handbook*, all should be treated as senior managing officials.

58. In the case of partnerships; associations; clubs; societies; charities; church bodies; institutes; mutual and friendly societies; and co-operative and provident societies, the~~is~~ senior managing officials 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 and any supervisors.

7.5. Legal Bodies Listed on a Recognised Stock Exchange

~~46.~~59. In accordance with Paragraph 4(4) of *Schedule 3*, the firm shall not be required to identify any shareholder or *beneficial owner* in relation to:

(a) a *customer*, and
(b) a person which ultimately controls a *customer*,

that is a company listed on a recognised stock exchange within the meaning of *the Beneficial Ownership Regulations*, or a majority owned subsidiary of such a company.

Beneficial Ownership (Definition) Regulations, 2017

~~47.~~60. In order for the firm to consider the company as the principal to be identified, it must obtain *documentation* which confirms that the company is listed on a recognised stock exchange.

61. For the purposes of Paragraph 4(4) of *Schedule 3* and *Commission Rule* 7.59. above, in accordance with *the Beneficial Ownership Regulations* the following are deemed to be recognised stock exchanges:

(a) any regulated market within the meaning of the European Directive on Markets in Financial Instruments 2004/39/EU;
(b) the International Stock Exchange Authority Limited;
(c) the Alternative Investment Market;
(d) the Specialist Funds Market;
(e) the Australian Stock Exchange;
(f) the New York Stock Exchange;
(g) the National Association of Securities Dealers Automated Quotation System;
(h) the Cayman Islands Stock Exchange;
(i) the Bermuda Stock Exchange;
(j) the Hong Kong Stock Exchange;
(k) the Johannesburg Stock Exchange; and
(l) the SIX Swiss Exchange.

EU Markets in Financial Instruments Directive 2004

7.6. Protected Cell Companies

~~48.~~62. A protected cell company ("PCC") is a single legal entity with one board of directors and one set of memorandum and articles of incorporation. A PCC can create an unlimited number of protected cells ("PCs"), the assets and liabilities of which are separate from those of the PCC~~,~~ (with the assets of the latter~~which are~~ referred to as "non-cellular" or "core"). Importantly, the PCs are not separate legal entities and therefore cannot transact as such.

~~49.~~63. A PCC can be a newly incorporated entity or alternatively an existing company can be converted to a PCC. In either case the formation of, or conversion to, a PCC within *the Bailiwick* requires, under the Companies (Guernsey) Law, 2008 as amended, the prior written consent of *the Commission*.

~~50.~~64. A PCC may create any number of PCs, the assets and liabilities of which are segregated from the non-cellular assets of the PCC and from the assets and liabilities of other PCs. However, a PC may not own shares in its own PCC or another PC of the same PCC.

~~51.~~65. Where a PCC is ~~the *customer*, or *beneficial owner* or *underlying principal*~~a *key principal* to a *business relationship* or *occasional transaction*, the firm must ~~conduct~~ apply *CDD* measures to~~on~~ both the core and the relevant PC(s), including the *beneficial owners* ~~and *underlying principals*~~ of such, ~~and the directors of the core~~ in accordance with the requirements for *legal persons*.

66. Notwithstanding the segregation in respect of the assets and liabilities of the core and PCs as detailed above, for the purposes of identifying and verifying the identity of the *beneficial owner* in accordance with Paragraph 4(3) of *Schedule 3*, the test for control through ownership of a PCC is two-fold and will differ depending on the circumstances of the firm's relationship with the PCC (or a PC thereof):

(a) Where the firm is entering into a *business relationship* or undertaking an *occasional transaction* with a PC (for example, the provision of a *bank account* for a particular PC), the beneficial ownership should be calculated separately in respect of:

(i) the shares or rights in the particular PC; and
(ii) the shares or rights in the core.

(b) Where the firm acts as administrator of the PCC, the beneficial ownership should be calculated in respect of the shares or rights in the PCC as a whole in the same way as with any other *legal person* and ignoring any segregation (i.e. including any shares or rights held in the core, as well as all PCs).

67. For the purposes of Paragraph 7.65.(b), a natural person's direct or indirect holding of shares or rights in a PCC is therefore calculated by including all shares or rights that the person holds in the PCC, whether those shares or rights form part of the core or are held within one or more PCs. The effect of this is that a person cannot try to conceal his or her beneficial ownership of a PCC by dividing shares among different PCs.

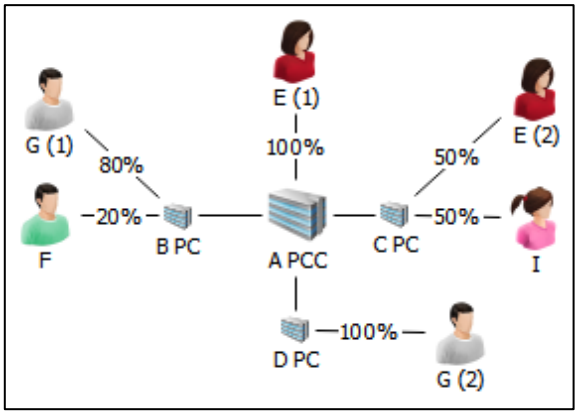


Fig. 8 – Beneficial Ownership of PCCs

In this example, A PCC is a PCC with three cells. E holds all of the shares in the core and 50% of the shares in C PC. E is therefore a *beneficial owner* of C PC, and holds 37% of all shares, making her a *beneficial owner* of A PCC.

Likewise, G holds 100% of the shares in D PC and 80% of the shares in B PC. G is therefore a *beneficial owner* of D PC and B PC, and holds 45% of the total shares making him a *beneficial owner* of A PCC.

I holds 50% of the shares in C PC and 12.5% of the shares in A PCC. I is therefore a *beneficial owner* of C PC, but not A PCC. Finally, F holds 20% of the shares in B PC and 5% of the total shares in the PCC. F is neither a *beneficial owner* of B PC or the A PCC structure.

68. The *CDD* measures to be applied to a PCC authorised or registered by *the Commission* as a CIS under Section 8 of *the POI Law* where it acts as a *key principal* to a *business relationship* or *occasional transaction* are set out in Section 9.5. of this *Handbook*.

~~52.~~69. The *CDD* measures for PCCs which are licensed under the Insurance Business (Bailiwick of Guernsey) Law, 2002 as amended ("*the IB Law*") and where the *beneficial owner* of the relevant PC or PCC is a business which is listed on a recognised stock exchange within the meaning of *the Beneficial Ownership Regulations*~~prescribed by *the Stock Exchange Regulations*~~ (or by a majority owned subsidiary of such a listed business) are the same as those ~~for *legal persons* listed on a stock exchange as~~ set out in Section 7.5. of this *Handbook*.

7.7. Incorporated Cell Companies

~~53.~~70. An incorporated cell company ("ICC") is structured similarly to a PCC with a non-cellular core and an unlimited number of cells ("ICs"). However, in contrast, the ICs of an ICC are separately incorporated and are therefore distinct legal entities with their own memorandum and articles of incorporation and boards of directors.

~~54.~~71. It is of note that the boards of the ICC and the boards of the ICs must be identically composed, so any director of an ICC must also be a director of each of its ICs.

~~55.~~72. Similar to a PCC, the assets and liabilities of each IC are segregated from the assets and liabilities of the ICC and from the assets and liabilities of the other ICs. While an IC can hold its own assets, those assets cannot include shares in its own ICC.

~~56.~~73. As a result of each IC having separate legal personality, the ICs have the ability to contract with third parties and with other ICs in their own right. An IC must therefore contract in respect of its own affairs and the ICC has no power to enter into transactions on behalf of any of its ICs. Each IC can also have distinct *beneficial owners*.

~~57.~~74. Where an ICC or IC is a *key principal* to a *business relationship* or *occasional transaction*~~*the customer*, or a *beneficial owner* or *underlying principal*~~, the firm must ~~conduct~~ apply *CDD* ~~on~~ measures to the relevant ICC or IC, ~~including~~ and to the *beneficial owners* there~~and any *underlying principal* of the ICC or IC~~, in accordance with the requirements for *legal persons*.

75. The *CDD* measures to be applied to an ICC or IC authorised or registered by *the Commission* as a CIS under Section 8 of *the POI Law* where it acts as a *key principal* to a *business relationship* or *occasional transaction* are set out in Section 9.5. of this *Handbook*.

~~58.~~76. The *CDD* measures for ICs or ICCs which are licensed under *the IB Law* and where the *beneficial owner* of the relevant IC or ICC is a business which is listed on a recognised stock exchange within the meaning of *the Beneficial Ownership Regulations*~~prescribed by *the Stock Exchange Regulations*~~ (or by a majority owned subsidiary of such a listed business) are the same as those ~~for *legal persons* listed on a stock exchange~~ set out in Section 7.5. of this *Handbook*.

7.8. Limited Partnerships and Limited Liability Partnerships

~~59.~~77. An LP is a form of partnership with or without legal personality at the election of the GP. Its members include one or more GP, who has actual authority over the LP, for example to bind the LP in contracts with third parties, and is liable for all debts of the LP, and one or more limited partner who contributes (or agrees to contribute) to the capital of the LP and who (subject to certain provisions) is not liable for the debts of the LP.

~~60.~~78. A Limited Liability Partnership ("LLP") is a body corporate with legal personality separate from that of its members and is therefore liable for its own debts. As a consequence of this legal personality, LLPs established within *the Bailiwick* must be registered and therefore public records exist similar to those for *legal persons*. With regard to the members of an LLP, there must be at least two who, unless otherwise stipulated within the members' agreement, may take part in the conduct and management of the LLP and are entitled to share equally in the profits of the LLP.

~~61.~~79. Where an LP or LLP is a *key principal* to a *business relationship* or *occasional transaction*~~the customer, or the beneficial owner or any underlying principal of a customer~~, the firm must identify, and verify the identity of, that LP/LLP (or take reasonable measures to do so in accordance with Paragraph 4(3)(c) or (d) of *Schedule 3*), ~~including as a minimum:~~as set out in Section 7.4. above.

~~62.~~80. ~~One or more of t~~The following non-exhaustive list provides examples of *documents* ~~are~~ considered suitable to verify one or more aspect~~s~~ of the identity of the LP/LLP in accordance with *Commission Rule* 7.78.:

(a) a copy of the LP/LLP agreement;
(b) a copy of the certificate of registration/establishment;
(c) a copy of the register of limited partners;
(d) a copy of the resolution of the GP (in the case of an LP) or members (in the case of an LLP) authorising the opening of any *bank account* and recording the *account* signatories;
(e) a copy of the latest audited financial statements; and/or
(f) information obtained from independent data sources, including electronic sources, for example a search of a register of LPs/LLPs.

~~63.~~81. Where the documents obtained are copies of the originals, the firm should refer to the requirements of Section 6.6. of this *Handbook*.

~~7.8.1. Identifying and Verifying the Identity of the Beneficial Owners of Limited Partnerships and Limited Liability Partnerships~~

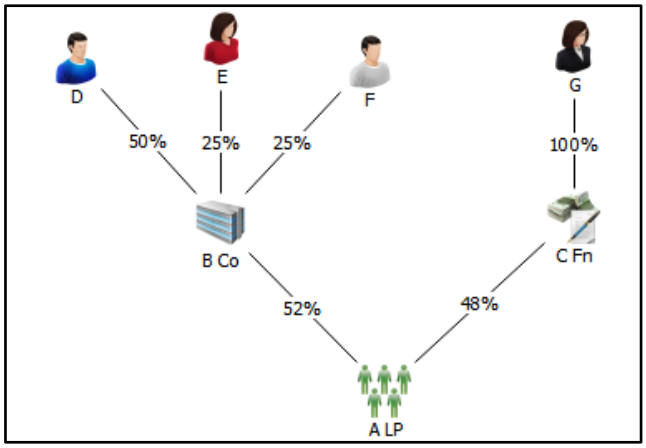
~~64. Paragraph 4(3)(c) of *Schedule 3* requires that the firm shall identify, and take reasonable measures to verify the identity of, the *beneficial owner* and any *underlying principal* of the LP/LLP and take measures to understand the ownership and control structure of that LP/LLP.~~

~~65.~~82. When seeking to identify, and verify the identity of, the *beneficial owner*~~s and any underling principal~~ of an LP/LLP, the firm must act in accordance with the requirements for *legal persons* in *Schedule 3* and the *Commission Rules* and *guidance* in Section 7.4.2. of this *Handbook*.

~~*7.4.2. Identifying and Verifying the Identity of the Beneficial Owners of Legal Persons*~~

~~66. With regard to LLPs, in accordance with Paragraph 21(2) of Schedule 3 and in turn as outlined in Regulation 3(b) of the Beneficial Ownership Regulations, the firm shall identify, and take reasonable measures to verify the identity of, any person who holds, directly or indirectly, more than [TBC]% of the voting rights in the conduct and management of the LLP (whether pursuant to the members' agreement or Section 14(3) of the Limited Liability Partnerships (Guernsey) Law, 2013 as amended).~~

Fig. 9 – Limited Partnership



In this example, A LP is a limited partnership which is the *customer* to a *business relationship* with the firm. 52% of the voting rights in A LP are held by B Co, a limited company, with the remaining 48% held by a foundation, C Fn.

D holds 50% of the shares in B Co so has an indirect holding in the voting rights in A LP of 26% overall (i.e. 50% of 52%). This means D does not hold a majority stake in an entity that holds more than 25% of the voting rights in A LP, but has an overall holding in the voting rights in A LP under the quantification test of more than 25%. Therefore D is a *beneficial owner* of A LP.

E and F each hold 25% of the shares in B Co so both have an indirect holding in the voting rights in A LP of 13% overall (i.e. 25% of 52%). As they have neither an overall holding in the voting rights in A LP under the quantification test of more than 25%, nor a majority stake in B Co, an entity which holds more than 25% of the voting rights in A LP, they are not *beneficial owners* of A LP.

G has a vested beneficial interest in 100% of the assets of ~~the~~ C Fn, so has an indirect holding in the voting rights in A LP of 48% overall (i.e. 100% of 48%). This means that G both holds a majority stake in an entity that holds more than 25% of the voting rights in A LP and has an overall holding in the voting rights in A LP under the quantification test of more than 25%. Therefore, G is a *beneficial owner* of A LP under both tests.

7.9. Foundations

7.9.1. Obligations of Businesses Establishing or Administering Foundations

~~67.~~83. During the course of establishing or administering a foundation relationship ~~for which it is to act as *foundation official*~~, the firm must, in order to identify and verify the identity of the *customer* and *beneficial owners*, identify:

(a) the *founder*(s), including the initial *founder(s)* and any persons or *legal arrangements* subsequently endowing the *foundation*;
(b) all councillors;
(c) any guardian(s);
(d) any ~~*beneficiaries*~~*beneficial owner*, including any default recipient; and
(e) any other natural person who exercises ultimate effective control over the foundation.

~~68. When seeking to verify the identity of the *beneficial owners* and *underlying principals* of a *foundation*, the firm should refer to Section 7.9.3. of this *Handbook*.~~

7.9.2. Obligations when Dealing with Foundations

~~69.~~84. Where a *foundation* is ~~the customer, or the beneficial owner or underlying principal of~~ a ~~customer~~ *key principal* to a *business relationship* or *occasional transaction*, the firm must:

(a) identify~~,~~ and verify the identity of the *foundation* (or take reasonable measures to do so in accordance with Paragraph 4(3)(c) or (d) of *Schedule 3)*, including without limitation:

(i) the full name;
(ii) the legal status of the *foundation*;
(iii) any official identification number (for example a registered number, tax identification number or registered charity or NPO number, where relevant);
(iv) the date and country or territory of establishment/registration; and
(v) the registered office address and principal place of operation/administration (where different from the registered office);
~~(vi) the powers that regulate and bind the *foundation*;~~

(b) identify and~~, subject to Section 9.5. of this *Handbook*,~~ verify the identity of any registered agent of the *foundation*, other than where the agent is a *transparent legal person*;

(c) ~~require the registered agent, *foundation official* or other relevant person to notify the firm of the names of~~identify the following:

(i) the *founder*(s), including the initial *founder(s)* and any persons or *legal arrangements* subsequently endowing the *foundation*;
(ii) all councillors;
(iii) any guardian(s);
(iv) any ~~*beneficiaries*~~*beneficial owner*, including any default recipient; and
(v) any other natural person who exercises ultimate effective control over the *foundation*; and

(d) understand the ownership and control~~*foundation*~~ structure of the *foundation* and the ~~nature and~~ purpose and intended nature of ~~activities undertaken by the *foundation* sufficient to monitor such activities and to fully understand~~ the *business relationship* or ~~the purpose of the~~ *occasional transaction*.

~~70.~~85.~~One or more of t~~The following non-exhaustive list provides examples of *documents*~~are~~ considered suitable to verify one or more aspect~~s~~ of the identity of ~~the~~ a *foundation*:

(a) a copy of the Certificate of Registration;
(b) a registry search, if applicable, including confirmation that the foundation has not been, and is not in the process of being, dissolved, struck off, wound up or terminated;
(c) a copy of the latest audited financial statements;
(d) a copy of the Charter; and/or
(e) a copy of the Council Resolution authorising the opening of the *account* and recording *account* signatories.

~~71.~~86.Where the documents obtained are copies of the originals, the firm should refer to the requirements of Section 6.6. of this *Handbook*.

~~72.~~87.Verification of the identity of the ~~parties to~~*beneficial owners* of a *foundation* must be undertaken either by the firm itself or, provided that the *Commission Rules* in Chapter 10 of this *Handbook* are met, by requesting the registered agent, where one has been appointed, ~~or *foundation official*~~ to provide the relevant information on the identity of such parties by way of a certificate or summary sheet.

7.9.3. Verifying the Identity of the Beneficial Owners of Foundations

~~73.~~88.Paragraph 22(6)(c) of *Schedule 3* defines that a person has control of a *foundation* through ownership if that person holds, directly or indirectly, any of the following:

(a) an interest equivalent to a shareholding of more than 25% including but not limited to an entitlement to more than 25% of the assets of the *foundation* in the event of its winding up or dissolution;
(b) more than 25% of the voting rights in the conduct or management of the *foundation*;
(c) the right to appoint or remove a majority of the managing officials of the *foundation* holding a majority of voting rights on all or substantially all matters at meetings of the *foundation* that are equivalent to board meetings;
(d) a vested beneficial interest or future entitlement to benefit from more than 25% of the assets of the *foundation*.

~~74.~~89. Other than where a *business relationship* or *occasional transaction* has been assessed as high *risk*, the firm must take reasonable measures to verify the identity of any natural person falling within Paragraph 7.88. above prior to any distribution of *foundation* assets to (or on behalf of) that natural person.

~~75.~~90. Where a *business relationship* has been assessed as being high *risk*, the firm must, where possible, take reasonable measures to verify the identity of any natural person falling within Paragraph 7.88. above at the time that the assessment of *risk* is made. Where it is not possible to do so (for example, because that person has not been ~~un~~born or is disenfranchised) the reasons must be documented and retained on the relevant *customer's* file.

~~76.~~91. The firm must take reasonable measures to verify the identity of those ~~*underlying principals* and other~~ parties identified by *Commission Rule* 7.82. or 7.83. other than the *beneficial owners* (for example, the~~any~~ *founder*(s), *foundation official*(s), councillors, guardian(s) and any other person(s) with ultimate effective control over the *foundation* (including the *beneficial owners* ~~or *underlying principal*~~ of such entities where they are *legal persons* or *legal arrangements*)) before or during the course of establishing a *business relationship* or before carrying out an *occasional transaction*.

~~77. When identifying the *founder*(s) in accordance with Paragraph 4(3) of *Schedule 3*, the firm must identify, and take reasonable measures to verify the identity of, the initial *founder*(s) and any persons subsequently endowing the *foundation* after formation.~~

~~78.~~92. Regardless of form, where the firm identifies that a *founder* is acting on behalf of another person, i.e. as a nominee *founder*, the firm must identify, and take reasonable measures to verify the identity of, the true economic *founder*.

93. With regard to Paragraph 7.88.(d), the persons falling within this category will depend on the specific circumstances of the *foundation*. However, this will generally include individuals who under the terms of the official documents of the *foundation* have a future entitlement to a substantial benefit from the *foundation*. As a matter of practice and policy, this will generally mean an entitlement to a benefit which in the hands of an individual recipient equates to more than 25% of the total assets of the *foundation*. In other words, it is not intended that, where a *foundation's* official documents anticipate the provision of benefits to a potentially large group, (for example, by providing *funds* to supply food to the inhabitants of a flooded village) members of that group should be treated as *beneficial owners*.

7.10. Trusts and Other Legal Arrangements

7.10.1. Obligations of Trustees (or Equivalent)

~~79.~~94. During the course of establishing a trust relationship for which it is to act as trustee, the firm must, in order to identify and verify the identity of the *customer* and *beneficial owners*, identify:

(a) the *settlor*(s), including the initial *settlor(s)* and any persons or *legal arrangements* subsequently settling *funds* into the trust;
(b) any *protector*(s), enforcer(s) and co-trustee(s);
(c) any beneficiary, whether his or her interest under the trust is vested, contingent or discretionary and whether that interest is held directly by that person or as the *beneficial owner* of a *legal person* or a *legal arrangement* that is a beneficiary of the trust, and/or any class of beneficiaries; and
(d) any other natural person who exercises ultimate effective control over the trust.

95. Where the firm is establishing a *legal arrangement* other than a trust for which it is to act in a position equivalent to that of a trustee, the firm must identify those persons fulfilling positions equivalent to those set out in *Commission Rule* 7.93. above.

~~80.~~96. ~~Further i~~Information on the verification of the *beneficial owners* ~~and *underlying principals*~~ of a trust can be found in Section 7.10.3. of this *Handbook*.

~~81. In addition to the parties listed in *Commission Rule* 7.95., the firm must also gather and retain basic information on other regulated agents of, and service provides to, the trust. Examples of such include investment advisors or managers, accountants and tax advisors.~~

~~82. For the purposes of *Commission Rule* 7.98., the following is deemed to constitute basic information:~~

~~(a) the full name of the regulated agent or service provider;~~
~~(b) their registered office address and principal place of business (where different from the registered office); and~~
~~(c) where a *legal person*, the names of any natural persons providing services to the trust.~~

7.10.2. Obligations when Dealing with Trusts or Other Legal Arrangements

~~83.~~97. Where a trust is ~~the *customer*, or the *beneficial owner* or *underlying principal* of~~ a ~~*customer*,~~*key principal* to a *business relationship* or *occasional transaction*, the firm must:

(a) identify and verify the identity of the trust (or take reasonable measures to do so in accordance with Paragraph 4(3)(c) or (d) of *Schedule 3*), including without limitation:

(i) the full name;
(ii) any official identification number (for example, a tax identification number or registered charity or NPO number, where relevant); and
(iii) the date and place of establishment of the trust; ~~and~~
~~the powers that regulate and bind the trust;~~

~~(c)~~(b) identify and~~, subject to Section 9.5. of this *Handbook*,~~ verify the identity of the trustees of the trust, other than where the trustee is a *transparent legal person*;
(c) require the trustees (or equivalent) of the trust or other *legal arrangement* to provide the firm with details of the identities of the *beneficial owners* ~~and *underlying principals*~~of the trust, including:

(i) the *settlor(s)*, including the initial *settlor(s)* and any persons or *legal arrangements* subsequently settling *funds* into the trust;
(ii) any *protector(s)*, enforcer(s) and co-trustee(s);
(iii) any beneficiary~~ies~~, whether ~~their~~ his or her interest under the trust is vested, contingent or discretionary and whether that interest is held directly by that person

or as the *beneficial owner* of a *legal person* or a *legal arrangement* that is a beneficiary of the trust, and/or any class of beneficiaries; and

(iv) any other natural person who exercises ultimate effective control over the trust; and

~~(f)~~(d) understand the ownership and control ~~trust~~ structure of the trust or other *legal arrangement* and the ~~nature and~~ purpose and intended nature of ~~activities undertaken by the trust sufficient to monitor such activities and to fully understand~~ the *business relationship* or ~~the purpose of the~~ *occasional transaction*.

~~84.~~98. When verifying the identity of the trust in accordance with *Commission Rule* 7.96.(a), ~~subject to Rule 7.10.2.(3) below,~~ the firm does not need to~~not~~ obtain copies of the entire trust instrument (for example, trust deed or declaration of trust); obtaining copies of relevant extracts of such an instrument may suffice.

~~85.~~99. Where the *business relationship* or *occasional transaction* has been assessed as high *risk*, the firm must obtain ~~the entire trust deed together with any subsequent deeds of amendments and the letter(s) of wishes (where applicable); or~~relevant extracts of the trust deed, deeds of amendments and letter(s) of wishes (as applicable to verify the points covered by *Commission Rule* 7.96.(a)(i)-(iii) above), together with an appropriate assurance from the trustee that the content of such documents does not contain contradictory information with other *identification data* gathered.

~~86.~~100. Where documents obtained are copies of the originals, the firm should refer to the requirements of Section 6.6. of this *Handbook*.

7.10.3. Verifying the Identity of Beneficial Owners of Trusts or Other Legal Arrangements

~~87.~~101. In accordance with Paragraph 4(3) of *Schedule 3*, in relation to a trust the firm shall identify and take reasonable measures to verify the identity of the *beneficial owner* which, in accordance with Paragraph 22(8) of *Schedule 3*, shall include (without limitation):

(a) any beneficiary who is a natural person, whether his or her interest under the trust is vested, contingent or discretionary, and whether that interest is held directly by that person or as the *beneficial owner* of a *legal person* or *legal arrangement* that is a beneficiary of the trust;

(b) any trustee, *settlor*, *protector* or enforcer of the trust who is a natural person or that is a *transparent legal person*;

(c) if any trustee, *settlor*, *protector* or enforcer of the trust is a *legal person* (other than a *transparent legal person*) or a *legal arrangement*, any natural person who is the *beneficial owner* of that *legal person* or *legal arrangement*;

(d) any natural person (other than a beneficiary, trustee, *settlor*, *protector* or enforcer of the trust), who has, under the trust deed of the trust or any similar document, power to:

(i) appoint or remove any of the trust's trustees;
(ii) direct the distribution of *funds* or assets of the trust;
(iii) direct investment decisions of the trust;
(iv) amend the trust deed; or
(v) revoke the trust;

(e) any *transparent legal person* (other than a trustee, *settlor*, *protector* or enforcer of the trust) that holds any of the powers set out in (d);

(f) where a *legal person* (other than an *transparent legal person*) or *legal arrangement* holds any of the powers within subparagraph (d) (other than a trustee, *settlor*, *protector* or

enforcer of the trust), any natural person who is a *beneficial owner* of that *legal person* or *legal arrangement*; and

(g) any other natural person who exercises ultimate effective control over the trust.

~~88.~~102. In the case of a *legal arrangement* other than a trust, in accordance with Paragraph 22(9) of *Schedule 3*, *beneficial owner* means any natural person or *transparent legal person* who is in a position in relation to that *legal arrangement* that is equivalent to the position of any natural person or *transparent legal person* set out in Paragraph 22(8) of *Schedule 3* as set out above.

103. For the avoidance of doubt, the firm should treat a *transparent legal person* as a natural person for the purposes of *Schedule 3* and this *Handbook*. In doing so, the *transparent legal person* should be identified and its identity verified in accordance with *Commission Rule* 7.31.. However, the firm does not need to determine the beneficial ownership of the *transparent legal person*.

~~89.~~104. Other than where a *business relationship* or *occasional transaction* has been assessed as being high *risk*, the firm must take reasonable measures to verify the identity of any natural person who is a beneficiary of, or any other natural person who benefits from, ~~or exercises ultimate effective control over,~~ the trust~~,~~ prior to any distribution of trust assets to (or on behalf of) that natural person.

~~90.~~105. Where a *business relationship* or *occasional transaction* has been assessed as being high *risk*, the firm must, where possible, take reasonable measures to verify the identity of all beneficiaries and other persons who are to benefit from~~, or exercises ultimate effective control over,~~ the trust~~,~~ at the time that the assessment of *risk* is made. Where it is not possible to do so (for example, because the~~y~~ beneficiaries have~~are~~ not yet been ~~un~~born or are ~~disenfranchised~~excluded) the reasons must be documented and retained on the relevant *customer's* file.

~~91.~~106. The vast majority of trusts established and administered in *the Bailiwick* are discretionary trusts. Under a discretionary trust the beneficiaries have no right to any ascertainable part of the income or capital of the trust property. Rather, the trustees are vested with a power, which they are obliged to consider exercising, to pay the beneficiaries, or apply for their benefit, such part of the income or capital of the trust as the trustees think fit. Consequently, a beneficiary's interest in trust property is merely discretionary except to the extent that the trustee has decided to appoint a benefit to him or her~~until such time that the trustee determines to make a distribution to the beneficiary and that beneficiary's interest in the trust property becomes vested~~.

~~92.~~107. *Schedule 3* recognises the differences between the interests of beneficiaries under discretionary trusts, as well as those under *fixed* ~~interest~~ *trusts* whose interests have not yet arisen and who are, therefore, contingent beneficiaries. In this respect, *Commission Rule* 7.103. allows, other than in relation to *high risk relationships*, for the verification of the identity of a beneficiary to take place at the time that ~~an interest is vested and~~ a distribution of trust assets or property occurs to, or on behalf of, that beneficiary.

108. Where the beneficiaries of a trust are designated by characteristics or by class, the firm ~~should~~ must obtain sufficient information concerning the beneficiaries to *satisfy* itself that it will be able to ~~establish~~ identify, and verify the identity of, a beneficiary at the time of a distribution or when the beneficiary gains vested rights, for example, a beneficiary who is unaware of their beneficiary status until a point in time or a minor who reaches the ~~attains~~ age of majority.

~~93.~~109. The firm must take reasonable measures to verify the identity of those *beneficial owners* exercising control over the affairs of the truste~~ *underlying principals*~~, i.e. any *settlor*(s), trustee(s), *protector*(s) and enforcer(s), ~~(~~including the *beneficial owner*s ~~or *underlying principal*~~ of such ~~an~~ entities~~y~~ where they~~it~~ are~~is a~~ *legal person*s or *legal arrangement*s~~)~~, before or during

the course of establishing a *business relationship* or before carrying out an *occasional transaction*.

~~94.~~110. Verification of the *beneficial owners* of a trust must be undertaken either by the firm itself or, provided that the *Commission Rules* in Chapter 10 of this *Handbook* are met, by requesting the trustee to provide the relevant information on the identity of such parties by way of a certificate or summary sheet.

7.11. CDD Measures for Particular Categories of Legal Person and Legal Arrangement

111. This section provides additional guidance to assist the firm in interpreting the preceding requirements of this Chapter when dealing with the following particular types of *legal person* or *legal arrangement* as *customer* or other *key principal*:

1. Charities and Non-Profit Organisations;
2. Governments, Supranational Organisations and State-Owned Enterprises; and
3. Sovereign Wealth Funds.

7.11.1. Charities and Non-Profit Organisations

112. Charities and NPOs play a vital role in the world economy, as well as many national economies and social systems. Their efforts complement the activity of the governmental and business sectors in providing essential services, comfort and hope to those in need around the world.

~~95.~~113. It is recognised, however, that charities and NPOs are vulnerable to exploitation by criminals, terrorists and terrorist organisations. In this respect, a charitable or benevolent purpose can be used to disguise underlying terrorist or criminal involvement, both in the raising of capital and in the subsequent distribution of *funds*, as well as through the provision of logistical and other support to terrorist or criminal organisations and operations. This is of particular concern where the charity or NPO has connections with higher-*risk* countries or territories.

~~96.~~114. Not all charities and NPOs are subject to scrutiny through legislation or registration requirements. Consequently, a criminal or terrorist organisation can exploit the inherent ~~risk in the~~ vulnerabilities ~~of~~ in the regimes in some jurisdictions. Additionally, some charities and NPOs are predominantly cash orientated and present a mechanism to disguise and confuse the detection of the original source(s) of *funds*.

~~97.~~115. When carrying out a ~~customer~~ *relationship risk assessment*, ~~as required by paragraphs 4(a) and 4(b) of *Schedule 3* and section 3C of this *Handbook*,~~ the following are examples of *risk* factors specific to charities and NPOs which could~~to~~ be considered by the firm, both singly and cumulatively, in addition to those factors set out in Chapter 3 of this *Handbook*~~, when determining the risk rating of a charity or NPO~~:

(a) the jurisdiction(s) within which *funds* are raised by the charity or NPO;
(b) the jurisdiction(s) within which *funds* are spent or distributed by the charity or NPO;
(c) the methods of *fund* raising utilised by the charity or NPO;
(d) the purpose for which the charity or NPO has been established; and
~~(d)~~(e) the nature of the projects (or equivalent) for which the charity or NPO provides funding~~; and~~.

~~1. the openness and transparency with which the charity or NPO conducts its affairs.~~

116. In considering the *risk* factors set out above, the firm may deem it appropriate to make a distinction between those charities or NPOs with a limited geographical remit and those with unlimited geographical scope, for example, medical and emergency relief charities. Where a

charity or NPO has a defined area of benefit, it is only able to expend its *funds* within that defined area and can quite properly be transferring *funds* to that country or territory. It would otherwise be less clear why the charity or NPO should be transferring *funds* to a third country and this would therefore be unusual.

117. Where the *customer* is a trust, foundation or other *legal arrangement*, there may be a situation where a charity or NPO is identified as a "long-stop" beneficiary, for example, under a calamity/disaster clause (or equivalent). In such cases the firm would not be expected to consider the factors identified above when carrying out a *relationship risk assessment*, except where all other intended beneficiary arrangements have failed, or if the firm considers it relevant appropriate in the circumstances.

~~Where a charity or NPO is the *customer*, the firm must:identify and verify the identity of the charity or NPO, including:~~

~~1. the full name ;~~

~~(g) the dateof establishment the primary address and mailing address (if different); and~~

~~(h) the of~~

~~(i) understand the nature and purpose of the charity or NPO;~~

~~(j) identify, and take reasonable measures to verify the identity of, any natural persons, including *underlying principals*, authorised signatories or equivalent, with ultimate effective control over the management of the charity or NPO and the assets of the charity or NPO (if different); and~~

~~(k) identify, and verify the identity of, any person purporting to act on behalf of the charity or NPO, including verifying his authority to so act.~~

118. With regard to the beneficial ownership of charities and NPOs, for the vast majority there will likely be no natural person who would be deemed to have control through ownership or other means in accordance with the definition of *beneficial owner* in *Schedule 3*. At most there may be a class of persons who stand to benefit from the charity's objectives and these will likely be self-evident from an understanding of the charity or NPO's nature and purpose. However, these persons are unlikely to have ultimate effective control over the affairs of the charity or NPO's.

119. Noting the above, where the charity or NPO is a *legal person*, the senior managing officials for the purposes of establishing beneficial ownership will often be a senior member of the governing body or committee of the charity or NPO, or may extend to an executive where the governing body does not have day-to-day control of the charity or NPO's affairs.

~~98. The firm should also have policies, procedures and controls in place which seek to understand whether the charity or NPO is operated with transparency and integrity and has effective operational controls and an adequate governance or management function.~~

120. Many jurisdictions require the registration of at least a portion of charities or NPOs for the purpose of ensuring the transparency of that jurisdiction's NPO sector. Whilst on its own not sufficient as verification of the identity of a charity or NPO, registration may allow the firm to gather further information on a charity or NPO, including details on its nature and purpose, and may act to support any verification undertaken. Within *the Bailiwick* the Guernsey Registry maintains lists of both registered charities and NPOs, ~~(~~excluding Sark~~)~~ (see Appendix B).

7.11.2. Governments, Supranational Organisations and State-Owned Enterprises

121. Where the *customer* in a *business relationship* or *occasional transaction*, or the *beneficial o*wner of the *customer*, is an overseas government or government department, a local authority, an agency established by the law of a foreign country or territory, a supranational organisation, or body owned (or majority owned) by any of the former, the firm should consider the measures set out within this section.

122. Where the *customer*, or a *beneficial owner* or other *key principal* of the *customer*, is a *Bailiwick* public authority, the firm should refer to Section 9.4. of this *Handbook*.

123. Bodies engaged in public administration are different from state-owned bodies which conduct business. The nature and *risk* of the *business relationship* or *occasional transaction* will therefore differ. Public administration involves a different revenue/payment stream from that of most business and may be funded from government sources or other forms of public revenue. On the other hand, state-owned businesses may engage in a wide range of activities, some of which could involve higher *risk* factors. Such entities may be partly publicly funded and may derive some or all of their revenues from trading activities.

124. In assessing the *risk* of a *business relationship* or *occasional transaction* with, or involving, a government entity, the firm should pay particular attention to the *risk*s associated with the country or territory from which the government entity originates, together with the *risk*s associated with the source of the government entity's funds and wealth.

125. When seeking to understand the ownership and control structure of the government entity in accordance with Paragraph 4(3)(c) of *Schedule 3*, the firm should consider the entity's relationship with its home state authority. In the majority of cases, it is unlikely that there will be an identifiable natural person with control of the entity through ownership or other means. In such cases, the firm should look to identify the natural person who holds the position of a senior managing official of the government entity in accordance with Step 3 of Paragraph 7.37. above.

126. Given the nature of government and supranational entities, it is likely that the directors (or equivalent) will include individuals falling within the definition of a *PEP*. The firm should therefore be alive to the increased likelihood of the existence of such persons within a *business relationship* or *occasional transaction*.

127. Where the firm identifies that a foreign *PEP* or an *international organisation PEP* is acting on behalf of a government entity, but where the *PEP* does not fall within the definition of *beneficial owner* and where no property of that *PEP* is handled in the particular *business relationship* or *occasional transaction*, the firm should consider this factor as part of its *risk* assessment of the relationship, including consideration of the nature of the *PEP's* role and reason why the *PEP* holds such a role.

128. Where the firm has determined that, but for the function held by the natural person, the *business relationship* or *occasional transaction* would be other than high *risk*, it is not required to apply *ECDD* measures.

129. One such example could be a government or state-level pension scheme investing in a *Bailiwick* CIS where members of the pension committee/board of trustees (or equivalent) are *PEPs* through their senior government positions but where they do not meet the definition of the senior managing official of the scheme. Those persons have no economic interest in the funds involved in the *business relationship* or *occasional transaction* (beyond any pension rights) and the *risk* of the relationship being used as a vehicle for the laundering of any personal funds is minimal.

7.11.3. Sovereign Wealth Funds

~~99.~~130. A Sovereign Wealth Fund ("SWF") is a state-owned investment fund used to invest in real and financial assets with the purpose of benefiting a country's economy. An SWF consists of a pool or pools of money derived from various sources including central *bank* reserves, commodity exports and foreign-exchange reserves.

~~100.~~131. There is a general concern that SWFs are capable of being used to meet political rather than purely financial objectives, by acquiring controlling interests in strategically important industries or destabilising economies. For this reason, understanding the nature and purpose of an SWF and the *business relationship* or *occasional transaction* is key.

~~101. Where an SWF is the *customer*, or *beneficial owner* or *underlying principal*, the firm must:~~

~~(1) identify and verify the existence of the SWF, including:~~

~~(a) the name;~~
~~(a) the address;~~
~~(a) the date of establishment;~~
~~(a) the name of the national government; and~~
~~(a) the investment powers;~~

~~(b) understand the legal standing of the SWF by reference to the applicable constitutional documents; and~~
~~(c) obtain the names of the authorised signatories and governing body (or committee, or equivalent) members and identify those natural persons with authority to give instructions over the use or transfer of funds or assets and verify the authority of those persons to so act.~~

~~102.~~132. Many SWFs are members of the International Forum of Sovereign Wealth Funds ("IFSWF"). Established in 2009 by a group of 23 state-owned international investors, the IFSWF is a global network of SWFs. The purpose of the IFSWF is to exchange views on issues of common interest with the aim of facilitating an understanding of the activities of SWFs and of the Santiago Principles which provide a clearer understanding of SWFs by promoting transparency, good governance, accountability and prudent investment practices.

~~103.~~133. Whilst membership alone is not sufficient as verification of an SWF, further information on the IFSWF members, including details on their ownership, nature, objects and purpose can be found on the IFSWF website and may act to support any verification undertaken.

134. When seeking to identify the *beneficial owner* of an SWF which is a *legal person*, it is unlikely that there will be an identifiable natural person with control of the SWF through ownership or by other means. In such cases the firm should look to identify the natural person who holds the position of senior managing official of the SWF in accordance with Step 3 of Paragraph 7.37. above.

7.12. CDD Measures for Particular Products and Services

135. In addition to the *CDD* measures detailed previously for *legal persons* and *legal arrangements* with which the firm deals as part of its *business relationships* and *occasional transactions*, there may be instances where the firm offers particular products or services which have unique *risks* associated with them.

136. This section provides *Commission Rules* and guidance in respect of the *CDD* measures to be applied by the firm where it provides the following products or services:

1. Life and Other Investment Linked Insurance;
2. Employee Benefit Schemes, Share Option Plans or Pension Schemes; or
3. Custody or Management to Non-Guernsey Collective Investment Schemes.

7.12.1. Life and Other Investment Linked Insurance

~~104.~~137. Where the product or service provided by the firm is the issuing of a life or other investment linked insurance policy, the firm must, in addition to identifying and verifying the *customer* and taking reasonable measures to verify the identity of the *beneficial owner* ~~and any *underlying principal*~~, also undertake the following measures in relation to any beneficiary as soon as they are identified or designated:

(a) for a beneficiary that is identified as a specifically named natural or *legal person* or *legal arrangement*, take the name of the natural or *legal person* or *legal arrangement*; and

(b) for a beneficiary that is designated by characteristics or by class (for example, a spouse or child) or by other means (for example, under a will), obtain sufficient information concerning the beneficiary for the firm to satisfy itself that it will be able to establish the identity of the beneficiary at the time of distribution.

~~105.~~138. In addition to ~~accordance with~~considering whether the *beneficial owner* of a life or other investment linked insurance policy is a *PEP* in accordance with Paragraph 4(3)(f) of *Schedule 3*, the firm must~~shall~~ also make a determination as to whether ~~the *beneficial owner* or~~ any beneficiary of ~~a life or other investment linked insurance~~such a policy (or the *beneficial owner* of a beneficiary where that beneficiary is a *legal person* or *legal arrangement*) ~~(at the point that a beneficiary is identified/designated)~~ is a *PEP* at the time that the beneficiary is identified or designated.

~~106.~~139. Where the firm determines that the *beneficial owner*, ~~or~~ any beneficiary, or the beneficial owner of any beneficiary of a life or other investment linked insurance product is a *PEP*, the firm must act in accordance with the requirements of Paragraph 5 of *Schedule 3* and Section 8.5. of this *Handbook*.

~~107.~~140. Verification of the identity of any beneficiary identified in accordance with *Commission Rule* 7.135. must occur prior to any distribution to (or on behalf of) that beneficiary.

~~108.~~141. When carrying out a *relationship risk assessment* as required by Paragraph 3 of *Schedule 3* and Chapter 3 of this *Handbook*, the firm must include any beneficiary identified by *Commission Rule* 7.135. above as a relevant *risk* factor in considering the overall *risk* of the *business relationship* or *occasional transaction*.

~~109.~~142. ~~Taking into account the requirements of *Commission Rule* 7.14.(3), w~~Where the firm has determined that a beneficiary which is a *legal person* or *legal arrangement* poses a high *risk*, the firm must carry out *ECDD* measures in accordance with Chapter 8 of this *Handbook*. This must include identifying~~,~~ and taking reasonable measures to verify the identity of~~,~~ the *beneficial owner* ~~and *underlying principal*~~ of the beneficiary prior to any distribution to (or on behalf of) the beneficiary.

7.12.2. Employee Benefit Schemes, Share Option Plans and Pension Schemes

~~110.~~143. Where the product or service provided by the firm is:

(a) an employee benefit scheme or arrangement;
(b) an employee share option plan;
(c) a pension scheme or arrangement;
(d) a superannuation scheme; or
(e) a similar scheme or arrangement;

and where contributions are made by an employer or by way of deductions from wages and the scheme rules do not permit assignment of a member's interest under the scheme,

then the sponsoring employer, the trustee, the foundation council and any other person who has control over the *business relationship* or *occasional transaction* (for example, the administrator or the scheme manager) ~~is~~ are to be considered as ~~the *principal*~~ *key principals* and must be identified and verified by the firm in accordance with the requirements of *Schedule 3* and this *Handbook*.

144. Where contributions are made by the sponsoring employer on behalf of a member by way of deductions from wages or otherwise through the payroll process, there is no requirement to apply *CDD* measures to the member throughout the life of the *business relationship*. However, the firm should be alive to the *risk* associated with the disbursement of pension *funds*, for example, the receipt of fraudulent requests for payment or the member being subject to UN, EU or other sanction.

145. Where a member or other third party makes contributions to a scheme or arrangement (outside of the sponsoring employer's payroll process) which would fall within the definition of an *occasional transaction* (for example, a voluntary contribution of more than £10,000 into the scheme) or a *business relationship* (for example, following the cessation of employment, making arrangements for smaller, regular ongoing contributions), the firm must apply *CDD* measures, including *ECDD* measures and/or enhanced measures as appropriate, to that member or third party.

146. Where a member's interest in a scheme or arrangement is assigned to a third party (for example, upon the death of the member), the firm should establish the rationale for the assignment and consider the extent of the *CDD* measures required to be applied to the assignee in order to satisfy itself that the assignment is legitimate and does not pose a *risk* to the firm.

~~111.~~147. When carrying out a *relationship risk assessment* in accordance with Paragraph 3 of *Schedule 3* and Chapter 3 of this *Handbook*, the firm must include the natural or *legal person(s)* or *legal arrangement(s)* ~~identified by *Commission Rule* 7.152. as~~ providing ~~*the*~~ *funds* to the scheme or arrangement as a relevant *risk* factor when determining the overall *risk* of the *business relationship* or *occasional transaction*.

7.12.3. Non-Guernsey Collective Investment Schemes

~~112.~~148. Where the firm is providing management or custody services, within the scope of a licence issued to it by *the Commission* under *the POI Law*, to a CIS established outside *the Bailiwick* it may, in certain circumstances, place reliance on the administrator or *transfer agent* of the NGCIS to have applied *CDD* measures to the investors in that scheme.

~~113.~~149. Where the firm provides management or custody services and wishes to rely on the *CDD* measures of the administrator of the NGCIS, the firm must:

(a) apply *CDD* measures to the administrator or *transfer agent* to ensure that it is an *Appendix C business* and regulated and supervised for investment business; and
(b) require the administrator or *transfer agent* to provide a written confirmation which:

(i) confirms that the administrator or *transfer agent* has appropriate *risk*-grading procedures in place to differentiate between the *CDD* measures for *high risk relationships* and *low risk relationships*;
(ii) contains adequate assurance that the administrator or *transfer agent* applies the necessary *CDD* measures to the investors in the NGCIS (including the *beneficial owners* of such); and

(iii) contains an assurance that the administrator or *transfer agent* will notify the firm where an investor in the NGCIS, or the *beneficial owner* ~~or underlying principal~~ of such, is categorised as a *PEP*.

~~114.~~150. In addition, the firm must have a programme for reviewing the *CDD* procedures of the administrator or *transfer agent* and testing the application of those procedures in respect of the underlying investors within the NGCIS.

~~115.~~151. Where the firm is acting as the administrator of an NGCIS and its functions include that of registrar/*transfer agent* or similar, the firm must apply *CDD* measures to the investors into the NGCIS as if they were its *customers* in accordance with the requirements of Section 4.8.2. of this *Handbook*.

~~116.~~152. Where the firm is entering into a *business relationship* or conducting an *occasional transaction* with an NGCIS which is its *customer* (for example, an accountant providing services to the NGCIS) the firm should treat the NGCIS as a *legal person* or *legal arrangement* and apply *CDD* measures in accordance with the relevant sections of this Chapter.

Chapter 8
Enhanced Customer Due Diligence

Contents of this Chapter

Tracked against the draft revised Chapter 8 issued during February 2018.

8.1. Objectives

1. This Chapter relates to *business relationships* and *occasional transactions* which have been assessed by the firm as:

   (a) presenting a high *risk* of *ML* and/or *FT* taking into account the requirements of Paragraph 5(1) of *Schedule 3*; and/or
   (b) involving one or more of the higher *risk* factors set out in Paragraphs 5(2)(a)-(d) of *Schedule 3*

   and should be read in conjunction with Chapter 3 of this *Handbook* which provides *Commission Rules* and *guidance* on the assessment of *risk* and Chapters 4 to 7 of this *Handbook* which set out the *CDD* measures to be applied.

2. In accordance with Paragraph 5(1) of *Schedule 3*, where the firm is required to carry out *CDD*, it shall also carry out *ECDD* in relation to high *risk business relationships* and *occasional transactions*, including, without limitation -

   (a) a *business relationship* or *occasional transaction* in which the *customer* or any *beneficial owner* is a foreign *PEP* (see Section 8.5. of this *Handbook*),
   (b) where the firm is an *FSB*, a *business relationship* which is -

      (i) a *correspondent banking relationship*, or
      (ii) similar to such a relationship in that it involves the provision of services, which themselves amount to financial services business or facilitate the carrying on of such business, by one *FSB* to another (see Section 8.6. of this *Handbook*),

   (c) a *business relationship* or *occasional transaction* -

      (i) where the *customer* or *beneficial owner* has a *relevant connection* with a country or territory that -

         (A) provides funding or support for terrorist activities, or does not apply (or insufficiently applies) *the FATF Recommendations*, or
         (B) is a country otherwise identified by the FATF as a country for which such measures are appropriate (see Section 8.7. of this *Handbook*),

      (ii) which the firm considers to be a *high risk relationship*, taking into account any notices, instructions or warnings issued from time to time by *the Commission* and having regard to the *NRA*,

   (d) a *business relationship* or an *occasional transaction* which has been assessed as a *high risk relationship*, and
   (e) a *business relationship* or an *occasional transaction* in which the *customer*, the *beneficial owner* of the *customer*, or any other *legal person* in the ownership or control structure of the *customer*, is a *legal person* that has *bearer shares* or *bearer warrants* (see Section 8.8. of this *Handbook*).

3. In accordance with Paragraph 5(2) of *Schedule 3*, the firm shall also carry out *enhanced measures* in relation to *business relationships* and *occasional transactions*, whether otherwise high *risk* or not, which involve or are in relation to -

   (a) a *customer* who is not resident in *the Bailiwick* (see Section 8.9. of this *Handbook*);
   (b) the provision of private banking services (see Section 8.10. of this *Handbook*);

(c) a *customer* which is a *legal person* or *legal arrangement* used for personal asset holding purposes (see Section 8.11. of this *Handbook*); or

(d) a *customer* which is –

(i) a *legal person* with *nominee shareholders*, or

(ii) owned by a *legal person* with *nominee shareholders* (see Section 8.12. of this *Handbook*).

4. Paragraphs 5(1) and 5(2) of *Schedule 3* are distinct from one another. Paragraph 5(1) requires that *ECDD* measures are applied to all *high risk relationships*. The requirement to apply *enhanced measures* to mitigate particular higher *risk* factors as set out in Paragraph 5(2) of *Schedule 3* can apply to *business relationships* and *occasional transactions* across the *risk* spectrum from low to high *risk*.

~~4.~~5. The presence of one or more of the higher *risk* factors set out in Paragraph 5(2) of *Schedule 3* may not necessarily equate to the overall *risk* of the *business relationship* or *occasional transaction* being high. However, in accordance with *Commission Rule* 3.19., the firm must have regard to the cumulative effect that one or more of these factors could have on the overall *risk* of the *business relationship* or *occasional transaction* when conducting a *relationship risk assessment*.

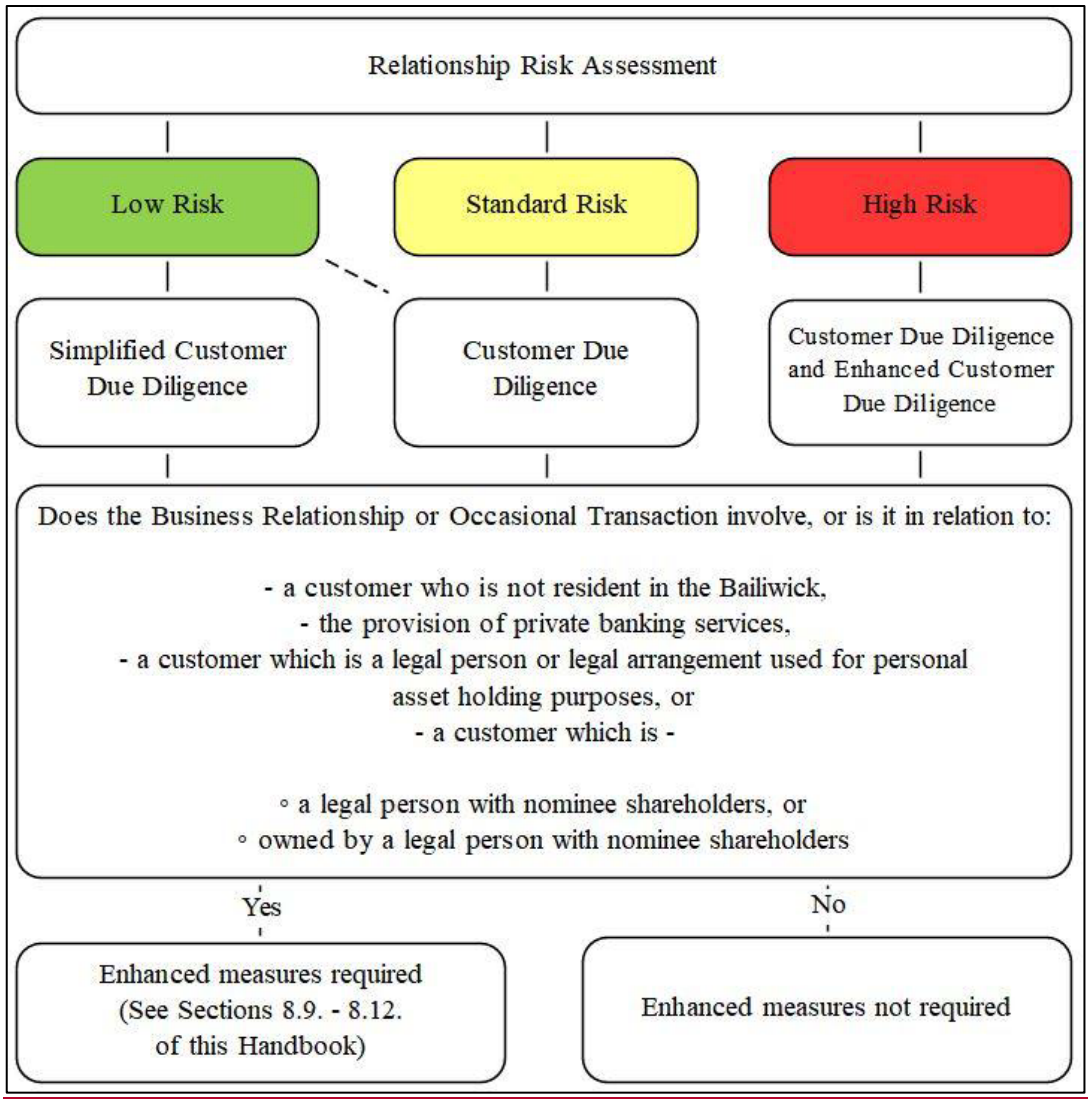


Fig. 10 – Enhanced Measures Flowchart

Nature of *Business Relationship* or *Occasional Transaction*	Measures to be Applied
Low risk relationship exhibiting one or more of the higher *risk* factors set out in Paragraph 5(2) of *Schedule 3*.	*SCDD* or *CDD* measures, together with *enhanced measures* appropriate to the higher *risk* factor(s) present.
Standard *risk business relationship* or *occasional transaction* exhibiting one or more of the higher *risk* factors set out in Paragraph 5(2) of *Schedule 3*.	*CDD* measures, together with *enhanced measures* appropriate to the higher *risk* factor(s) present
High risk relationship which meets one or more of the criteria in Paragraph 5(1) of *Schedule 3*.	*CDD* measures, together with *ECDD* measures as set out in Section 8.2.1. of this *Handbook*
High risk relationship which meets one or more of the criteria in Paragraph 5(1) of *Schedule 3* and exhibits one or more of the higher *risk* factors set out in Paragraph 5(2) of *Schedule 3*.	*CDD* measures and *ECDD* measures as set out in Section 8.2.1. of this *Handbook*, together with *enhanced measures* appropriate to the higher *risk* factor(s) present.

Fig. 11 – Application of Due Diligence and Enhanced Measures Depending on Risk

~~5. Where the firm is required to apply *ECDD, the* enhanced measures applied must be in addition to the measures taken in respect of *business relationships* or *occasional transactions* presenting a low or standard *risk*, as set out in paragraph 4 of *Schedule 3* and chapters 4 to 7 of this *Handbook* and must address the particular *high risk* characteristics present.~~

8.2. Policies, Procedures and Controls

8.2.1. ECDD Measures (High Risk Relationships)

6. The firm must ensure that its policies, procedures and controls require the application of *ECDD* measures where the firm has determined, taking into account the circumstances set out in Paragraph 5(1) of *Schedule 3* and the *risk* factors provided in Chapter 3 of this *Handbook*, that a *business relationship* or *occasional transaction* is high *risk*.

7. In accordance with Paragraph 5(3)(a) of *Schedule 3*, references to *ECDD* shall mean -

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

(ii) obtaining senior management approval for, in the case of an existing *business relationship* with a foreign *PEP*, continuing that *business relationship*,

(iii) taking reasonable measures to establish and understand the source of any *funds* and of the wealth of –

(A) the *customer*, and

(B) the *beneficial owner*, where the *beneficial owner* is a *PEP*,

(iv) carrying out more frequent and more extensive ongoing monitoring, including increasing the number and timing of controls applied and selecting patterns of activity or transactions that need further examination in accordance with Paragraph 11 of *Schedule 3* (see Chapter 11 of this *Handbook*), and

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

(A) obtaining additional information about the *customer*, such as the type, volume and value of the *customer's* assets and additional information about the *customer's beneficial owners*,

(B) verifying additional aspects of the *customer's* identity,

(C) obtaining additional information to understand the purpose and intended nature of each *business relationship* and *occasional transaction*, and

(D) taking reasonable measures to establish and understand the source of wealth of *beneficial owners* not falling within Paragraph 5(3)(iii).

8. Examples of steps the firm could take in accordance with Paragraphs 5(3)(v)(A)-(D) of Schedule 3 could include:

(a) supplementing the firm's understanding of the purpose and intended nature of *the business relationship* by obtaining information on the reasons for intended or performed transactions;

(b) commissioning independent research by a specialist firm or consultant pertaining to the purpose and objective of the *business relationship* or *occasional transaction* and evidencing information in relation to the *customer* and/or the *beneficial owner*~~or any underlying principal~~;

(c) where the *customer* is a *legal person*, identifying and verifying the identity of other directors (or equivalent) of the *customer* in addition to those senior managing officials identified as *beneficial owners* in accordance with Step 3 of Paragraph 7.37. of this *Handbook* and/or those natural persons acting on behalf of the *customer* captured by Section 4.3.2.; and/or

~~(c)~~(d) obtaining internal information from group representatives or offices based in a jurisdiction where the *customer* has a connection.

~~8.~~9. In addition to the ~~minimum~~ requirements of Paragraph 5(3) of *Schedule 3* ~~noted~~ as set out above, listed below are examples of further steps ~~that~~ the firm could take as part of its *ECDD* measures to address specific *risks* arising from a *high risk relationship*:

~~(d) updating more regularly the identification data held on the customer and/or any beneficial owner or underlying principal;~~

(a) in the case of an existing *business relationship* which has, following a *relationship risk assessment*, been assessed as high *risk* not involving a foreign *PEP*, obtaining senior management approval for continuing that relationship; and/or

(b) requiring the first payment ~~to~~ be carried out through an *account* in the customer's name with an *Appendix C business*.

8.2.2. Enhanced Measures (Higher Risk Factors)

~~9.~~10. In ~~addition to the application of *ECDD* measures to high *risk business relationships* and *occasional transactions*, in~~ accordance with Paragraph 5(2) of *Schedule 3*, the firm's policies, procedures and controls must ~~also~~ require the application of *enhanced measures* as detailed in Sections 8.9. - 8.12. of this *Handbook* to *business relationships* and *occasional transactions* ~~displaying~~ involving or in relation to one or more of the higher *risk* factors in Paragraph 5(2)(a)-(d) of *Schedule 3*.

~~10.~~11. There may be a *business relationship* or *occasional transaction* ~~within~~ which involves or is in relation to~~the *customer* exhibits~~ more than one of the higher *risk* factors set out in Paragraph 5(2)(a)-(d) of *Schedule 3*. ~~(F~~(for example, a non-resident *customer* using ~~a personal asset holding vehicle which has *nominee shareholders*~~private banking services). In such cases, the firm must apply *enhanced measures* sufficient to mitigate each of the higher *risk* factors present within the *business relationship* or *occasional transaction*.

8.2.3. ECDD and Enhanced Measures (High Risk Relationships with Higher Risk Factors)

~~11.~~12. There may also be circumstances in which a *high risk relationship* involves or is in relation to~~exhibits~~ one or more of the higher *risk* factors in Paragraph 5(2)(a)-(d) of *Schedule 3*. In such

cases~~, in accordance with Paragraph 5(2)(b) of *Schedule 3*~~ the firm must~~shall~~ apply *ECDD* measures as well as applying sufficient *enhanced measures* to mitigate the particular higher *risk* factor(s) present.

13. In accordance with *Commission Rule* 8.12. above, the *enhanced measures* applied by the firm should be specific to the particular higher *risk* factor(s) present in a *business relationship* or *occasional transaction*. However, there may be situations where an *enhanced measure* taken by the firm addresses more than one higher *risk* factor, or where the *ECDD* measures applied by the firm to a *high risk relationship* also mitigate one or more higher *risk* factor(s).

~~12.~~14. For example, it may be that the firm is providing private banking services to a *customer* who is a foreign *PEP* and~~In the above example it may be that~~ the firm is *satisfied* that the *ECDD* measures applied to address the fact that ~~because~~ the *customer* is a *PEP* equally mitigate the higher *risk* associated with the provision of private banking services (for example, by taking reasonable measures to establish~~ing~~ the source of *funds* and the source of the *customer's* wealth)~~ of the *customer*. The firm would therefore apply additional measures to mitigate the remaining *high risk* characteristics, in this case the *risk* associated with the *PEP* being a non-resident *customer*.~~

15. The policies, procedures and controls of the firm should allow for it to determine, based upon the specific higher *risk* factors present in a~~of the~~ *business relationship* or *occasional transaction* and its assessment of the overall *risk* of that relationship~~present~~, which and how many *enhanced measures* it would be appropriate to apply to mitigate the specific *risk*s identified.

8.3. Source of Funds and Source of Wealth

~~13.~~16. In accordance with Paragraph 5(3)(a)(iii) of *Schedule 3*, as part of its *ECDD* measures the firm shall take reasonable measures to establish and understand the source of any *funds* and of the wealth of –

(A) the *customer*, and
(B) the *beneficial owner*, where the *beneficial owner* is a *PEP*.

~~14.~~17. The taking of reasonable measures to establish and understand a *customer's* source of wealth (and that of any *beneficial owner* who is a *PEP*), ~~and that of any *beneficial owner* and *underlying principal*,~~ together with measures to establish and understand the source of any *funds* used in a *business relationship* or *occasional transaction*, are important aspects of the due diligence process. These steps serve to assist the firm in *satisfying* itself that such wealth and *funds* are not the proceeds of criminal activity and are consistent with the firm's knowledge of the *customer* and *beneficial owner*, and the nature of the *business relationship* or *occasional transaction*.

18. In addition to taking reasonable measures to establish the source of any *funds* and of the wealth of the *customer*/*beneficial owner* for *high risk relationships* as part of *ECDD* measures, the firm may also determine that it would be appropriate to apply the measures in Paragraph 5(3)(a)(iii) of *Schedule 3* as an *enhanced measure* to apply to a *business relationship* or *occasional transaction* involving or in relation to one or more of the higher *risk* factors in Paragraph 5(2) of *Schedule 3* but where the overall *risk* of the *business relationship* or *occasional transaction* is other than high.

~~15. In complying with the aforementioned requirement of *Schedule 3*, the firm must establish the source of funds and source of wealth of the *customer*, and any *beneficial owner* and *underlying principal*, who are providing funds, assets or any other form of value to the *customer*, *business relationship* or *occasional transaction*.~~

~~16.~~19. The source of *funds* refers to the activity which generated the particular *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 the *customer* or *beneficial owner* both within and outside a *business relationship*, i.e. those activities which have generated a *customer's* or ~~*/beneficial owner's*~~ net assets and property.

~~17.~~20. The firm must, in taking reasonable measures to establish~~ing~~ the source of any *funds* ~~or~~ and wealth, document and evidence consideration of the *risk* implications of the source of the *funds* and wealth and the geographical sphere of the activities in which they have been generated ~~a *customer's funds* and/or wealth~~.

21. In determining what constitutes "reasonable measures" to establish the source of *funds* and wealth, i.e. show them to be true, the firm should have regard to the particular *risk* factors present in a *business relationship* or *occasional transaction*, together with its overall assessed *risk*. Such *risk* factors include, inter alia, the value of the *customer's* or *beneficial owner's* assets, together with the value of the *funds* involved in the *business relationship* or *occasional transaction*, the type and complexity of the *customer* or *beneficial owner*, the *customer's* or *beneficial owner's* economic activity and employment, and the nature of the services provided by the firm.

22. Information on the source of *funds* and wealth will generally be obtained from the *customer* or *beneficial owner* in the first instance and the extent to which this is corroborated through additional information or documentation should be commensurate with the *risk*. The firm may have a *business relationship* where it can establish to its satisfaction the source of *funds* and source of wealth from the *customer* or *beneficial owner* without seeking to corroborate that information because it is consistent with the knowledge the firm holds about the *business relationship* or *occasional transaction* and because the values involved are relatively low and commensurate with the type of product or service being provided by the firm.

23. For example, the firm may have a natural person *customer* located in a jurisdiction on the Business from Sensitive Sources Notices utilising its products or services for a relatively small amount of *funds* and where the only factor making it a *high risk relationship* is geographic *risk*. In such a case placing reliance upon the information provided by the *customer* on the source of *funds* and wealth as part of the firm's *ECDD* measures could be considered "reasonable" because it is consistent with the information and knowledge it has built up about the *customer* through *CDD* measures, together with the other elements of its *ECDD* measures and the *enhanced measures* applied because the *customer* is not resident in *the Bailiwick*.

24. ~~Measures the firm could take, the extent of which should be commensurate with the *risk*, to establish the source of any *funds* involved in a *business relationship* or *occasional transaction* and the source of a *customer's*/*beneficial owner's*/*underlying principal's* wealth could include~~On the other hand, "reasonable measures" will require corroborating information where the *customer* or *beneficial owner* is from a high *risk* country or territory, where the values involved in the *business relationship* or *occasional transaction* are large and where the sources of *funds* and wealth are not easily discernible from the *customer's* or *beneficial owner's* disclosed income and business interests.

25. The extent to which the firm corroborates the information provided by the *customer* or *beneficial owner* on the source of *funds* and wealth is a function of *risk* and not a "one size fits all" approach. Where corroboration of the information provided by the *customer* or *beneficial owner* is required, the firm could consider one or more of the means set out in the following non-exhaustive list:

(a) commissioning an independent and reliable report from a specialist agency;
(b) ~~obtaining reliable information directly from the *customer*/*beneficial owner*/*underlying principal* concerned, for example by~~ obtaining certified copies of corroborating documentation such as contracts of sale, property deeds, salary slips, etc.;
(c) where the firm is part of a group, obtaining reliable information from another member of the group with which the *customer* or *beneficial owner* has a connection;

(d) obtaining information from a reliable third party (for example, a professionally qualified solicitor, accountant or tax advisor) who has an office in a country or territory connected with the *customer* or *beneficial owner*~~/*underlying principal*~~;

(e) where the *customer* has been introduced to the firm, obtaining information from the *introducer*;

(f) where information is publicly available or available through subscription databases, obtaining information from a reliable public or private third party source; or

(g) obtaining information from financial statements that have been prepared and audited in accordance with generally accepted accounting principles.

~~18.~~26. It would not be considered sufficient for the firm to accept a *customer's* or *beneficial owner's* responses on an application form at face value, particularly where vague answers are given (for example, 'employment' or 'salary') without further clarification.~~, such~~ As noted previously, the firm should ~~as where the *customer* was employed and his actual level of income, would not be considered as having taken reasonable measures to establish~~ seek to corroborate the source of *funds* and source of wealth, particularly where the value of *funds*, or the *risk* of the *business relationship* or *occasional transaction*, is high, for example, by taking steps to understand where the *customer* or *beneficial owner* was employed and his or her actual level of income.

~~19.~~27. Similarly, establishing the source of *funds* involved in a *business relationship* or *occasional transaction* should not ~~simply~~ be limited to knowing from which financial institution the *funds* may have been transferred. The steps taken by the firm should be substantive and seek to establish the provenance of the *funds* or the reason for the *funds* having been acquired.

~~20.~~28. The ~~requirements~~ obligation to~~in respect of~~ take reasonable measures to establish~~ing~~ the source of ~~a *customer's* *funds~~ *funds* extends beyond those *funds* present at the commencement of a *business relationship*. In this respect, ~~are ongoing and apply to all new proceeds passing through the *business relationship*, either from the *customer* or a third party.~~the firm's monitoring arrangements~~undertaken as part of *ECDD*~~ should include assessing, on an ongoing basis, whether the transactional activity of a *business relationship* is consistent with the *risk* profile of that ~~customer~~relationship, the nature of the product provided and the firm's understanding of~~, including his~~ the *customer's* and *beneficial owner's* source of wealth.

8.4. Interplay Between SCDD and Enhanced Measures

~~21.~~29. It may be possible to apply *SCDD* measures as specified in Chapter 9 of this *Handbook* to a *business relationship* or *occasional transaction* ~~with a *customer* exhibiting~~involving or in relation to one or more of the higher *risk* factors set out in Paragraph 5(2) of *Schedule 3*, provided that *enhanced measures* are applied to address the particular higher *risk* factors present.

~~22.~~30. By way of example, it may be possible, where the firm has assessed the *ML* and *FT risk* of a *business relationship* or *occasional transaction* to be low, to apply the *SCDD* measures set out in Section 9.3. of this *Handbook* to a natural person resident in *the Bailiwick* using a personal asset holding vehicle, provided the firm also applies an *enhanced measure* to satisfy itself that ~~such~~ the use of such a personal asset holding vehicle is genuine and legitimate.

~~23.~~31. Similarly it may be possible, where the firm has assessed the *ML* and *FT risk* as low, to apply the *SCDD* measures set out in Section 9.6. of this *Handbook* to a non-resident *Appendix C business*, provided that an *enhanced measure* is also applied to mitigate the *risk* associated with a non-resident *customer*, for example, to determine and understand why the *Appendix C business* is obtaining the services in *the Bailiwick* and not in its home jurisdiction.

ECDD Measures

8.5. Politically Exposed Persons

8.5.1. Introduction

~~24.~~32. Due to their position and influence, *PEPs* may have the potential to abuse their positions for the purpose of committing *ML* and related predicate offences, including bribery and corruption, as well as conducting activity related to *FT*. Where a *PEP* also has connections to countries or business sectors where corruption is widespread, the *risk* is further increased.

~~25.~~33. *PEP* status itself does not incriminate individuals or their associates and connected entities. However, it will mean that a *customer* or *beneficial owner* who is a foreign *PEP* is subject to *ECDD* measures and that a domestic *PEP* or *international organisation PEP* may, on the basis of *risk*, be subject to *ECDD* measures. ~~The nature and scope of the firm's activities, together with the results of its *business risk assessment* and *risk* appetite, will determine whether the existence of *PEPs* is a practical issue for the firm.~~

~~26.~~34. There is no 'one-size fits all' approach to applying *ECDD* measures for *PEPs*. The nature of the measures applied will be commensurate with the type of *PEP*, the specific *risks* that are identified and the nature of the *PEP's* position and ability to influence.

8.5.2. Identification of PEPs

~~27.~~35. In accordance with Paragraph 4(3)(f) of *Schedule 3*, as part of its *CDD* measures the firm shall make a determination as to whether the *customer* or *beneficial owner* is a *PEP*, and if so, whether he or she is a foreign *PEP*, a domestic *PEP* or an i*nternational organisation PEP*.

~~28.~~36. As referenced above, Paragraph 5(4) of *Schedule 3* ~~notes~~ defines three categories of *PEP*, referred to ~~defined~~ as follows for the purpose~~s~~ of this *Handbook*:

(a) "foreign *PEP*" – a natural person who has~~holds~~, or has h~~a~~e~~l~~d at any time, a prominent public function, or who has been elected or appointed to such a function, in a country or territory other than *the Bailiwick*;

(b) "domestic *PEP*" – a natural person who has, or has had at any time, a prominent public function, or who has been elected or appointed to such a function, ~~holds, or has held or has been elected or appointed to, a prominent public function~~ within *the Bailiwick*; and

(c) "*international organisation PEP*" – a natural person who is, or has been at any time, entrusted with a prominent function by an *international organisation*.

~~29.~~37. In accordance with the definition of *PEP* contained within Paragraph 5(4) of *Schedule 3*, prominent public function includes, without limitation:

(i) heads of state or heads of government;
(ii) senior politicians and other important officials of political parties;
(iii) senior government officials;
(iv) senior members of the judiciary;
(v) senior military officers; and
(vi) senior executives of state owned body corporates.

~~30.~~38. When seeking to establish whether a natural person falls within the definition of a *PEP*, 'prominent' should be interpreted as relating only to those persons in positions of seniority in the

areas covered by Paragraph 8.37. above. Middle ranking or more junior individuals in the foregoing categories are explicitly excluded from the definition.

~~31.~~39. Notwithstanding the above, the term 'prominent' is not defined either in *Schedule 3* or this *Handbook* as the precise level of seniority which triggers the requirement to treat an individual as a *PEP* will depend upon a range of factors, including the role held by the individual, the particular organisational framework of the government or *international organisation* concerned, and the powers, ~~and~~ responsibilities and influence associated with particular public functions.

~~32.~~40. To assist in the identification of natural persons falling within the definition of domestic *PEP*, Appendix E to *this Handbook* lists those positions in Guernsey, Alderney and Sark deemed to fall within the categories listed in Paragraph 8.37. above.

41. Authorities in other jurisdictions may publish lists, similar to Appendix E to this *Handbook*, of those natural persons considered to fall within the definition of a *PEP* within their jurisdiction. These could be helpful for the firm in determining whether to treat an individual as a *PEP*. However, the firm should be mindful that these classifications will be based upon perceptions of *risk* applicable within other jurisdictions and that these may not necessarily be appropriate perceptions from the perspective of the firm.

~~33.~~42. In determining whether a *customer*~~,~~ or ~~any~~ *beneficial owner* ~~or *underlying principal*,~~ is a *PEP*, the firm could consider:

(a) using sources such as ~~the Transparency International Corruption Perception Index,~~ the UN, the European Parliament, the UK Foreign and Commonwealth Office and the Group of States Against Corruption to establish, as far as is reasonably possible, whether or not a *customer*~~,~~ or ~~any~~ *beneficial owner* ~~or *underlying principal*~~, is a natural person who is the current or former holder of a prominent public function in a foreign country or territory, or for an *international organisation*;

(b) using sources such as the States of Guernsey, States of Alderney and Chief Pleas of Sark to establish, as far as is reasonably possible, whether or not a *customer*~~,~~ or *beneficial owner* ~~or *underlying principal*,~~ is a natural person who is the current or former holder of a prominent public function within *the Bailiwick*;

(c) seeking confirmation from a *customer*~~,~~ or *beneficial owner* ~~or *underlying principal*~~, for example through a question within an application form, as to whether they hold, or have held, a prominent public function either within *the Bailiwick* or beyond, or for an *international organisation*; or

(d) using commercially available databases to identify such persons.

~~34.~~43. In accordance with Paragraph 5(1)(a) of *Schedule 3*, *w*here the firm determines that an individual who is the *customer* or *beneficial owner* to a *business relationship* or *occasional transaction* is a foreign *PEP*, it shall carry out *ECDD* in relation to that *business relationship* or *occasional transaction*.

~~35.~~44. Where the firm identifies that a *customer*~~,~~ or *beneficial owner* ~~or any *underlying principal*~~ is a domestic *PEP* or *international organisation PEP*, it must gather sufficient information to understand the particular characteristics of the public function that the natural person has been entrusted with and factor this information into the *relationship risk assessment* conducted in accordance with Paragraph 3 of *Schedule 3* and Chapter 3 of this *Handbook*.

~~36.~~45. Where, having conducted a *relationship risk assessment*, the firm concludes that the *business relationship* or *occasional transaction* involving a domestic *PEP* or *international organisation PEP* is high *risk*, the firm must apply *ECDD* measures in accordance with Paragraph 5(3)(a) of *Schedule 3* and Section 8.2.1. of this *Handbook*.

~~37.~~46. Where the firm concludes that the *business relationship* or *occasional transaction* with the domestic *PEP* or *international organisation PEP* does not present a high level of *risk*, it is not necessary to apply ~~the~~ *ECDD* measures, provided that the firm has applied *SCDD* or ~~/~~*CDD* measures and any *enhanced measures* necessary in accordance with Paragraph 5(2) of *Schedule 3*.

~~38.~~47. Where the firm identifies that a foreign *PEP* is a director (or equivalent) of a *customer*, or a person acting or purporting to act for a *customer*, but where the *PEP* does not fall within the definition of ~~a~~ *beneficial owner* ~~or underlying principal~~ and where no *funds* or assets of that *PEP* ~~is~~ are handled in the particular *business relationship* or *occasional transaction*, the firm should include as part of its *relationship risk assessment* consideration of the nature of the *PEP's* role and the reason why the *PEP* holds such a role.

~~39.~~48. Where the firm has determined as part of its *relationship risk assessment* that, but for the function held by the *PEP* in the circumstances in Paragraph 8.47. above, the *business relationship* or *occasional transaction* would be other than *high risk*, it could decide to apply, based on *risk*, *CDD* measures appropriate to the form of the *customer* in accordance with Chapters 4 to 9 of this *Handbook*, including *enhanced measures* as applicable.

~~40.~~49. One such example would be a foreign public sector pension scheme investing into a CIS. In such a case there may be members of the pension committee who are *PEPs*, holding their position on the committee by virtue of their political position and with no ability to exercise ultimate effective control over the ~~*customer*~~pension scheme. Such persons have no economic interest in the *funds* involved in the *business relationship* or *occasional transaction* (beyond potentially any pension rights as a resident of that country or organisation) and the *risk* of the relationship being used as a vehicle for the laundering of any *funds* or assets personally held by the *PEP* or the financing of terrorism is low.

8.5.3. International Organisation PEPs

~~41.~~50. In accordance with Paragraph 5(4)(b) of *Schedule 3*, the definition of a *PEP* includes a natural person who is, or has been, entrusted with a prominent public function by an *international organisation*. This includes members of senior management or individuals who have been entrusted with equivalent functions, for example, directors, councillors and members of the board or equivalent of an *international organisation*.

~~42.~~51. Paragraph 21 of *Schedule 3* defines an *international organisation* as an entity:

(a) which was established by a formal political agreement between its member states that has the status of an international treaty;
(b) the existence of which is recognised by law in its member states; and
(c) which is not treated as a resident institutional unit of the country in which it is located.

~~43.~~52. Examples of *international organisations* covered by *Schedule 3* and this *Handbook* include the UN, the World Bank and the North Atlantic Treaty Organization ("NATO").

~~44.~~53. There may be other examples of *international organisations*, for example, international sporting federations, which do not fall within the *Schedule 3* definition, but where the firm considers that *ECDD* measures should be applied to a *business relationship* or *occasional transaction*. There are no prescribed requirements in this regard and any decision taken should be based on the firm's assessment of *risk*.

8.5.4. Immediate Family Members

~~45.~~54. In addition to the specific *risks* posed by *PEPs*, the firm should be alive to the potential for the abuse of a *business relationship* or *occasional transaction* with or by a family member of a *PEP*. This abuse could be for the purpose of moving the proceeds of crime or facilitating the placement and concealment of such proceeds without specific connection to the *PEP* themselves.

~~46.~~55. In accordance with Paragraph 5(4)(c) of *Schedule 3*, an immediate family member of a *PEP* shall include, without limitation:

(a) a spouse;
(b) a partner, being a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse;
(c) a parent;
(d) a child;
(e) a sibling;
(f) a parent-in-law; and
(g) a grandchild.

~~47.~~56. The list of immediate family members included within Paragraph 5(4)(c) of *Schedule 3* as set out above is without limitation and the firm should take a proportionate, *risk*-based approach to the treatment of wider family members. This determination will depend on the social, economic and cultural structure of the country of the *PEP*. It should also be noted that the number of persons who qualify as immediate family members is fluid and may change over time.

~~48.~~57. In deciding whether a member of a wider family unit would be considered as~~person is~~ an immediate family member ~~or close associate~~ of a *PEP*, the firm should determine the extent of the influence that a particular *PEP* relationship or association has and assess the level of *risk* that exists through the particular connection with a *PEP*.

~~49.~~58. ~~For immediate family members,~~ This determination will include such relevant factors as the influence that particular types of family members generally have and how broad the circle of close family members and dependents tends to be. In some cultures the number of family members who are considered to be close or who have influence may be quite small, while in others the circle of family members may be broader and extend to cousins or even clans.

8.5.5. Close Associates

~~50.~~59. In accordance with Paragraph 5(4)(d) of *Schedule 3*, a close associate of a *PEP* shall include, without limitation -

(i) a person who is widely known to maintain a close business relationship with a *PEP*, or
(ii) a person who is in a position to conduct substantial financial transactions on behalf a *PEP*.

60. Those persons considered to be close associates could include known partners outside the family unit who would not qualify as immediate family members (for example, girlfriends, boyfriends and extra-marital partners), ~~or~~ prominent members of the same political party, civil organisation, labour or employee union as the *PEP*, and business partners or associates, especially those that share beneficial ownership of a *legal person* or *legal arrangement* with the *PEP*, or who are otherwise connected (for example, through joint membership of a company board where the *PEP* and/or close associate is a *beneficial owner*).

~~51.~~61. As with an immediate family member, the interpretation of whether an individual should be considered to be a close associate will depend upon the social, economic and cultural context of the relationship.

~~52.~~62. Where the firm determines that a natural person who is the *customer*~~,~~ or ~~any~~ *beneficial owner* ~~or *underlying principal*,~~ to a *business relationship* or *occasional transaction* is an immediate family member or close associate of a domestic *PEP* or *international organisation PEP*, the firm should treat that person in accordance with the requirements set out in *Schedule 3* and this *Handbook* for the category of *PEP* to which they are connected. For example, the child of a domestic *PEP* should be treated in accordance with the provisions for domestic *PEPs*.

~~53. In deciding whether a person is a family member or close associate of a *PEP*, the firm need only research information which is in its possession or which is publicly available.~~

8.5.6. Former PEPs

~~54.~~63. On the basis of the potential for *PEPs* to abuse their prominent positions for the purpose of committing various financial crimes, the default position on the treatment of *PEPs* in the *FATF Recommendations* is that once you are a foreign *PEP*, or a family member or close associate of such a person, the relationship should always be subject to *ECDD* measures ~~forever~~.

~~55.~~64. Notwithstanding the above, ~~it is acknowledged that~~ there may be situations where a *business relationship* or *occasional transaction* involves persons who have held prominent public positions historically but who~~ich~~ would otherwise not be considered to be high *risk*.

~~56.~~65. ~~The definition of *PEP* included within~~Accordingly, Paragraph 5 of *Schedule 3* provides flexibility in respect of the timeframe within which ~~a~~ certain natural persons are to be classified as ~~a *PEPs* and therefore subject to *ECDD* measures~~. Details of these timeframes are included within Sections 8.5.6.1. to 8.5.6.3. of this *Handbook* below and differ depending on the type of *PEP* ~~(i.e. foreign/*international organisation* or domestic)~~ and the position that the *PEP* holds.

Category of PEP	**Role of PEP**	**Time Period for Declassification**
Foreign *PEP*	A head of state or head of government (or an immediate family member or close associate of such a person).	Never
	A person with the power to direct the spending of significant *funds* (or an immediate family member or close associate of such a person).	Never
	All other foreign *PEPs* (including immediate family members and close associates thereof).	7 years from cessation of role
International Organisation PEP	A head of an *international organisation* (or an immediate family member or close associate of such a person).	Never
	A person with the power to direct the spending of significant *funds* (or an immediate family member or close associate of such a person).	Never
	All other *international organisation PEPs* (including immediate family members and close associates thereof).	7 years from cessation of role
Domestic *PEP*	All domestic *PEPs* (including immediate family members and close associates thereof).	5 years from cessation of role

Fig. 12 - Timescales for Declassification PEPs

~~57.~~66. Details on the requirements of *Schedule 3*, together with additional *guidance*, are provided ~~Commission Rules and guidance are also included~~ within the following sections ~~detailing~~ setting out the steps to be taken by the firm when it is looking to establish a *business relationship* or undertake an *occasional transaction* within which the *customer*~~,~~ or ~~any~~ *beneficial owner* ~~or *underlying principal*,~~ is a former *PEP*.

~~58.~~67. In accordance with Paragraph 5(8) of *Schedule 3* (and as reflected in Fig. 12 above), the measures set out in Sections 8.5.6.1. - 8.5.6.3. below apply in respect of persons falling within Paragraphs 5(4)(c)-(d) of *Schedule 3* (immediate family members and close associates) in respect of the person in question as they do in respect of that person.

8.5.6.1. Domestic PEPs, Family Members and Close Associates

~~59.~~68. In accordance with Paragraph 5(5) of *Schedule 3*, the firm may treat a domestic *PEP* as not being a PEP five years after the person ceased to be entrusted with a public function (for the purposes of this *Handbook*, a "former domestic *PEP*") if the senior management of the firm has documented that the firm is satisfied that –

(a) it understands the source of the *funds* within the *business relationship* or *occasional transaction*, and
(b) there is no reason to continue to treat the person as a *PEP*.

69. Where, during the course of a *business relationship* (or in the case of a prospective *business relationship* or *occasional transaction*, prior to the firm being engaged), the *customer*~~,~~ or *beneficial owner* ~~or any underlying principal,~~ becomes a former domestic *PEP*, the firm is not required to ~~can cease~~ apply~~ing~~ the measures set out in Section 8.5.2. of this *Handbook* for~~in respect of~~ that natural person~~,~~ provided that the ~~following~~ criteria in Paragraph 8.68. above are met.~~:~~

~~(a) there is no evidence that the former domestic PEP continues to exercise political influence; and~~
~~(b) the firm's senior management has approved the declassification of the natural person's domestic PEP status.~~

~~60.~~70. Where the firm identifies, in accordance with Paragraph 4(3)(f) of *Schedule 3*, that the *customer* to a prospective *business relationship* or *occasional transaction*, or any *beneficial owner* of~~r underlying principal to~~ such, has held a prominent public function within *the Bailiwick* within the past five years, the firm should consider this as a ~~*risk*~~ factor when undertaking its *relationship risk assessment* in accordance with *Commission Rule* 8.44. above.

~~61.~~71. After a period of five years from the date that the individual ceased to be entrusted with any prominent public function has elapsed and the natural person becomes a former domestic *PEP*, consideration of their previous functions as part of a *relationship risk assessment* is no longer required.

8.5.6.2. International Organisation PEPs, Family Members and Close Associates

~~62.~~72. In accordance with Paragraph 5(6) of *Schedule 3*, subject to Paragraph 5(9), the firm may treat an *international organisation PEP* as not being such a *PEP* seven years after the person ceased to be entrusted with a prominent function by an *international organisation* if the senior management of the firm has documented that the firm is satisfied that -

(a) it understands the source of the *funds* within the *business relationship* or *occasional transaction*, and
(b) there is no reason to continue to treat the person as a *PEP*.

~~63.~~73. In accordance with Paragraph 5(9) of *Schedule 3*, the provisions set out in Paragraph 8.72. above do not apply in respect of -

(a) a head of an *international organisation*,

(b) a person with the power to direct the spending of significant sums, or
(c) persons falling within Paragraphs 5(4)(c)-(d) of *Schedule 3* (immediate family members and close associates) in respect of such persons.

~~64.~~74. In determining whether an *international organisation PEP* falls within Paragraph 8.73.(b) above, the firm should consider whether:

(a) the *international organisation PEP* has/had authority over, or access to, significant assets and *funds*, policies and/or operations of the *international organisation*;
(b) the *international organisation PEP* has/had access to, or control or influence over, the *accounts* of the *international organisation*; and
(c) the *international organisation PEP* has/had control over the awarding of contracts or similar by the *international organisation*.

~~65.~~75. For any other ~~international organisation PEPs~~natural person falling within Paragraph 5(4)(b) of *Schedule 3*, the firm can make a decision to declassify ~~a natural person~~that person as an *international organisation PEP* following a period of seven years, such period commencing on the date that they~~ individual~~, or the associated *international organisation PEP* in the case of an immediate family member or close associate, ceased to be entrusted with any prominent public function (a "former *international organisation PEP*").

~~66.~~76. Where, during the course of a *business relationship* (or in the case of a prospective *business relationship* or *occasional transaction*, prior to the firm being engaged)~~,~~ the *customer*~~,~~ or *beneficial owner* ~~or any *underlying principal*,~~ becomes a former *international organisation PEP*, the firm is not required to~~can cease~~ apply~~ing~~ the measures set out in Section 8.5.2. of this *Handbook* for that natural person provided that the ~~following~~ criteria in Paragraph 8.72. of *Schedule 3* are met~~:there is no evidence that the former *international organisation PEP* continues to exercise influence over the *international organisation*; andthe firm's senior management has approved the declassification of the natural person's *international organisation PEP* status~~.

~~67.~~77. Where the firm identifies, in accordance with Paragraph 4(3)(f) of *Schedule 3*, that the *customer* or *beneficial owner* to a prospective *business relationship* or *occasional transaction*~~, or any *beneficial owner* or *underlying principal* to such,~~ has held a prominent public function with an *international organisation* within the past seven years, the firm should consider this as a factor when undertaking its *relationship risk assessment* in accordance with *Commission Rule* 8.44. above.

~~68.~~78. After a period of seven years from the date that the natural person ceased to be entrusted with any prominent public function has elapsed and that person becomes a former *international organisation PEP*, consideration of their previous functions as part of a *relationship risk assessment* is no longer required.

8.5.6.3. Foreign PEPs, Family Members and Close Associates

~~69.~~79. In accordance with Paragraph 5(7) of *Schedule 3*, subject to Paragraph 5(9), the firm may treat any foreign *PEP* as not being a *PEP* seven years after the person ceased to be entrusted with a public function if the senior management of the firm has documented that the firm is satisfied that -

(a) it has established and understands the source of the person's wealth, and that of the *funds* within the *business relationship* or *occasional transaction*, and
(b) there is no reason to continue to treat the person as a *PEP*.

~~70.~~80. In accordance with Paragraph 5(9) of *Schedule 3*, the provisions set out in Paragraph 8.79. above do not apply in respect of -

(a) a head of state or head of government,
(b) a person with the power to direct the spending of significant sums, or
(c) persons falling within Paragraphs 5(4)(c)-(d) of *Schedule 3* (immediate family members and close associates) in respect of such persons.

~~71.~~81. In determining whether a foreign *PEP* falls within Paragraph 8.80.(b) above, the firm should consider whether:

(a) the foreign *PEP* has/had access to, or authority, control or influence over, ~~or access to, substantial~~significant state assets and *funds*, policies and/or operations;
(b) the foreign *PEP* has/had control over regulatory approvals, including awarding licences and concessions;
(c) the foreign *PEP* has/had the formal or informal ability to control mechanisms established to prevent and detect *ML* and/or *FT* (for example, control over law enforcement or other public sector investigative agencies); and
(d) the foreign *PEP* has/had access to, or authority, control or influence over, ~~government accounts or~~ the assets~~ccounts~~ of state owned enterprises.

~~72.~~82. For all other foreign *PEPs* falling within Paragraph 5(4)(a) of *Schedule 3*, the firm could decide to declassify a natural person as a foreign *PEP* following a period of seven years, such period commencing on the date that the individual ceased to be entrusted with any prominent public function (a "former foreign *PEP*").

83. Where, during the course of a *business relationship* (or in the case of a prospective *business relationship* or *occasional transaction*, prior to the firm being engaged) the *customer* or *beneficial owner* becomes a former foreign *PEP*, the firm is not required to apply the measures set out in Section 8.5.2. of this *Handbook* for that natural person provided that the criteria in Paragraph 8.79. of *Schedule 3* are met.

~~73.~~84. Where the firm identifies, in accordance with Paragraph 4(3)(f) of *Schedule 3*, that the *customer* or *beneficial owner* to a prospective *business relationship* or *occasional transaction* has held a prominent public function outside *the Bailiwick* within the past seven years, it should continue to treat that individual as a foreign *PEP* in accordance with the requirements of Paragraph 5 of *Schedule 3* and Section 8.5.2. of this *Handbook*.

~~74. Where, during the course of a *business relationship*, the *customer*, or *beneficial owner* or any *underlying principal*, becomes a former foreign *PEP*, the firm can cease applying *ECDD* measures to that *business relationship* provided the following criteria are met:~~

~~(a) neither the *customer*, or *beneficial owner* or any *underlying principal*, is currently classified as a foreign *PEP*;~~
~~(a) the firm has undertaken a *relationship risk assessment* and is *satisfied* that the *business relationship* is other than high *risk*, taking into account factors such as the geographic risk associated with the *PEP* and the perceived level of corruption;~~
~~(a) there is no apparent evidence that the former foreign *PEP* continues to exercise political influence;~~
~~(a) the former foreign *PEP's* source of wealth has been established, documented and is understood, together with the source of the *funds* within the *business relationship*; and~~
~~(a) the firm's senior management has approved the declassification of the natural person's foreign *PEP* status and the overall reduction in the *risk* of the *business relationship*.~~

~~75. Where the firm identifies that the *customer* to a prospective *business relationship* or *occasional transaction*, or any *beneficial owner* or *underlying principal* to such, is a former foreign *PEP*, the~~

~~firm is not required to treat the *business relationship* or *occasional transaction* as high *risk* or apply *ECDD* measures provided the following criteria are met:~~

~~(a) the firm has undertaken a *relationship risk assessment* and is *satisfied* that the *risk* of the *business relationship* or *occasional transaction* is other than high *risk*;~~
~~(a) the source of the *funds* within the *business relationship* or *occasional transaction* is understood; and~~
~~(a) there is no evidence that the former foreign *PEP* continues to exercise political influence.~~

8.6. Correspondent Relationships

~~76.~~85. Correspondent banking is the provision of banking services by one *bank* ~~("the correspondent *bank*")~~ to another *bank* ("the respondent *bank*"). Used by *banks* throughout the world, correspondent *accounts* enable *banks* to conduct business and provide services that they ~~*bank* does~~ not offer directly. There are also similar relationships in other areas of *financial services business*.

~~77.~~86. In accordance with Paragraph 5(1)(b) of *Schedule 3*, the firm shall apply *ECDD* measures in relation to a *business relationship* or *occasional transaction* which is a *correspondent banking relationship*, or similar to such a relationship in that it involves the provision of services, which themselves amount to *financial services business* or facilitate the carrying on of such business, by one *financial services business* to another.

~~78.~~87. Additionally, in accordance with Paragraph 8(2) of *Schedule 3*, the firm shall:

(a) not enter into, or continue, a *correspondent banking relationship* with a *shell bank*; and
(b) take appropriate measures to ensure that it does not enter into, or continue, a *correspondent banking relationship* where the respondent *bank* is known to permit its *accounts* to be used by a *shell bank*.

~~79.~~88. In relation to *correspondent banking relationships* and similar correspondent relationships established for securities transactions or *funds* transfers, whether for the firm as principal or for its *customers*, the firm must apply ~~additional *CDD*~~the measures ~~including those~~ set out in (a) to (e) below and, where relevant, those in *Commission Rule* 8.88. below:

(a) gather sufficient information about a respondent institution to understand fully the nature of the respondent institution's business;
(b) determine from publicly available information the reputation of the respondent institution and the quality of supervision, including whether it has been subject to an *ML* or *FT* investigation or regulatory action;
(c) assess the respondent institution's AML and CFT policies, procedures and controls and ascertain that they are adequate, appropriate and effective;
(d) obtain *board* approval before establishing new correspondent relationships; and
(e) clearly understand and document the respective AML and CFT responsibilities of each institution.

~~80.~~89. Where a correspondent relationship involves the maintenance of 'payable-through *accounts*', the firm must also take steps in order to *satisfy* itself that:

~~(a) it clearly understands the respective responsibilities of each institution;~~
(a) the *customer* (the respondent institution) has complied with all of the required *CDD* ~~obligations~~ measures set out in *Schedule 3* and this *Handbook* on those of its *customers* with direct access to the *accounts* of the correspondent institution; and

(b) the respondent institution is able to provide relevant *customer identification data* upon request to the correspondent institution.

~~81.~~90. The firm must ensure that appropriate and effective policies, procedures and controls are in place when establishing a correspondent relationship with a foreign *bank* or other *financial services business*.

~~82.~~91. Additionally, the firm must have appropriate and effective policies, procedures and controls in place to ensure compliance with the requirements of Paragraph 8 of *Schedule 3* in respect of *shell banks*.

8.7. High Risk Countries and Territories

~~83.~~92. In accordance with Paragraph 5(1)(c)(i) of *Schedule 3*, the firm shall apply *ECDD* measures to a *business relationship* or *occasional transaction* where the *customer* or *beneficial owner* has a *relevant connection* with a country or territory that -

(A) provides funding or support for terrorist activities, or does not apply (or insufficiently applies) *the FATF Recommendations*, or
(B) is a country otherwise identified by the FATF as a country for which such measures are appropriate.

~~84.~~93. For the purposes of Paragraph 5(1)(c), Paragraph 5(10) of *Schedule 3* defines that a *customer* or *beneficial owner* has a '*relevant connection*' with a country or territory if the *customer* or *beneficial owner* –

(a) is the government, or a public authority, of the country or territory,
(b) is a *PEP* within the meaning of Paragraph 5(4) of *Schedule 3* in respect of the country or territory,
(c) is resident in the country or territory,
(d) has a business address in the country or territory,
(e) derives *funds* from –

(i) assets held by the *customer* or *beneficial owner*, or on behalf of the *customer* or *beneficial owner*, in the country or territory, or
(ii) income arising in the country or territory, or

(f) has any other connection with the country or territory which the firm considers, in light of the firm's duties under *Schedule 3* (including but not limited to its duties under Paragraph 2 of *Schedule 3*), to be a *relevant connection* for those purposes.

~~85.~~94. The firm must have policies, procedures and controls in place which enable it to determine those countries or territories falling within Paragraph~~s~~ 5(1)(c)(i) of *Schedule 3*~~and *Commission Rule 8.93. above*~~.

95. In establishing whether a country or territory provides funding or support for terrorist activities for the purposes of Paragraph 5(1)(c)(i)(A) of *Schedule 3*, the firm should consider if there are reports from credible sources indicating a country or territory is providing state-level financing or other forms of material support for terrorist activities or to terrorist organisations.

~~86.~~96. In addition to those countries and territories falling within Paragraph 8.92. above, in accordance with Paragraph 5(1)(c)(ii) of *Schedule 3* the firm shall~~must also give special attention~~ have regard to the *NRA* when undertaking *relationship risk assessments*, which includes details on those countries and territories deemed to pose an increased *risk* to *the Bailiwick*.~~to business~~

~~*relationships* and *occasional transactions* where the *customer* is established or situated in a country or territory closely associated with~~

~~(a) illegal drug production, processing or trafficking;~~

~~(b) corruption;~~

~~(c) terrorism; and~~

~~(d) other organised crime.~~

~~87.~~97. As part of its policies, procedures and controls, the firm must:

(a) be aware of concerns about weaknesses in the AML and CFT systems of other countries or territories; and

(b) consider any Business from Sensitive Sources Notices and Instructions issued from time to time by *the Commission*.

~~88.~~98. ~~The firm should also consider, as part of its policies, procedures and controls~~In determining, for the purposes of its policies, procedures and controls, those countries and territories falling within Paragraph 5(1)(c)(i) of *Schedule 3*, the firm should consider:

(a) findings of reports issued by the FATF, FATF-style regional bodies and FATF associate members (for example, MONEYVAL, the Asia/Pacific Group on Money Laundering, the IMF and the World Bank (see Appendix B of this *Handbook*));

(b) findings of reports issued by credible sources such as governments, government bodies and other independent organisations (for example, Transparency International, the National Crime Agency, the Financial Crimes Enforcement Network and the US Department of State (see Appendix B of this *Handbook*));

(c) situations where a country or territory has not been the subject of an AML and CFT assessment; and

(d) its own experience, or the experience of other group entities where part of a multinational group, which may indicate weaknesses in the *ML* or *FT* framework of a country or territory or wider concerns (for example, the prevalence of drug or human trafficking or political corruption).

8.8. Bearer Shares and Bearer Warrants

99. In accordance with Paragraph 5(1)(e) of *Schedule 3*, the firm shall apply *ECDD* measures to a *business relationship* or *occasional transaction* in which the *customer*, the *beneficial owner* of the *customer*, or any other *legal person* in the ownership and control structure of the *customer*, is a *legal person* that has *bearer shares* or *bearer warrants*.

~~89. When assessing the *risk* of a particular *business relationship* or *occasional transaction*, the firm should consider whether any *legal person* who is the *customer*, *beneficial owner* or *underlying principal* has issued, or has the ability to issue, *bearer shares*, bearer warrants or *bearer negotiable instruments* (collectively referred to as "*bearer shares*" for the purposes of this section).~~

~~90.~~100. A *bearer share* is a share that is owned by, and gives all associated rights to, the person who is in control or possession of the share. The *bearer share* is not recorded by indefeasible title (for example, on a register) and transfer of the ownership of the share does not need to go through a register to be effected. As there are no records as to the holder, it is often difficult to identify the true or ultimate *beneficial owner* of a *bearer share*, or more broadly, *bearer share* companies.

~~91.~~101. Where the firm's *risk* appetite allows for a *customer*, ~~or~~ the *beneficial owner* ~~or *underlying*~~ of a *customer*, or any other *legal person* in the ownership and control structure of the *customer* to have ~~issued or have the ability to issue~~ *bearer shares* and/or *bearer warrants*, the firm must have

appropriate and effective policies, procedures and controls in place to mitigate the *risk* posed by their use. ~~including the application of the measures required under *Rule* 8.102. below, to ensure that they are not misused for *ML* and/or *FT*.~~

~~92.~~102. Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* falling within Paragraph 5(1)(e) of *Schedule 3* ~~which the *customer*, or any *beneficial owner* or *underlying principal*, is a *legal person* which has issued, or has the ability to issue, *bearer shares*~~, the firm must apply ~~each~~ both of the following measures in respect of that *business relationship* or *occasional transaction*, together with the *ECDD* measures set out in Paragraph 5(1) of *Schedule 3*:

(a) determine and satisfy itself as to the reasons why the *customer*, ~~or any~~ the *beneficial owner* of the *customer* ~~or *underlying principal*~~, or other *legal person* in the ownership and control structure of the *customer* has ~~issued~~ *bearer shares* and/or *bearer warrants* ~~retains the ability to do so~~; and

~~(b)~~ have custody of the *bearer shares* and/or *bearer warrants*, or be satisfied as to their location and immobilisation ~~of the *bearer shares*~~. This should include confirming the number and location of the *bearer shares* and/or *bearer warrants* on a periodic basis, or alternatively, receiving a written undertaking from the custodian of those *bearer shares* and/or *bearer warrants* that the firm will be notified of any changes to records relating to them and their custodian.

~~(c) ensure that any new or continued relationships or any *occasional transactions* are approved by the senior management of the firm; and~~

~~(d)~~(b) ~~review the *business relationship* on at least an annual basis, including all documents, data and information obtained as part of its *CDD* measures to ensure that they remain appropriate and relevant.~~

~~93.~~103. The firm must apply the above policies, procedures and controls to a *business relationship* or *occasional transaction* irrespective of whether the identified *bearer share* or *bearer warrant* represents an amount below the relevant threshold for ownership or control of the *legal person*.

Enhanced Measures

~~94.~~104. In accordance with Paragraph 5(2) of *Schedule 3*, the firm shall carry out *enhanced measures* in relation to *business relationships* and *occasional transactions*, whether otherwise high *risk* or not, which involve or are in relation to -

(a) a *customer* who is not resident in *the Bailiwick*;
(b) the provision of private banking services;
(c) a *customer* which is a *legal person* or *legal arrangement* used for personal asset holding purposes; or
(d) a *customer* which is –

(i) a *legal person* with *nominee shareholders*, or
(ii) owned by a *legal person* with *nominee shareholders*.

105. Paragraph 5(3)(b) of *Schedule 3* defines *enhanced measures* as being the carrying out of appropriate and adequate enhanced measures in relation to a *business relationship* or *occasional transaction*, to mitigate and manage the specific higher *risk* of *ML* and *FT* resulting from the matters listed in Paragraph 5(2) of *Schedule 3* that are relevant to that relationship or transaction.

106. For a number of *business relationships* or *occasional transactions* there is likely to be more than one *specified business* involved and the firm should be aware that the *enhanced measures* it

applies may be different to those applied by another *specified business* to mitigate differing higher *risk* factors.

107. By way of example, a fiduciary establishes a trust for a non-resident *customer* to whom it applies *enhanced measures* as set out in Section 8.9. below. The fiduciary then acts as the *customer* in a *business relationship* with another *specified business* where, acting as trustee, it opens a *bank account* on behalf of the trust with a private *bank*. The *bank* will apply *enhanced measures* to mitigate the higher *risks* associated with its *customer* being a personal asset holding vehicle and the provision of private banking services as detailed in Sections 8.10. and 8.11., which may be different to those applied by the fiduciary.

8.9. Non-Resident Customer

95.108. *Customers* who are not resident in a country or territory but who nevertheless seek to form a *business relationship* or conduct an *occasional transaction* with a business in that country or territory will generally ~~may~~ have legitimate reasons for doing so. However, some such *customers* may ~~will~~ present~~ose~~ a higher *risk* of *ML* and/or *FT*, for example, ~~and may~~ bye attempting to move illicit *funds* away from their country or territory of residence or attempting to further conceal the source of *funds* from that country or territory.

~~96. Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* with a *customer* who is not resident in *the Bailiwick*, the firm must apply *enhanced measures* which are commensurate with the higher *risk* associated with non-resident *customers*.~~

97.109. For the purposes of Paragraph 5(2)(a) of *Schedule 3*, examples of *enhanced measures* the firm could apply in respect of ~~that~~ a *business relationship* or *occasional transaction* involving or in relation to a *customer* who is not resident in *the Bailiwick* could include:

(a) taking steps to understand the reason(s) behind the *customer* seeking to establish a *business relationship* or carry out an *occasional transaction* with ~~in~~ the firm~~Bailiwick~~;
(b) the use of external data sources to collect information on the *customer* and the particular country *risk* in order to build a *customer* business and *risk* profile similar to that available for a resident *customer*;
(c) taking reasonable measures to establish and understand the source of the *funds* used within the *business relationship* or *occasional transaction* and considering whether this is consistent with the firm's understanding of the *customer* and the rationale for the *business relationship* or *occasional transaction* (see Section 8.3. of this *Handbook*).

98.110. For the purposes of Paragraph 8.109.(a), when determining the reasons for establishing a *business relationship* or undertaking an *occasional transaction*, the firm should document its determination. The reasons given~~which~~ should be more detailed and substantive than merely 'tax planning', 'asset protection' or similar.

99.111. Where the firm determines that the rationale for the *customer* establishing a *business relationship* or undertaking an *occasional transaction* with the firm is tax planning or tax mitigation, the firm should seek to understand ~~the substance of~~ the underlying tax rationale for the *business relationship* or *occasional transaction*. Where concerns are raised about this rationale, the firm could consider requesting a copy of the tax opinion or tax advice to support its understanding of the *customer's* arrangements.

100.112. With regard to Paragraph 8.109.(c) above, when seeking to establish the source of any *funds*, the firm should consider both the activities which generated those *funds* in order to understand the provenance of the *funds* and any potential implications to those *funds* being moved to *the Bailiwick* For example, is the *customer* seeking to circumvent capital controls by moving the *funds* to the firm.

8.10. Customer Provided with Private Banking Services

~~101.~~113. Private banking is generally understood to be the provision of personalised banking and/or investment services to high-net-worth *customers* in a closely managed relationship. It may involve complex, bespoke arrangements and high value transactions across multiple countries and territories. Such *customers* may therefore present a higher *risk* of *ML* and/or *FT*.

~~102.~~114. For the purposes of this section a service is~~will be~~ regarded as a private banking service if it meets all four of the following criteria:

(a) is offered or proposed to personal, private client, *customers* (either directly or through a *legal person* or *legal arrangement*) identified by the firm as being eligible for the service on the basis of their net worth;
(b) involves high value investment;
(c) is non-standardised; and
(d) is tailored to the *customer's* needs.

~~103.~~115. For the avoidance of doubt, private banking services are not considered to be solely the preserve of a *bank* (with the exception of accepting deposits) but could feasibly~~e~~ be offered by a firm licensed under *the POI Law*. A business licensed under *the Fiduciaries Law* who facilitates private banking services as part of its duties as a trustee is not considered to be providing private banking services.

~~104. Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* with a *customer* to which it provides private banking services, the firm must carry out *enhanced measures* which are commensurate with the higher *risk* associated with the provision of private banking services.~~

~~105.~~116. For the purposes of Paragraph 5(2)(b) of *Schedule 3*, examples of *enhanced measures* the firm could apply in respect of ~~that~~ a *business relationship* or *occasional transaction* involving or in relation to the provision of private banking services could include:

(a) reviewing the *business relationship* ~~on at least an annual basis~~more frequently, including all documents, data and information obtained as part of the firm's *CDD* measures in order to ensure that they continue to be appropriate and relevant;
(b) where transaction monitoring thresholds are used, ensuring that these are appropriate for the circumstances of the *business relationship* and considering whether they should be reduced to provide greater oversight of transactions connected with the *business relationship*;
(c) taking reasonable measures to establish and understand the source of any *funds* and of the~~source of~~ wealth of the *customer* and *beneficial owner* ~~and *underlying principal*~~ (see Section 8.3. of this *Handbook*).

~~106.~~117. Where the firm offers private banking services alongside other corporate or retail services, it should consider on a case by case basis whether a *customer* utilises such private banking services, taking into account Paragraph 8.114. above, or whether the products and/or services provided to the *customer* fall within more traditional retail banking services. If the latter, there is no requirement to apply the *enhanced measures* set out above.

8.11. Customer is a Personal Asset Holding Vehicle

~~107.~~118. Personal asset holding vehicles are *legal persons* or *legal arrangements* established by ~~individuals~~ natural persons for the specific purpose of holding assets for investment. Whilst there are some perfectly legitimate reasons for establishing a personal asset holding vehicle, the use of

such, either a *legal person* or *legal arrangement*, can serve to conceal the true source of wealth and *funds*, or the identity of the ultimate *beneficial owner* of the investment. The use of personal asset holding vehicles therefore presents a higher *risk*, making it more difficult for the firm to establish the true beneficial ownership of a *customer*.

~~108.~~119. Notwithstanding the above, the extent of the *risk* associated with the personal asset holding vehicle could vary depending upon whether a regulated trust and corporate service provider is providing corporate services to the personal asset holding vehicle. This will in turn determine the extent of the *enhanced measures* to be applied by the firm to the *customer*.

~~109. Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* with a *customer* which is a *legal person* or *legal arrangement* used for personal asset holding purposes, the firm must apply *enhanced measures* which are commensurate with the higher *risk* associated with the use of personal asset holding vehicles.~~

~~110.~~120. For the purposes of Paragraph 5(2)(c) of *Schedule 3*, examples of *enhanced measures* the firm could apply in respect of a *business relationship* or *occasional transaction* involving or in relation to a *customer* which is a *legal person* or *legal arrangement* used for personal asset holding purposes ~~examples of *enhanced measures* the firm could apply in respect of that *business relationship* or *occasional transaction*~~ could include:

(a) determining the purpose and rationale for making use of a personal asset holding vehicle rather than a *beneficial owner* holding assets in their own name and *satisfying* itself that the ~~*customer's*~~ use of such a vehicle has a genuine and legitimate purpose;

(b) taking reasonable measures to establish and understand the source of any *funds* and of the~~source of~~ wealth of the *customer*~~,~~ and *beneficial owner* ~~and *underlying principal*~~ (see Section 8.3. of this *Handbook*).

~~111.~~121. Paragraph 5(2)(c) applies where the personal asset holding vehicle is the *customer*~~,~~ or the third party where the *customer* is a trustee or general partner acting on behalf of a personal asset holding vehicle.

~~112.~~122. For the purposes of Paragraph 8.120.(a) above, when determining the purpose and rationale for ~~a *customer* making~~the use of an asset holding vehicle, the firm should document its determination. The reasons given should be more detailed and substantive than merely 'tax planning', 'asset protection' or similar.

~~113.~~123. Where the firm determines that the rationale for the *customer* making use of a~~n~~ personal asset holding vehicle is tax planning or tax mitigation, the firm should seek to understand the ~~substance of the~~ underlying tax rationale. Where concerns are raised about this rationale, the firm could consider requesting a copy of the tax opinion or tax advice to support its understanding of the *customer's* arrangements.

8.12. Customer with Nominee Shareholders

~~114.~~124. There may be sound commercial reasons for a *customer* using *nominee shareholders*, for example, to ease administration and reduce costs by tasking the nominee to undertake essential corporate actions in the administration of the structure.

~~115.~~125. Notwithstanding the above, as detailed in Section 7.3. of this *Handbook*, the use of *nominee shareholders* can provide a *customer* with the means to obscure true ownership and control by separating legal and beneficial ownership. The use of *nominee shareholders* therefore presents a higher *risk*, making it more difficult for the firm to establish the true beneficial ownership of a *customer*.

~~116. Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* with a *customer* which is a *legal person* with *nominee shareholders*, the firm must apply *enhanced measures* which are commensurate with the higher *risk* associated with the use of *nominee shareholders*.~~

~~117.~~126. For the purposes of Paragraph 5(2)(d) of *Schedule 3*, examples of *enhanced measures* the firm could apply in respect of a *business relationship* or *occasional transaction* involving or in relation to a *customer* which is a *legal person* with *nominee shareholders*, or owned by a *legal person* with *nominee shareholders*, ~~examples of *enhanced measures* the firm could apply in respect of that *business relationship* or *occasional transaction*~~ could include:

(a) determining and satisfying itself as to the reasons why the *customer*, or a *legal person* which owns the *customer*, is making use of *nominee shareholders*;

(b) using external data sources to collect information on the fitness and propriety of the *nominee shareholder* (such as their regulated status and reputation) and the particular country *risk*;

(c) where nominees are used in *intermediary relationships* falling within Section 9.8. of this *Handbook*, the measures the firm must take in accordance with the *Commission Rules* in Section 9.8.2.

~~118.~~127. Where the firm enters into a *business relationship* or undertakes an *occasional transaction* with a CIS which is authorised or registered by *the Commission* and has not been nominated as the party responsible for applying *CDD* measures to investors in that CIS in accordance with Section 4.8.1. of this *Handbook*, it is not required to apply *enhanced measures* in respect of that CIS where the CIS has *nominee shareholders*, for example, an *intermediary* investing into the CIS on behalf its own customers.

Chapter 9
Simplified Customer Due Diligence

Contents of this Chapter

9.1. Introduction

1. This Chapter provides for the treatment of *business relationships* and *occasional transactions* which have been assessed as being *low risk relationships* pursuant to Paragraph 3 of *Schedule 3* and Chapter 3 of this *Handbook*. It sets out the ability to apply *SCDD* measures to *business relationships* or *occasional transactions* in specific circumstances and defines those simplified measures which can be applied.

2. This Chapter should also be read in conjunction with Chapters 4 to 7 of this *Handbook* which provide for the overarching *CDD* obligations and the specific requirements for the differing categories of natural persons, *legal persons* and *legal arrangements* ~~*customer*~~ with which the firm could deal as part of a *business relationship* or *occasional transaction*.

9.2. Simplified Customer Due Diligence Measures

3. The general rule is that *business relationships* and *occasional transactions* are subject to the full range of *CDD* measures as set out in *Schedule 3* and this *Handbook*, including the requirement to identify~~,~~ and verify the identity of~~,~~ the *customer* and to identify~~,~~ and take reasonable measures to verify the identity of~~,~~ the *beneficial owner* ~~and *underlying principal*~~.

4. However, there may be circumstances where the *risks* of *ML* and *FT* have been assessed by the firm as being low. Examples could include:

   (a) a *Bailiwick* resident *customer* where the purpose and intended nature of the *business relationship* or *occasional transaction* is clearly understood by the firm ~~and where no aspect of the *business relationship* or *occasional transaction* is considered to carry a high risk of ML and FT~~;

   (b) a *business relationship* or *occasional transaction* where the *risks* associated with the relationship are inherently low and information on the identity of the *customer*~~,~~ and ~~any~~ *beneficial owner* ~~and *underlying principal*,~~ is publicly available, or where adequate checks and controls exist elsewhere in publicly available systems; or

   ~~(b)~~(c) a *business relationship* or *occasional transaction* in which the *customer* is an *Appendix C business*. ~~or~~

   ~~(c) where adequate checks and controls exist elsewhere in publicly available systems.~~

5. There may also be circumstances where the *risk* of *ML* and *FT* has been assessed as low by *the Bailiwick* as part of its *NRA*. In these circumstances, the firm may consider applying *SCDD* measures when identifying, and verifying the identity of, the *customer* and~~,~~ *beneficial owner* ~~and any *underlying principal*~~.

National Risk Assessment [Awaiting Publication]

6. In accordance with Paragraph 6(1) of *Schedule 3*, where the firm is required to carry out *CDD* in relation to a *business relationship* or *occasional transaction* which has been assessed as a *low risk relationship* pursuant to Paragraph 3(4)(a) or in accordance with the *NRA*, it may, subject to the provisions of Paragraphs 6(2) and 6(3) of *Schedule 3*, apply reduced or *SCDD* measures.

7. In accordance with Paragraph 6(2) of *Schedule 3*, the discretion in Paragraph 6(1) as set out above may only be exercised by the firm:

   (a) in accordance with the requirements set out in this *Handbook*, and
   (b) where it complies with the requirements of Paragraph 3 of *Schedule 3*.

8. The *SCDD* measures applied by the firm should be commensurate with the low *risk* factors and should relate only to relationship acceptance measures or to aspects of ongoing monitoring (excluding sanctions screening). Examples of possible measures could include:

   (a) reducing the ~~frequency of customer identification updates~~verification measures applied to the *customer* and/or *beneficial owner*, in accordance with the following sections of this ~~c~~Chapter;
   (b) reducing the degree of on-going monitoring and scrutiny of *transactions*, based on a reasonable monetary threshold; or
   (c) not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the *business relationship* or *occasional transaction*, but inferring the purpose and nature from the type of *transaction(s)* or *business relationship* established.

9. The firm must ensure that, when it becomes aware of circumstances which affect the assessed *risk* of a *business relationship* or *occasional transaction* to which *SCDD* measures have been applied, a review of the *relationship risk assessment* is undertaken and a determination is made as to whether the *identification data* held ~~is undertaken to determine whether it~~ remains appropriate to the revised *risk* of the *business relationship* or *occasional transaction*.

10. Where the firm has taken a decision to apply *SCDD* measures, documentary evidence must be retained which reflects the reason for the decision. The *documentation* retained must provide justification for the decision, including why it is deemed acceptable to apply *SCDD* measures having regard to the circumstances of the *business relationship* or *occasional transaction* and the *risks* of *ML* and *FT*.

11. In accordance with Paragraph 6(3) of *Schedule 3*, for the avoidance of doubt, the discretion to apply *SCDD* measures shall not be exercised:

   (a) where the firm forms a suspicion that any party to a *business relationship* or *occasional transaction* or any *beneficial owner* is or has been engaged in *ML* or *FT*, or
   (b) in relation to a *business relationship* or *occasional transaction* where the *risk* is other than low.

9.3. Bailiwick Residents

12. Where the ~~firm is establishing a *business relationship* or undertaking an *occasional transaction* with a~~ *customer*, *beneficial owner* or other *key principal* ~~who~~ to a *business relationship* or *occasional transaction* is a natural person resident in *the Bailiwick*, the firm may apply *SCDD* measures in respect of that natural person, provided the requirements as set out in Section 9.2. above are met. Where the firm has determined that it can apply *SCDD* measures because the *risk* has been assessed as low, it may elect to verify one of points (b) date of birth and (c) residential address under *Commission Rule* 5.8., in addition to (a) legal name.

13. Notwithstanding the above, it should be borne in mind that not all *Bailiwick* residents are intrinsically low *risk*. The firm must ensure that a *relationship risk assessment* is undertaken in accordance with the requirements of Paragraph 3 of *Schedule 3* and Chapter 3 of this *Handbook* and that where the *business relationship* or *occasional transaction* is considered to be other than low *risk*, that the appropriate *CDD*, and where necessary *ECDD*, measures are applied.

9.4. Bailiwick Public Authorities

14. Where ~~the firm is establishing~~the *customer*, *beneficial owner* or other *key principal* to a *business relationship* or ~~undertaking an~~ *occasional transaction* has been identified as~~with~~ a *Bailiwick*

public authority, the firm may choose to apply *SCDD* measures in respect of that public authority. Where *SCDD* measures are applied, it is not necessary for the firm to apply full verification measures to the public authority (and ~~any~~ the ~~controllers~~ *beneficial owners* thereof)~~of the authority~~, other than where the firm considers this course of action appropriate in the circumstances.

15. The firm must ~~obtain~~ identify, and verify the identity of, ~~, as a minimum, the following information about~~ *the Bailiwick* public authority, including as a minimum:

    (a) the full name of the public authority;
    (b) the nature and status of the public authority;
    (c) the address of the public authority; and
    (d) the names of the directors (or equivalent)~~, signatories and authorised officials~~ of the public authority.

16. The following are examples of *Bailiwick* public authorities:

    (a) a government department;
    (b) an agency established by law;
    (c) a parish authority/douzaine; and
    (d) a body majority owned by an authority listed in points (a) to (c) above.

17. Where a natural person authorised to act on behalf of a *Bailiwick* public authority is acting in the course of employment, it is not necessary to identify and verify the identity of ~~such~~ that person~~s~~.; H~~h~~owever, the firm should ~~confirm~~ verify the natural person's authority to so act.

~~17.~~18. It may be that an individual acting on behalf of a *Bailiwick* public authority falls within the definition of a domestic *PEP*. However, in the context of acting for *the Bailiwick* public authority, the individual is directing funds belonging to the authority and not their personal funds. The firm may therefore determine that the measures required under *Commission Rule* 9.15. are sufficient and that the prominent public function held by the natural person does not pose an increased *risk* to the firm in the context of the *business relationship* or *occasional transaction* with *the Bailiwick* public authority.

9.5. Collective Investment Schemes Authorised or Registered by the Commission

~~18.~~19. Where the *customer*, *beneficial owner* or other *key principal* to a *business relationship* or *occasional transaction* is a CIS authorised or registered by *the Commission*, the firm (other than where it has been nominated as the party responsible for applying *CDD* measures to investors in accordance with Section 4.8.1. of this *Handbook*) may consider the CIS to be the ~~*customer*~~principal for the purposes of the firm's *CDD* measures. ~~In such cases it will be acceptable for the firm to identify only those natural persons holding a controlling ownership interest in the CIS.~~

~~19.~~20. Where this is the case, ~~In order for~~ in verifying the identity of the CIS the firm ~~to consider the CIS as the principal to be identified and verified, it~~ must, as a minimum, obtain documentation which confirms the *customer* is a CIS authorised or registered by *the Commission*.

~~20. With regard to the beneficial ownership of the CIS, the firm must seek written confirmation, either from the firm nominated in accordance with Section 4.7.1. of this *Handbook* or the *board* (or equivalent) of the CIS, as to whether any natural person ultimately controls the CIS, either directly or indirectly, through ownership.~~

~~21. For those natural persons holding a controlling ownership interest in the CIS, the firm must gather basic information on identity, including their legal name, residential address and date of birth.~~

21. Further information about CISs authorised and registered by *the Commission* can be found on *the Commission's* website:

https://www.gfsc.gg/industry-sectors/investment/regulated-entities

22. Where a natural person authorised to act on behalf of a CIS to which this section applies is doing so in the course of employment with that CIS or its Designated Manager, it is not necessary to identify, and verify the identity of, that person. However, the firm should verify the person's authority to act on behalf of the CIS.

~~22.~~23. As an example, where a *bank* is opening an *account* for a CIS authorised or registered by *the Commission*, the *bank* may treat the CIS as the *customer* to be identified and verified.

9.6. Appendix C Businesses

24. Appendix C to this *Handbook* lists those countries or territories which *the Commission* considers require regulated *FSBs*, and in limited circumstances *PBs*, to have in place standards to combat *ML* and *FT* consistent with *the FATF Recommendations* and where such businesses are appropriately supervised for compliance with those requirements. Appendix C is reviewed periodically with countries or territories being added or removed as appropriate.

~~23.~~25. The fact that a country or territory has requirements to combat *ML* and *FT* that are consistent with *the FATF Recommendations* means only that the necessary legislation and other means of ensuring compliance with *the FATF Recommendations* are 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.

~~24.~~26. The inclusion of a country or territory in Appendix C does not mean that the country or territory in question is intrinsically low *risk*, nor does it mean that any *business relationship* or *occasional transaction* ~~or~~in which the *customer* or *beneficial owner* ~~arising~~ has a *relevant connection* ~~from or connected with~~to such a country is to be automatically treated as a *low risk relationship*.

~~25.~~27. Where the *customer*~~, or a *beneficial owner* or *underlying principal,*~~ has been identified as an *Appendix C business* and~~,~~ the purpose and intended nature of the *business relationship* or *occasional transaction* is understood ~~and~~, subject to *Commission Rule* 9.28.~~ any *beneficial owner* of the *Appendix C business* has been identified~~, verification of the identity of the *Appendix C business* ~~and any *beneficial owner*~~ is not required.

~~26.~~28. If the *Appendix C business* is acting for or on behalf of another party, subject to the provisions of Sections 9.8. and 9.9. of this chapter, as required by Paragraph 4(3)(d) of *Schedule 3* reasonable measures must be taken to identify, and verify the identity of, that third party ~~must be identified and their identity verified~~ in accordance with the requirements of *Schedule 3* and this *Handbook*.

~~27. Where the *Appendix C business* is a *specified business* supervised by *the Commission*, the identification of any *beneficial owner* of the *Appendix C business* is not required, other than where the firm considers this appropriate based upon the circumstances of the *business relationship* or *occasional transaction*.~~

~~28.~~29. Where a natural person authorised to act on behalf of an *Appendix C business* is doing so in the course of employment with that business, it is acceptable for the firm not to identify~~,~~ and verify the identity of~~,~~ that person. However, the firm should verify the person's authority to act on

behalf of the *Appendix C business*. One such example would be a director (or equivalent) of a *Bailiwick* fiduciary who is acting in the course of his fiduciary obligations or an administrator executing instructions on behalf of a fund.

29.30. The firm is not obliged to deal with regulated *FSBs* or *PBs* in the jurisdictions listed in Appendix C as if they were local, notwithstanding that they meet the requirements identified in Appendix C. ~~The firm should use commercial judgement in considering~~ The firm may, in deciding whether or not to deal with a regulated *FSB* or *PB* ~~and may, if it wishes~~, impose higher standards than the minimum standards identified in this *Handbook* where it considers this necessary.

9.6.1. Determination of Appendix C Countries and Territories

30.31. In accordance with Paragraph 16(2) of *Schedule 3*, when exercising its functions *the Commission* must take into account information, or in relation to:

(a) the *ML* and *FT risk* associated with particular countries, territories and geographic areas; and
(b) the level of cooperation it expects to receive from relevant authorities in those countries, territories and areas.

31.32. In making its determination of those jurisdictions listed in Appendix C, in addition to the factors set out in Paragraph 16(2) of *Schedule 3*, *the Commission* will also take into consideration several other factors including:

(a) the jurisdiction's membership of the FATF and/or a FATF-style regional body;
(b) reports and assessments by the FATF and/or other regional body for compliance with *the FATF Recommendations*;
(c) good governance indicators;
~~(d) the likely level of co-operation *the Commission* could expect to receive from the competent authorities within the country or territory;~~
~~(e)~~(d) the level of drug trafficking, bribery and corruption and other financial and organised crime within the jurisdiction; and
~~(f)~~(e) the extent of terrorism and terrorist financing activities within the jurisdiction.

32.33. When reviewing assessments undertaken by the FATF or other FATF-style regional bodies of a country'/ ~~or~~ territory's compliance with *the FATF Recommendations*, particular attention is given to:

(a) the findings, recommendations and ratings of compliance~~country or territory is compliant or largely compliant~~ with *the FATF Recommendations* (in particular Recommendations 10, 11 and 12); and
(b) the findings, recommendations and ratings of effectiveness of the country or territory's AML and CFT regime ~~has been assessed as highly or substantially effective~~ against the FATF's eleven 'Immediate Outcomes' set out within its methodology for compliance with *the FATF Recommendations*.

9.7. Receipt of Funds as Verification of Identity

33.34. Where the *customer*~~,~~ and ~~any~~ *beneficial owner* ~~and *underlying principal*,~~ have been identified and the *business relationship* or *occasional transaction* is considered to be low *risk*, the firm may consider the receipt of *funds* to provide satisfactory means of verifying identity.

34.35. In order to utilise this provision, the firm must ensure that:

(a) all initial and future *funds* are received from an *Appendix C business*;

(b) all initial and future *funds* come from an *account* in the sole or joint name of the *customer* or ~~*underlying principal*~~*beneficial owner*;

~~(c)~~ payments are only paid to an *account* in the *customer's* name (i.e. no third party payments allowed)~~;~~

~~(d)~~(c) ~~payments are only paid to an account in the *customer'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;

~~(e)~~(d) no changes are made to the product or service that enable *funds* to be received from or paid to third parties; and

~~(f)~~(e) no cash withdrawals are permitted other than by the *customer*, or a~~n~~ *beneficial owner*~~*underlying principal*~~, on a face-to-face basis where the identity of the *customer* or *beneficial owner* can be confirmed, and in the case of significant cash *transactions*, the reasons for cash withdrawal are verified.

~~35.~~36. The firm must ensure that, once a *business relationship* has been established, should any of the conditions set out in *Commission Rule* 9.35. no longer be met, full verification of the identity of the *customer*~~,~~ and ~~any~~ *beneficial owner* ~~and *underlying principal*,~~ is carried out in accordance with the requirements of *Schedule 3* and this *Handbook*.

~~36.~~37. Should the firm have reason to suspect the motives behind a particular *transaction* or believe that the *business relationship* or *occasional transaction* is being structured to avoid the firm's standard *CDD* measures, it must ensure that the receipt of *funds* is not used to verify the identity of the *customer*~~,~~ or ~~any~~ *beneficial owner* ~~or *underlying principal*~~.

~~37.~~38. The firm must retain documentary evidence to demonstrate the reasonableness of its conclusion that the *risk* of the *business relationship* being established or the *occasional transaction* being undertaken is low.

9.8. Intermediary Relationships

39. An *intermediary relationship* is where the firm enters into a *business relationship* with an *intermediary* who is acting for or on behalf of its customers and where the *business relationship* the firm has is with the *intermediary* and not the *intermediary's* customers. If the firm has assessed the *ML* and *FT risks* of the relationship with the *intermediary* as low, it may, subject to certain criteria being met and only in respect of certain qualifying products and services, treat the *intermediary* as its *customer* for *CDD* purposes, instead of identifying, and verifying the identity of, the *intermediary's* customer(s).

40. The firm should be aware that money launderers are attracted by the availability of complex products and services that operate internationally within a reputable and secure financial services environment. In this respect, the firm should be alert to the risk of an *intermediary relationship* being used to mask the true beneficial ownership of an underlying customer for criminal purposes.

41. Section 9.8.2. of this *Handbook* sets out the criteria which must be met for an *intermediary relationship* to be established by the firm. In such cases the firm will not have a direct relationship with the *intermediary's* customer and it will therefore not be necessary to apply *CDD* measures to the *intermediary's* customers, unless the firm considers this course of action to be appropriate in the circumstances. The *intermediary* does however have a direct relationship with its customer.

9.8.1. Risk Assessment

42. Before establishing an *intermediary relationship*, the firm must undertake a *relationship risk assessment* of the proposed *business relationship* with the *intermediary*.

43. Such an assessment will allow the firm to determine the *risk* in placing reliance on an *intermediary* and to consider whether it is appropriate to treat the *intermediary* as the firm's *customer* or whether it feels the *risk* would be better managed if it were to:

    (a) treat the *intermediary* as an *introducer* in accordance with Chapter 10 of this *Handbook*; or
    (b) apply *CDD* measures to the *customer* (including the *beneficial owner* and other *key principals*) for whom the *intermediary* is acting.

44. Chapter 10 of this *Handbook* provides for the identification and verification requirements in relation to introduced *business relationships*, i.e. where an *Appendix C business* enters into a *business relationship* with the firm on behalf of one or more third parties, who are its *customers*.

~~9.7.1.~~9.8.2. Criteria for Establishing an Intermediary Relationship

45. When establishing an *intermediary relationship*, the firm must apply *CDD* measures to the *intermediary* to ensure that the *intermediary* is either:

    (a) an *Appendix C business*; or
    (b) a wholly owned nominee subsidiary vehicle of an *Appendix C business* which applies the policies, procedures and controls of, and is subject to oversight from, the *Appendix C business*;

    excluding a trust and corporate service provider other than a person licensed under *the Fiduciary Law*.

46. Where the condition in *Commission Rule* 9.45. is met and the *business relationship* with the *intermediary* has been assessed as being low *risk*, the firm can exercise its own judgement in the circumstances as to the level of *CDD* measures to be applied to the *intermediary*. However, at a minimum the firm must:

    (a) identify and, subject to the provisions of Section 9.6. of this *Handbook*, verify the identity of the *intermediary*; and
    (b) receive written confirmation from the *intermediary* which:

        (i) confirms that the *intermediary* has appropriate *risk*-grading procedures in place to differentiate between the *CDD* requirements for *high risk relationships* and *low risk relationships*;
        (ii) contains adequate assurance that the *intermediary* applies appropriate and effective *CDD* measures in respect of its customers, including *ECDD* measures for *PEPs* and other *high risk relationships*;
        (iii) contains sufficient information to enable the firm to understand the purpose and intended nature of the *intermediary relationship*; and
        (iv) confirms that the *account* will only be operated by the *intermediary* and that the *intermediary* has ultimate, effective control over the relevant product or service.

47. Where an *intermediary relationship* has been established, the firm must prepare and retain documentary evidence of the following:

(a) the adequacy of its process to determine the *risk* of the *intermediary relationship* and the reasonableness of its conclusions that it is a *low risk relationship*;
(b) that it has applied *CDD* measures to the *intermediary*; and
(c) that the *intermediary relationship* relates solely to the provision of products or services which meet the requirements of Section 9.8.3. below.

48. In circumstances where the criteria for an *intermediary relationship* are not completely satisfied or are no longer met (for example, because the proposed *intermediary* is not an *Appendix C business* or the *risk* of the *intermediary relationship* has been assessed as being other than low) then the relationship must not be considered as an *intermediary relationship*.

49. Where the firm has determined, in accordance with *Commission Rule* 9.48., that it cannot treat an *intermediary* as the *customer*, the firm must treat the underlying customers of the *intermediary* as if they were the firm's *customers* and must apply its own *CDD* measures in accordance with the requirements of *Schedule 3* and this *Handbook*.

50. The firm should always consider whether the *risk* would be better managed if it applied *CDD* measures to the person or *legal arrangement*, including the *beneficial owner* and other *key principals*, for whom the *intermediary* is acting rather than treating the *intermediary* as its *customer*.

51. The following are examples of steps the firm could take where, in accordance with *Commission Rule* 9.48., the firm is required to apply *CDD* measures to an *intermediary's* customers:

(a) open individual *accounts* in the names of each of the *intermediary's* underlying customers and apply *CDD* measures to each of those customers, including the *beneficial owners* and other *key principals*; or
(b) open an *account* in the name of the *intermediary*, provided that the firm also receives a complete list of the underlying *customers* from the *intermediary* to allow it to apply its own *CDD* measures to those *customers*, including the *beneficial owners* and other *key principals*.

~~9.7.2.~~9.8.3. Qualifying Products and Services

52. For an *intermediary* to be considered as the *customer* of the firm, the *intermediary relationship* must be for the provision of one of the following products and services:

(a) Investment of life company *funds* to back the life company's policyholder liabilities where the life company opens an *account* (see Section 9.8.3.1. below);
(b) Undertaking various restricted activities by a POI licensee, as part of its relationship falling within the scope of *the POI Law*, with another regulated *FSB* where the *funds* (and any income) may not be returned to a third party unless that third party was the source of *funds* (see Section 9.8.3.2. below); or
(c) Investments into a CIS or NGCIS (for example, by a discretionary or advisory investment manager or custodian) acting in its own name and as the registered owner of the shares or units of the CIS (see Section 9.8.3.3. below).

9.8.3.1. Investment of Life Company Funds

53. Where the firm is licensed under *the Banking Law* and provides services to a life insurance company through the opening of an *account* for the investment of *funds* to back the life company's policyholder liabilities, the firm can treat the life insurance company as its *customer*.

54. Where the firm is licensed under *the POI Law* and a life insurance company is investing its policy holder *funds* into a CIS authorised or registered by *the Commission* or an NGCIS, the firm can treat the life insurance company as its *customer*.

55. If the *account* or investment has a policy identifier then the firm must require an undertaking from the life company that it is the legal and beneficial owner of the *funds* and that the policyholder has not been led to believe that he or ~~/~~she has rights over an *account* or investment in *the Bailiwick*.

9.8.3.2. Investment Activity

56. Where the firm is licensed under *the POI Law* and undertakes various restricted activities within the scope of its licence as part of its relationship with another regulated *FSB*, the firm can treat that regulated *FSB* as its *customer*.

57. Where the firm utilises these provisions, any *funds* received from the *intermediary* (and any income resulting from the investment of such) must not be returned to a third party, unless that third party was the source of the *funds* and the firm is *satisfied* that the involvement of the third party does not pose an increased *ML* or *FT risk*.

9.8.3.3. Investments into Collective Investment Schemes

58. Where the firm has been nominated in accordance with Paragraph 4.57**4**. and an investment is made into a CIS or NGCIS (referred to in this section as a "CIS") by an *intermediary*, for example, a discretionary or advisory investment manager or custodian acting in its own name and as the registered owner of the shares as set out in Section 4.8.2. of this *Handbook*, the *nominated firm* can treat the *intermediary* as its *customer*.

59. Investments made into a CIS via an *intermediary* as described under *Commission Rule* 4.70.(b)-(c), where the identity of the underlying investors is not disclosed to the CIS or the *nominated firm*, is common practice within the fund sector across the world and is recognised within guidance issued by IOSCO, the Basel Committee on Banking Supervision and in the European Supervisory Authorities' ("ESAs") Risk Factors Guidelines issued under the Fourth Anti-Money Laundering Directive.

60. Notwithstanding the above, the ability for an underlying investor to invest into a CIS on an undisclosed basis increases the *risk* of a CIS being abused for *ML* or *FT* purposes. This is particularly relevant where there are a very limited number of investors in a CIS who could exercise control over the assets of that CIS, either through ownership or by other means. In this respect it is possible for an individual person or family office to hold, via an *intermediary* or *intermediaries*, more than 25% of the shares/units or voting rights of a CIS, or exercise control through other means, which as identified under *the Bailiwick's* Beneficial Ownership regime, would classify the underlying investor as a *beneficial owner*, but their identity would not be known.

~~38.~~61. The *nominated firm* should be aware that certain types of CIS, such as hedge funds, real estate and private equity funds, tend to have a smaller number of investors~~,~~ which can be private individuals as well as institutional investors, for example, pension funds or funds of funds. CISs that are designated for a very limited number of high-net-worth individuals or family offices can have an inherently higher *risk* of abuse for *ML* and/or *FT* purposes as compared to retail or institutional funds. In such cases, underlying investors are more likely to be in a position to exercise control over the CIS and use the CIS as a personal asset holding vehicle.

62. Personal asset holding vehicles should not be authorised/registered under *the POI Law*, as Paragraph 1(1)(b) of Schedule 1 to *the POI Law* states, inter alia:

'a CIS is any arrangement relating to property of any description (including money)…in which the investors do not have a day-to-day control over the management of the property to which the arrangement relates (whether or not they have any right to be consulted or give directions)'.

63. However, the *nominated firm* should be aware that an authorised or registered CIS could have, or may develop over time, the attributes of a personal asset holding vehicle.

64. Where the *nominated firm* wishes to utilise the intermediary provisions in respect of a CIS which is designated for a very limited number of investors, the *nominated firm* must have assessed the risk of the CIS being used by those investors as a personal asset holding vehicle as low. The conclusions of this assessment must be documented and reviewed on a periodic basis.

65. In conducting its assessment in accordance with *Commission Rule* 9.64. above, the *nominated firm* should consider factors such as the manner in which the shares or units of the CIS are distributed; the powers afforded to the share/unit holders of the CIS and their ability to influence any decision making; and details of any unusual connections between share/unit holders, board members and other parties connected with the CIS.

66. The assessment undertaken by the *nominated firm* could form part of its *relationship risk assessment* of the particular CIS, or be undertaken and recorded as a separate assessment.

67. Where the CIS targets institutional investors, as opposed to individuals, or retail investors through professional intermediaries, the risk of the CIS becoming a personal asset holding vehicle, for which a small group of individuals would be considered *beneficial owners* under *the Bailiwick's* Beneficial Ownership regime, is likely to be low.

68. Similarly, a CIS could be established by an *Appendix C business* as an in-house scheme for that *Appendix C business'* customers and for which the *Appendix C business* would be acting as the *intermediary* (i.e. the registered share/unit holder). Even in these cases, the *nominated firm* could, after reasonable enquiries about the CIS' distribution and operation, determine that the risk of that CIS being used as a personal asset holding vehicle is low.

69. Where the *nominated firm* has assessed that the risk of a CIS being used as a personal asset holding vehicle is other than low, it must not treat an *intermediary* as its *customer* and must look through the *intermediary relationship* to apply *CDD* measures (including *ECDD* and *enhanced measures* as applicable) to the *intermediary's* underlying customers, including the *beneficial owners* and other *key principals*.

~~9.8.~~9.9. Pooled Bank Accounts

70. *Banks* often accept pooled deposits on behalf of *FSBs* and other professional firms. These *accounts* may contain the *funds* of more than one underlying *customer* and are generally held on an undisclosed basis.

~~39.~~71. Where the firm is licensed by *the Commission* under *the Banking Law* and has identified ~~that~~ an *account* operated by it on behalf of one of the following types of *account* holder~~a specified business falls within one of sections (a)-(d) below~~, the firm may treat this party as its *customer*:

(a) an ~~pooled~~ *account* in the name of a fiduciary licensed by *the Commission* or supervised by an equivalent authority in the Bailiwick of Jersey, or a wholly owned subsidiary of such a business which meets the requirements of Paragraph 9.72. below, where the holding of *funds* in the ~~pooled~~ *account* is on a short-term basis;

~~(a)~~(b) an ~~client~~ *account* in the name of ~~fiduciary licensed by the Commission or~~ a firm of lawyers or estate agents registered with *the Commission* or supervised by an equivalent authority in the Bailiwick of Jersey, where the holding of *funds* in the ~~client~~ *account* is on a short-term basis and is necessary to facilitate a transaction;

~~(b)~~(c) a client money *account* in the name of a firm licenced under *the POI Law*, or subject to equivalent licensing and oversight by an authority in the Bailiwick of Jersey, where the *funds* are subject to the Licensees (Conduct of Business) Rules 2016 or equivalent legislation in the Bailiwick of Jersey; or

~~(c)~~(d) a client money *account* in the name of a firm licenced under *the IMII Law*, or subject to equivalent licensing and oversight by an authority in the Bailiwick of Jersey,~~-~~ where the *funds* are subject to the Insurance Managers and Insurance Intermediaries (Client Money) Regulations~~,~~ 2008 or equivalent legislation in the Bailiwick of Jersey.

72. The requirements referred to in Paragraph 9.71.(a) above are that the wholly owned subsidiary:

(a) has no *customers* which are not *customers* of the fiduciary in *the Bailiwick* or Bailiwick of Jersey; and
(b) applies the same AML and CFT policies, procedures and controls as the fiduciary in *the Bailiwick* or Bailiwick of Jersey.

73. For the purposes of Paragraphs 9.71.(a) and (b) above, *funds* are considered to have been held on a 'short-term' basis where they are held, undisclosed, for no longer than 40 days.

74. Where the firm is licensed by *the Commission* under *the Banking Law* and holds deposits on a fiduciary basis on behalf of an overseas *bank* falling within the definition of an *Appendix C business*, the firm should treat the overseas *bank* as its *customer* in accordance with Section 9.6. of this *Handbook*.

9.9.1. Establishing a Pooled Banking Relationship

75. Where the firm operates an *account* falling within the provisions of Paragraph 9.71. and the *business relationship* with the *account* holder has been assessed as being low *risk*, the firm can exercise its own judgement as to the level of *CDD* measures to be applied to the *account* holder in the particular circumstances. However, as a minimum the firm must:

(a) identify and, subject to the provisions of Section 9.6. of this *Handbook*, verify the identity of the *account* holder; and
(b) receive written confirmation from the *account* holder which:

(i) confirms that the *account* holder has appropriate *risk*-grading procedures in place to differentiate between the *CDD* measures appropriate for *high risk relationships* and those for *low risk relationships*;
(ii) contains adequate assurance that the *account* holder applies appropriate and effective *CDD* measures in respect of its *customers* (and the *beneficial owners* and other *key principals*), *including ECDD* measures for *PEPs* and other *high risk relationships*;
(iii) contains sufficient information to enable the firm to understand the purpose and intended nature of the relationship; and
(iv) confirms that the *account* will only be operated by the *account* holder and that the *account* holder has ultimate effective control over the relevant product or service.

76. Where a *business relationship* has been established with an *account* holder for the provision of a pooled *account*, the firm ~~utilises the provisions of paragraph 7.15.(2), it~~ must prepare and retain documentary evidence ~~which confirms~~of the following:

(a) the adequacy of its processes to determine the *risk* of the *business relationship* with the *account* holder and the reasonableness of its conclusions that it is a *low risk relationship*;

(b) that it has~~, subject to section 9.5. of this Handbook, undertaken CDD procedures in respect of the specified business, including ensuring that the specified business has appropriate and effective AML and CFT policies, procedures and controls in place to identify and verify the underlying customers, including beneficiaries and underlying principals~~ applied *CDD* measures in respect of the *account* holder; and

(c) that the *business relationship* with the *account* holder relates solely to the provision of ~~the products and services~~an *account* falling within ~~the terms of~~ Paragraph 9.71.(a)-(d) above.

77. Where the firm operates a pooled *account* on behalf of ~~a professional firm or FSB~~ an *account* holder which:

(a) does not fall within Paragraph 9.71.(a)-(d) ~~of this *Handbook*~~above; or

(b) has been assessed as being other than low *risk*, for example, because the firm has concerns in respect of the manner in which a pooled *account* is being used by a *specified business*,

then the firm must not treat the *account* holder as its *customer and* must perform its own *CDD* measures on the underlying *customers* (including the *beneficial owners* and other *key principals*) within the pooled *account* in accordance with the requirements of *Schedule 3* and this *Handbook*.

~~40.~~78. The firm should always consider whether the *risks* would be better managed if the firm ~~undertook~~applied *CDD* measures on the *customer*, ~~and~~ *beneficial owner* and other *key principals* ~~and *underlying principal(s)*~~ for whom the ~~specified *business*~~*account* holder is acting rather than treating the ~~specified *business*~~*account* holder as the *customer*.

~~1. Where the firm considers that such action is necessary, e.g. because the firm has concerns in respect of the manner in which a pooled account is being used by a specified business, the firm must perform its own CDD measures on the underlying customers within the pooled account in accordance with the identification and verification requirements of Schedule 3 and this Handbook for natural persons, legal persons and legal arrangements.~~

Chapter 10
Introduced Business

Contents of this Chapter

10.1. Introduction

1. An introduced *business relationship* or *occasional transaction* is a formal arrangement whereby an *Appendix C business* (or an overseas branch of, or member of the same group of bodies as, the firm) acting on behalf of one or more third parties who are also its customers, establishes a *business relationship* or undertakes an *occasional transaction* with a *specified business* on behalf of that customer. Introduced ~~r~~ *business relationships* or *occasional transactions* may be ~~business relationships~~ on behalf of a single *customer* or on behalf of more than one *customer*, including a pool of such persons.

2. A *business relationship* established by an *introducer* on behalf of more than one of its *customers* is described by this *Handbook* as a pooled relationship. Further information on pooled relationships can be found in Section 9.9. of this *Handbook*.

3. This Chapter does not apply to outsourcing or agency ~~arrangements~~relationships. Under an introducer *arrangement* the third party will apply its own procedures to perform the *CDD* measures for the *customer*, subject to an initial assessment of the third party by the firm and to ongoing periodic testing. This contrasts with an outsourced ~~arrangement~~ or agency relationship, where the outsourced service provider or agency is regarded as part of the delegating firm, applying~~ies~~ the delegating firm's *CDD* measures ~~on behalf of the delegating firm~~ in accordance with the delegating firm's procedures and subject to oversight and control of the effective implementation of those procedures by the delegating firm.

10.2. Risk Exposure

4. Introduced business by its very nature has the capacity to be high *risk*, i.e. relying on a third party to have adequately applied *CDD* measures to mitigate the *risk* of the firm being involved in, or abused for, *ML* or *FT*. In this respect, while the firm is still required to hold sufficient identifying information about its *customer*~~,~~ and ~~any~~ the *beneficial owner* thereof ~~or *underlying principal*~~, the firm places reliance on a third party to have adequately and appropriately verified the identity of that *customer* and *beneficial owner*~~connected parties~~, and to retain evidence of that verification.

5. The firm must recognise the increased *risk* posed by introduced business and ensure that its consideration of these *risks* is adequately documented within its *business risk assessments*.

6. In addition to an explanation of any *risks* identified ~~within its introducer arrangements~~, the firm's *business risk assessments* should also include a description of the policies, procedures and controls established to mitigate and manage such *risk*.

7. The firm must ~~use a *risk* based approach when deciding~~consider, for each~~on a~~ *business relationship*~~*customer* by *customer*~~ basis or *occasional transaction*, whether it is appropriate on the basis of *risk*~~,~~ to rely on a certificate or summary sheet from an *introducer* ~~for a *customer*~~ in accordance with Paragraph 10 of *Schedule 3* or whether it considers it necessary to do more.

8. In accordance with Paragraph 10(3) of *Schedule 3*, where reliance is placed upon an *introducer*, the responsibility for complying with the relevant provisions of Paragraph 4 of *Schedule 3* shall remain with the firm.

10.3. Establishing an Introducer Relationship

9. In accordance with Paragraph 10(1) of *Schedule 3*, in the circumstances set out in Paragraph 10(2) as reflected below, the firm may accept a written confirmation of identity and other matters from an *introducer* in relation to the requirements of Paragraph 4(3)(a)–(e) of *Schedule 3*, provided that:

(a) the firm also requires copies of *identification data* and any other relevant *documentation* on the identity of the *customer* and *beneficial owner* to be made available by the *introducer* to the firm immediately upon request; and
(b) the *introducer* keeps such *identification data* and *documents*.

10. In accordance with Paragraph 10(2) of *Schedule 3*, the circumstances referred to in Paragraph 10.9. above are that the *introducer*:

(a) is an *Appendix C business*; or
(b) is either an overseas branch office of, or a member of the same group of *legal persons* or *legal arrangements* as, the firm, and

(i) the ultimate *legal person* or *legal arrangement* of the group of *legal persons* or *legal arrangements* of which both the *introducer* and the firm are members, is an *Appendix C business*; and
(ii) the conduct of the *introducer* is subject to requirements to forestall, prevent and detect *ML* and *FT* (including the application of any appropriate additional measures to effectively handle the risk of *ML* or *FT*) that are consistent with those in *the FATF Recommendations* in respect of such a business (particularly Recommendations 10, 11 and 12), and the *introducer* has implemented a programme to combat *ML* and *FT* that is consistent with the requirements of Recommendation 18; and
(iii) the conduct both of the *introducer*, and of the group of *legal persons* or *legal arrangements* of which both the *introducer* and the firm are members, is supervised or monitored for compliance with the requirements referred to in (ii) above, by *the Commission* or an overseas regulatory authority.

11. In addition to the confirmations required by Paragraph 10(1) of *Schedule 3*, w~~W~~hen establishing an *introducer* relationship, the firm must also *satisfy* itself that the *introducer*:

(a) has appropriate *risk*-grading procedures in place to differentiate between the *CDD* requirements for *high risk relationships* and *low risk relationships*;
(b) ~~conducts~~ applies appropriate and effective *CDD* ~~procedures~~ measures ~~in respect of~~to its *customers*,~~,~~ and the *beneficial owners* and other *key principals* thereof, including *ECDD* measures to~~for~~ foreign *PEPs* and other *high risk relationships*; and
(c) has appropriate record keeping requirements similar to those~~as~~ set out in Paragraph 14 of *Schedule 3*.

12. The *CDD* measures referred to in Paragraph 10(1) of *Schedule 3* include the following elements:

(a) identifying the *customer* and verifying the customer's identity using *identification data*;
(b) identifying any person purporting to act on behalf of the *customer* and verifying that person's identity and their authority to so act;
(c) identifying the *beneficial owner* and taking reasonable measures to verify the identity of the *beneficial owner*, including, in the case of a *customer* which is a *legal person* or *legal arrangement*, taking measures to understand the ownership and control structure of the *customer*;
(d) determining whether the *customer* is acting on behalf of another person and, if the *customer* is so acting, taking reasonable measures to identify that other person and to obtain sufficient *identification data* to verify the identity of that other person; and
(e) understanding, and as appropriate obtaining information to support this understanding of, the purpose and intended nature of the *business relationship* or *occasional transaction*.

13. A template certificate which may be used by the firm for introduced business can be in Appendix D to this *Handbook*.

14. The firm must take appropriate steps to be *satisfied* that the *introducer* will supply, immediately upon request ~~without delay~~, certified copies or originals of the *identification data* and other ~~evidence~~ relevant *documents* it has collected under the *CDD* measures applied to its *customer*~~*process*~~*s*, including the *beneficial owner* and other *key principals* thereof.

15. Where an introduced *business relationship* presents a high *risk* of *ML* or *FT*, consideration should be given to whether it is appropriate for the firm to rely solely upon the information provided by the *introducer* or whether supplemental *CDD* information and/or documentation is required.

~~16. The firm must not place reliance upon an *introducer* where it suspects *ML* and/or *FT* in connection with the *customer* or any *beneficial owner* or *underlying principal*.~~

~~17.~~16. It is the responsibility of the *introducer* to inform the firm of any changes to the parties involved in an introducer arrangement, for example, to the relationship structure, the profile, or any *CDD* held. As part of establishing an introduced relationship the firm should seek confirmation from the *introducer* that it will notify the firm of changes to the *customer*, or the *beneficial owner* thereof, without delay.

10.4. Testing

~~18.~~17. The firm must have a scheduled programme of testing to ensure that, on an on-going basis, an *introducer*~~s~~ is~~are~~ able to fulfil the requirement that certified copy~~ies~~ or original~~s of the~~ *identification data* that it has collected will be provided~~,~~ to the firm immediately upon request~~, without delay~~. This will involve the firm adopting ongoing procedures to ensure it has the means to obtain that *identification data*.

~~19.~~18. The testing programme should be *risk*-based and commensurate with the *risk* exposure, size and scope of the business introduced. The programme should ~~act as an~~provide appropriate and sufficient~~effective~~ assurance ~~control~~ to ~~allow~~ the firm ~~to be confident~~ that it can continue to rely upon an *introducer* to fulfil its obligation~~s~~ to provide *identification data* immediately upon request. In this respect, priority should be given to those *introducers* posing the highest *risk* to the firm, i.e. those with the greatest number of introduced relationships and/or the highest *risk customers*.

~~20.~~19. Notwithstanding the above, the firm should set a minimum timeframe within which all *introducers* will be subject to appropriate periodic testing and record this within its *introducer* testing procedure.

~~21.~~20. The scope of the testing undertaken should include verification that the information received from~~on~~ the *introducer* on a certificate or summary sheet containing information about the identity of the underlying *customer*~~,~~, *beneficial owner* and other *key principals* ~~or *underlying principal*~~, continues to be accurate and up to date. This allows the firm to determine whether, based on any changes, it wishes to continue to rely upon the arrangement or whether the firm may wish to seek further information from the *introducer* about the underlying *customer* and/or associated *key principals*.

~~22. For the purposes of Rule 10.4.(1), 'without delay' should be interpreted as an *introducer* providing a response within two business days following a formal request by the firm.~~

~~23.~~21. Where, as a result of a test carried out, the firm is not *satisfied* that the *introducer* has appropriate policies and procedures in place, maintains appropriate records, or will provide evidence of those records ~~without delay~~immediately if requested to do so, the firm must apply *CDD* measures in accordance with Paragraph 4 of *Schedule 3* for that *customer*, including the *beneficial owner* and

other *key principals* thereof, and give consideration to terminating its relationship with the *introducer*.

10.5. Termination

~~24.~~22. In the event that an *introducer* terminates its relationship with an introduced *customer*, the firm should consider how best it will~~can~~ continue to maintain compliance with ~~the~~ its *CDD* obligations for that *customer* and associated *key principals*. In this respect, the firm should give consideration to the following:

(a) instructing the *introducer* to provide the firm with copies of the ~~relevant evidence of identification~~*ty data* held for the *customer*, *beneficial owner* and other *key principals*; or
(b) gathering its own *identification data* on the *customer*, *beneficial owner* and other *key principals*, and terminating the *introducer* relationship.

10.6. Group Introducers

~~25.~~23. Where a *customer* is introduced to the firm by a member of the firm's wider group, it is not necessary for the identity of the *customer* or any *key principal* to be re-verified, provided that the group entity acting as *introducer* provides the firm, in accordance with Paragraph 10(1) of *Schedule 3*, with written confirmation that it:

(a) applies *CDD* requirements in line with Paragraph 4 of *Schedule 3*;
(b) meets the requirements of Paragraph 10(2) of *Schedule 3* to be classified as an *introducer*;
(c) applies record keeping requirements in line with Paragraph 14 of *Schedule 3*; and
(d) will provide copies of *identification data* ~~and other relevant documentation relating to the *CDD* requirements~~ immediately upon request~~ and without delay. This requirement is satisfied if the firm has access to the information electronically via a group-wide database.~~

~~26.~~24. Where the firm has access to the *identification data* of the introducing group member's *customers* and associated *key principals*, for example via a group-wide document management system, the testing obligations set out in *Commission Rule* 10.14. will be deemed to have been met, provided the firm reviews the *identification data* held on a periodic basis.

~~27.~~25. Notwithstanding the above, the firm must not regard group introduced business as intrinsically low *risk* and must ~~use a risk-based approach when~~ decide, on the basis of *risk*,~~ing~~ whether it is appropriate to rely on a certificate or summary sheet from a group *introducer*. Where a certificate or summary sheet is not deemed appropriate, the firm must consider the steps it is required to take, bearing in mind that the ultimate responsibility for the application of *CDD* measures remains with the firm.

10.7. Chains of Introducers

~~28.~~26. Chains of *introducers* are not permitted and the firm must not place reliance on an *introducer* which forms part of a chain.

27. This requirement is intended to avoid~~s~~ a situation whereby, should the middle institution fall away, the receiving business is ~~would be~~ left in~~with~~ difficulty vis-à-vis obtaining copies of *identification data* and other relevant documentation relating to the introduced *customer* from the original *introducer*.

Chapter 11
Monitoring Transactions and Activity

Contents of this Chapter

11.1. Introduction

1. The regular monitoring of a *business relationship*, including any transactions and other activity carried out as part of that relationship, is one of the most important aspects of effective ongoing *CDD* measures.

2. It is ~~also~~ vital that the firm understands a *customer's* background and is aware of changes in the ~~*customer's*~~ circumstances of the *customer* and *beneficial owner* throughout the life-cycle of a *business relationship*. The firm can usually only determine when it might have reasonable grounds for knowing or suspecting that *ML* and/or *FT* is occurring if it has the means of assessing when a transaction or activity falls outside the normal expectations for a particular *business relationship*.

3. ~~It should be borne in mind that t~~There are two strands to effective ongoing monitoring:

   (a) The first relates to the transactions and activity which occur on a day-to-day basis within a *business relationship* and which need to be monitored to ensure they remain consistent with the firm's understanding of the *customer* and the product or service it is providing to the *customer*.

   (b) The second relates to the *customer* themselves and the requirement for the firm to ensure that it continues to have a good understanding of its *customers* and their *beneficial owners* ~~and *underlying principals*~~. This is achieved through maintaining relevant and appropriate ~~identification data~~*CDD* ~~for the *customer*~~ and applying appropriate ongoing screening.

4. This Chapter deals with the requirement for the firm to monitor *business relationships* on an ongoing basis, including the application of scrutiny to large and unusual or complex transactions or activity so that *ML* and *FT* may be identified and prevented.

11.2. Objectives

5. A key prerequisite to managing the *risk* of a *business relationship* ~~or *occasional transaction*~~ is understanding the *customer*, ~~(~~and ~~any~~ *beneficial owner* ~~and *underlying principal*)~~, and where changes to those parties occur. ~~Also critical is maintaining~~It is also important to maintain a thorough understanding of the *business relationship* and to appropriately monitor~~ing a *customer's*~~ transactions in order to be in a position to detect, and subsequently report, suspicious activity.

6. The type of monitoring applied by the firm will depend on a number of factors and should be developed with reference to the firm's *business risk assessments* and *risk appetite*. The factors forming part of this consideration will include the size and nature of the firm's business, including the characteristics of its *customer*-base and the complexity and volume of expected transactions or activity.

7. The monitoring of *business relationships* should involve the application of scrutiny to large~~,~~ and unusual or complex transactions, as well as to patterns of transactions or activity, to ensure that such transactions and activity are consistent with the firm's knowledge of the *customer*, their business and *risk* profile, including where necessary, the source of *funds*. Particular attention should be paid to *high risk* ~~*customers*~~ *relationships* (~~including~~ for example, those involving foreign *PEPs*), ~~*and*~~ high *risk* ~~jurisdictions~~countries and territories~~, *high risk business relationships*~~ and high *risk* transactions.

8. 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. For example, unusual patterns of transactions with no apparent or visible economic or lawful purpose.

9. The nature of the monitoring in any given case will depend on the business of the firm, the frequency of activity and the types of business. Monitoring may include reference to: specific types of transactions; the relationship profile; a comparison of activities or profiles with that of a similar *customer* or peer group; or a combination of these approaches.

11.3. Obligations

10. In accordance with Paragraph 11(1) of *Schedule 3*, the firm shall perform ongoing and effective monitoring of any *business relationship*, which shall include –

(a) reviewing *identification data* and records to ensure they are kept up to date, accurate and relevant, and updating such data and records when they are not up to date, accurate or relevant;

(b) scrutinising any transactions or other activity to ensure that the transactions are consistent with the firm's knowledge of the *customer*, their business and *risk* profile (including, where necessary, the source of *funds*) and paying particular attention to all –

(i) complex transactions;
(ii) transactions which are both large and unusual; and
(iii) unusual patterns of activity or transactions,

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

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

11. In accordance with Paragraph 11(2) of *Schedule 3*, the extent of any monitoring carried out and the frequency at which it is carried out shall be determined on the basis of materiality and *risk* including, without limitation, whether or not the *business relationship* is a *high risk relationship*.

~~11. This approach will generally mean more frequent or intensive monitoring, including greater scrutiny of:~~

~~(a) high *risk relationships*, particularly those involving *PEPs*;~~
~~(b) high *risk* products/services;~~
~~(c) high *risk* countries or territories; and~~
~~(d) sanctioned entities.~~

12. Examples of the additional monitoring arrangements for *high risk relationships* could include:

(a) undertaking more frequent reviews of *high risk relationships* and updating *CDD information* on a more regular basis;
(b) undertaking more regular reviews of transactions and activity against the profile and expected activity of the *business relationship*;
(c) applying lower monetary thresholds for the monitoring of transactions and activity;
(d) reviews being conducted by persons not directly involved in managing the relationship, for example the *ML~~FC~~CO*;
(e) ensuring that the firm has adequate MI systems to provide the *board* and *ML~~FC~~CO* with the timely information needed to identify, analyse and effectively monitor *high risk relationships* and *accounts*;
(f) appropriate approval procedures for high value transactions in respect of *high risk relationships*; and/or
(g) a greater understanding of the personal circumstances of *high risk relationships*, including an awareness of sources of third party information.

11.4. PEP Relationships

13. The system of monitoring used by the firm must provide for the ability to identify where a *customer*~~,~~ or *beneficial owner* ~~*or underlying principal*~~ becomes a *PEP* during the course of the *business relationship* and whether that person is a foreign, domestic or *international organisation PEP*.

14. In accordance with Paragraph 5(3)(a)(ii) of *Schedule 3*, where a *customer or beneficial owner* becomes a foreign *PEP* during the course of an existing *business relationship*, as part of the *ECDD* measures subsequently applied the firm shall obtain senior management approval to continue that relationship.

15. Where the firm identifies during the course of a *business relationship* that the *customer* or *beneficial owner* is a domestic or *international organisation PEP*, it should refer to the requirements of *Commission Rule* 8.44.

~~14.~~16. It is not expected that the firm will have a thorough knowledge of, or fully research, a family connection. The extent to which a connection is researched should be based upon the size, scale, complexity and involvement of the person in the context of the *business relationship* and the profile of the *business relationship*, including its asset value.

~~15.~~17. It is possible that family members and/or associates may not inform the firm, or even be aware, of their *PEP* status and therefore independent screening and monitoring should be conducted. It is also possible that an individual's *PEP* status may not be present at take-on, for example, where that person takes office during the life of a *business relationship* ~~stage~~. It is therefore ~~essential~~ important that ongoing monitoring exists in order to identify changes of status and *risk* classification.

11.5. High Risk Transactions or Activity

~~16.~~18. When conducting ongoing monitoring, the following are examples of red flags which may indicate high *risk* transactions or activity within a *business relationship*:

(a) an unusual transaction in the context of the firm's understanding of the *business relationship* (for example, abnormal size or frequency for that *customer* or peer group, or a transaction or activity involving an unknown third party);
(b) funds originating from, or destined for, an unusual location, whether specific to an individual *business relationship*, or for a generic *customer* or product type;
(c) the unexpected dormancy of an *account*, or transactions or activity unexpectedly occurring after a period of dormancy;
(d) unusual patterns of transactions or activity which have no apparent economic or lawful purpose;
(e) an instruction to effect payments for advisory or consulting activities with no apparent connection to the known activities of the *customer* or their business;
(f) the involvement of charitable or political donations or sponsorship; or
(g) a~~n~~ *relevant connection*~~association~~ with a ~~jurisdiction~~ country or territory that has significant levels of corruption, or provides funding or support for terrorist activities.

~~17.~~19. Transactions or activity to or from jurisdictions specified in the Business from Sensitive Sources Notices and Instructions issued by *the Commission* must be subject to a greater level of caution and scrutiny.

https://www.gfsc.gg/commission/financial-crime/business-sensitive-sources-notices

11.6. Real-Time and Post-Event Transaction Monitoring

~~18.~~20. Monitoring procedures should involve a combination of real-time and post-event monitoring. Real-time monitoring focuses on transactions and activity where information or instructions are received before or as the instruction is processed. Post-event monitoring involves periodic, for example monthly, reviews of transactions and activity which have occurred over the preceding period.

~~19.~~21. Real-time monitoring of activity can be effective at reducing exposure to *ML*, *FT* and predicate offences such as bribery and corruption, whereas post-event monitoring may be more effective at identifying patterns of unusual transactions or activities.

~~20.~~22. In this respect, regardless of the split of real-time and post-event monitoring, the over-arching purpose of the monitoring process employed should be to ensure that unusual transactions and activity are identified and flagged for further examination.

11.7. Automated and Manual Monitoring

~~21.~~23. The firm's monitoring processes should be appropriate having regard to its size, activities and complexity, together with the *risks* identified by the firm within its *business risk assessments*. While bigger firms with large volumes of transactions will likely favour an automated system, the firm may conclude that a manual real-time and/or post-event monitoring process is sufficient given the size and scale of its business.

24. Notwithstanding the method of monitoring used, in accordance with the requirements of Paragraph 11(2) of *Schedule 3* the firm should adapt the parameters of its processes, in particular the extent and frequency of monitoring, on the basis of materiality and *risk*, including, without limitation, whether or not a *business relationship* is a *high risk relationship*.

~~22.~~25. In ~~determining~~ establishing the expected norms of a *business relationship* and in turn the appropriate parameters for its monitoring processes to be effective, the firm should~~must include~~ consider, as a minimum, the nature and level of expected transactions and activity and the assessed *risk* of the *business relationships* that are being monitored.

~~23.~~26. The rationale for deciding upon either a manual or automated method of monitoring, together with the criteria in defining the parameters of that monitoring, should be based on the conclusions of the firm's *business risk assessments* and *risk appetite*. The decision made by the firm should be documented as part of this process, together with an explanation demonstrating why the *board* consider the chosen method to be appropriate and effective.

11.7.1. Automated Monitoring Methods

~~24.~~27. Where the firm has a large number of *business relationships* or a high level of activity~~ies~~, effective monitoring is likely to necessitate the automation of the monitoring process. Such automated systems may be used to facilitate the monitoring of significant volumes of transactions or *business relationships*, and associated *customers* and *beneficial owners*. Automated systems may also be utilised where the firm operates in an environment where the opportunity for human scrutiny of individual transactions and activity is limited, for example, in e-commerce.

28. The use of automated monitoring methods can be effective in both strands of ongoing monitoring:

(a) identifying a transaction and/or activity which warrant further scrutiny; and
(b) screening *customers* and *beneficial owners* to *business relationships*, as well as the *payers* and *payees* to individual transactions, for connections to persons subject to UN or EU sanction or posing an increased *risk*. For example, *PEPs*, those convicted of criminal acts, or those persons in respect of whom adverse media exists.

~~25.~~29. With regard to the monitoring of transactions and activity, exception procedures and reports can provide a simple but effective means of monitoring all incoming and outgoing transactions and activity to identify those involving, amongst other things:

(a) particular countries, territories or geographical locations;
(b) particular products, services and/or *accounts*; or
(c) transactions or activity falling outside of predetermined parameters within a given time frame.

30. Where an automated monitoring method is used, whether specific to the firm or a group-wide system, the firm must:

(a) understand how the system works and how to use the system (for example, making full use of guidance);
(b) understand when changes are to be made to the system (including the nature and extent of any changes);
(c) understand the system's coverage (including the extent of the transactions, activity and/or parties monitored);
(d) understand the sources of data used (including both the source(s) of internal data fed into the system and the source(s) of external data to which it is compared);
(e) understand the nature of the system's output (exceptions, alerts etc.);
(f) set clear procedures for dealing with potential matches, driven on the basis of *risk* rather than resources; and
(g) record the basis for discounting alerts (for example, false positives) to ensure there is an appropriate audit trail.

~~26.~~31. Subject to *Commission Rule* 11.32. below, t~~T~~he firm must ensure that the parameters of any automated system allow for the generation of alerts for large and unusual, complex, ~~unusual~~ or higher *risk* transactions or activity which must be subject to further investigation.

32. Where the firm is a branch office or subsidiary of an international group and uses group-wide systems for transaction and activity monitoring, the ability for the firm to dictate the particular characteristics of the monitoring conducted by the system may be limited. Where this is the case, notwithstanding the group-wide nature of the system, the firm must be *satisfied* that it provides adequate mitigation of the *risks* applicable to the business of the firm.

~~27.~~33. The firm should be aware that the use of computerised monitoring systems does not remove the requirement for *relevant ~~staff~~ employees* to remain vigilant. It is essential that the firm continues to attach importance to human alertness. Factors such as ~~staff~~ a person's intuition; direct contact with a *customer* either face-to-face or on the telephone; and the ability, through practical experience, to recognise transactions and activities which do not seem to have a lawful or economic purpose, or make sense for a particular *customer*, cannot be automated.

11.8. Examination

~~28. Where the firm identifies any large, complex, unusual or higher *risk transaction* or pattern of *transactions* or other activity, it must undertake an investigation of that *transaction* or other activity in accordance with paragraph 11.8.(2) of this *Handbook* below.~~

34. In accordance with Paragraph 11(3) of *Schedule 3*, where within an existing *business relationship* there are complex, or large and unusual, transactions, or unusual patterns of transactions, which have no apparent economic or lawful purpose, the firm shall:

(a) examine the background and purpose of those transactions, and
(b) increase the degree and nature of monitoring of the *business relationship*.

~~29.~~35. As part of its examination, the firm should give consideration to the following:

(a) reviewing the identified transaction or activity in conjunction with the *relationship risk assessment* and the *CDD information* held;
(b) understanding the background of the activity and making further enquiries to obtain any additional information required to enable a determination to be made by the firm as to whether the transaction or activity has a rational explanation and economic purpose;
(c) reviewing the appropriateness of the *relationship risk assessment* in light of the unusual *transaction* or activity, together with any supplemental *CDD information* obtained; and
(d) considering the transaction or activity in the context of any other connected *business relationships* and the cumulative effect~~s~~ this may have on the *risk* ~~rating(s)~~ attributed to those ~~*customer* and/or *business*~~ relationship~~(s)~~.

36. For the purposes of Paragraph 11(3) of *Schedule 3*, what constitutes a large and unusual or complex transaction will be based on the particular circumstances of a *business relationship* and will therefore vary from *customer* to *customer*.

~~30.~~37. The firm must ensure that the examination of any large and unusual, complex~~, unusual~~ or otherwise higher *risk* transaction or pattern of transactions or other activity is sufficiently documented and that such *documentation* is retained in a readily accessible manner in order to assist *the Commission*, *the FIS*, other domestic competent authorities and auditors.

~~31.~~38. The firm must ensure that procedures ~~exist~~ are *maintained* which require that an internal disclosure ~~SAR~~ is filed with the *ML~~FC~~RO* in accordance with the requirements of Chapter 13 of this *Handbook* where the circumstances of the transaction or activity ~~appear~~ raise a suspicion~~us~~ of *ML* and/or *FT~~in any way~~*.

~~32.~~39. Following the conclusion of its examination, the firm should give consideration to whether follow-up action is necessary ~~to refine and amend its policies, procedures and controls~~ in light of the identified transaction or activity. This could include, but is not limited to:

(a) ~~undertaking~~ applying *ECDD* measures where this is considered necessary or where the ~~*risk*~~ firm has re-~~rating~~ assessed ~~of~~ the *business relationship* ~~h~~as being high *risk* ~~changed~~ as a consequence of the transaction or activity;
(b) considering whether further *employee* training in the identification of large and unusual, complex~~, unusual~~ or higher risk transactions and activity is needed;
~~(b)~~(c) subject to *Commission Rule* 11.32. above, considering whether there is a need to adjust ~~refine~~ the monitoring system (for example, refining monitoring~~'s~~ parameters~~,~~ or enhancing ~~ement of~~ controls for more vulnerable products, ~~/~~services and/or business units); and/or
~~(c)~~(d) applying increased levels of on-going monitoring for particular relationships.

11.9. Ongoing Customer Due Diligence

~~33.~~40. The requirement to conduct ongoing *CDD* will ensure that the firm is aware of any changes in the development of a *business relationship*. The extent of the firm's ongoing *CDD* measures

must be determined on a *risk*-sensitive basis. However, the firm must be aware that as a *business relationship* develops, the risks of *ML* and *FT* may change.

~~34.~~41. *The Commission* would expect ongoing *CDD* to be conducted on a periodic basis in line with the requirement to review *relationship risk assessments* in accordance with Paragraph 3(4)(b) of *Schedule 3*, or where a trigger event occurs in the intervening period.

~~35.~~42. It should be noted that it is not necessary to re-verify or obtain current *identification data* unless an assessment has been made that the *identification data* held is not adequate for the assessed *risk* of the *business relationship* or there are doubts about the veracity of the information already held. Examples of such could include a material change in the way that the business of the *customer* is conducted which is inconsistent with its existing business profile, or where the firm becomes aware of changes to a *customer's* or *beneficial owner's* circumstances, such as a change of address.

~~36.~~43. In order to reduce the burden on *customers* and other *key principals* in *low risk 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.

11.10. Oversight of Monitoring Controls

~~37.~~44. The ~~*board*, the *FCRO* and the~~ *MLFCCO* should have access to, and familiarise his or her self with, the results and output from the firm's monitoring processes. Such output should be ~~regularly~~ reviewed by the *MLCO* who in turn should report regularly to the *board* ~~and~~, providing relevant MI such as statistics and key performance indicators, together with details of any trends and actions taken where concerns or discrepancies have been~~are~~ identified.

~~38. In some cases the firm may form part of a group which provides a variety of financial services and/or prescribed business either through a group network or via individual entities. The diversity of such services presents differing challenges in respect of monitoring *ML*, *FT* and sanctions *risks* across the breadth of business. Where the firm undertakes cross-sectorial business, it should have controls and measures in place, including in respect of ongoing monitoring, which provide for engagement with the varying units and the capability to review or share information for relationships utilising more than one business function or service.~~

~~39.~~45. The *board* should ~~review~~ consider the appropriateness and effectiveness of the firm's monitoring processes as part of its annual review of the firm's *business risk assessments* and associated policies, procedures and controls. This should include consideration of the extent and frequency of such monitoring, based on materiality and *risk* as set out in the *business risk assessments*.

~~40.~~46. Where the firm identifies weaknesses within its monitoring arrangements, it should ensure that these are rectified in a timely manner and consideration should be given to *notifying the Commission* in accordance with the requirements of Section 2.7. of this *Handbook*.~~.~~

Chapter 12
UN, EU and Other Sanctions

Contents of this Chapter

12.1. Introduction

1. A sanction is a measure imposed by a government using laws and regulations to apply restrictive measures against a country, regime, individual, entity, industry or type of activity believed to be violating international law and could include one or more of the following:

   (a) the freezing of *funds*;
   (b) the withdrawal of financial services;
   (c) a ban or restriction on trade;
   (d) a ban or restriction on travel; or
   (e) suspension from international organisations.

2. The ultimate objective of a sanction varies according to the situation. For instance, an arms embargo and a ban on the export of certain items or raw materials could be aimed at supporting a peace process and restricting the financing of weapons by combatants. Sanctions may also be aimed at preventing the proliferation of weapons of mass destruction, disrupting terrorist operations, or trying to change the policies and actions of the target. Sanctions of this kind are a tool used increasingly for enforcing foreign policy by putting pressure on a state or entity in order to maintain or restore international peace and security. Often, sanctions are used as an alternative to force. All recent UN and EU sanctions contain information as to their intended aim or purpose.

3. This Chapter outlines the statutory provisions applicable to firms within *the Bailiwick* concerning UN, EU and other sanctions. It also covers the policies, procedures and controls required in order to comply with *the Bailiwick's* sanctions regime and the provisions for the disclosure of information to the relevant authorities in respect of designated persons and the freezing of *funds*.

12.2. Overview

4. The two key supranational bodies to determine sanctions measures relevant to the sanctions regime within *the Bailiwick* are currently the UN and the EU.

5. The UN Security Council can take measures to maintain, or restore, international peace or security. Such measures range from economic sanctions to international military action. Each UN member state is then called upon to implement the requirements of a sanctions measure in its own territory.

6. The EU applies sanctions in pursuit of the specific objectives of the Common Foreign and Security Council as set out in the Treaty of the European Union. EU sanctions are either adopted to ensure compliance with UN sanctions requirements or enacted autonomously by the EU to advance specific EU objectives. European Council ("EC") regulations imposing sanctions apply directly in member states. However, further legislation is required in each member state to impose penalties for sanctions breaches under EC regulations.

7. EC regulations impose restrictive measures in respect of designated persons, that is, persons, groups or entities designated by the UN Sanctions Committee or the EU's Security Council. These designated persons are listed in Annex 1 to EC regulations.

8. A country may also impose sanctions unilaterally as an extension of its own foreign policy, for example the UK via HM Treasury or the US via OFAC, and can request that other jurisdictions implement sanctions against a person, group or entity.

12.3. The Bailiwick's Sanctions Regime

9. The *Bailiwick* has enacted numerous pieces of legislation which implement sanctions measures, many dealing specifically with *FT*, the aim of which is to limit the availability of *funds* and financial services to terrorists and terrorist organisations:

- *The Terrorist Asset-Freezing Law*

  The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011

- The Afghanistan (Restrictive Measures) Ordinance, 2011

  The Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011
  The Afghanistan (Restrictive Measures) (Alderney) Ordinance, 2011
  The Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011

- The Al-Qaida (Restrictive Measures) Ordinance, 2013

  The Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013
  The Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013
  The Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013

- *The Terrorism Law*

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

10. In addition to the sanctions regime implemented by the above enactments, *the Bailiwick* has passed additional legislation to implement a wide range of country-specific sanctions enabling the implementation of sanctions imposed by the UN and/or the EU. UN sanctions are implemented through Order in Council under Section 1 of the United Nations Act 1946 and EU sanctions by Ordinance under Section 1 of the European Communities (Implementation) (Bailiwick of Guernsey) Law 1994.

11. While *the Bailiwick's* sanctions regime is based upon legislation that broadly mirrors equivalent legislation in the UK, it is completely separate from, and operates independently of, the UK regime.

12. Notwithstanding *the Bailiwick's* independent sanctions regime, trans-jurisdictional issues may arise at times. Many transfers of *funds* will be made to or from another jurisdiction that operates a sanctions regime and in such cases a licence, authorisation, or notification may be required in both jurisdictions. In addition, the legislative frameworks of some jurisdictions contain provisions which have extra-territorial effect, so that they may apply to some of the parties involved in a *Bailiwick* transaction on the grounds of nationality or place of incorporation even if the jurisdiction in question is not involved in that transaction.

13. Whilst not directly enforceable in *the Bailiwick*, the firm should be aware, in particular, of sanctions implemented by OFAC. OFAC regulations apply to any persons or entities, wherever based, trading in US Dollars, as well as:

(a) US citizens and permanent resident immigrants regardless of where they are located;
(b) persons and entities within the US;
~~(c) persons and entities trading in US Dollars;~~
~~(d)~~(c) US incorporated entities and their foreign branches;

~~(e)~~(d) in the cases of certain sanctions, such as those regarding Cuba and North Korea, all foreign subsidiaries owned or controlled by US companies; and

~~(f)~~(e) in certain cases, foreign persons in possession of US origin goods.

12.4. The Bailiwick's Sanctions Regime – Sanctions Committee

14. The *Bailiwick* has established a Sanctions Committee to co-ordinate sanction activities, ensure information is distributed publicly and to provide advice on sanctions. The Sanctions Committee reports to the External Relations Group of the States of Guernsey's Policy and Resources Committee and to *the Bailiwick's* AML/CFT Advisory Committee.

12.5. The Bailiwick's Sanctions Regime – External Relations Group

15. The External Relations Group is mandated on behalf of the Policy and Resources Committee to:

(a) agree to implement new sanctions measures;
(b) license frozen *funds*; and
(c) administer notifications and authorities, for example, those under specific ordinances.

16. The External Relations Group also works with HM Treasury and the Foreign Commonwealth Office.

12.6. Obligation to Report

17. Under *the Terrorist Asset-Freezing Law*, together with the Afghanistan (Restrictive Measures) Ordinance, 2011 and the Al-Qaida (Restrictive Measures) Ordinance, 2013 (collectively "*the Restrictive Ordinances*"), it is a criminal offence for the firm to fail to disclose to the Policy and Resources Committee any knowledge or suspicion it may have that a *customer* or potential *customer* is a designated person or has committed any of the offences set out *in the Terrorist Asset-Freezing Law* or *the Restrictive Ordinances*. This requirement is in addition to the reporting obligations in *the Disclosure Law* and *the Terrorism Law*.

18. Similar requirements apply to orders and ordinances implemented under the aforementioned EU and UN implementation mechanisms.

19. The firm should be aware that the effects of failing to comply with sanctions orders ~~*the Terrorist Asset-Freezing Law* or *the Restrictive Ordinances*~~ could have serious repercussions. This could include prosecution for criminal offences and/or financial penalties, levied not only against the firm, but potentially also personally against the senior management of the firm. Any such prosecution is likely to result in extensive reputational damage for the firm, its *board* and *the Bailiwick* as an international finance centre.

12.7. Designated Persons

20. For the purposes of *the Terrorist Asset-Freezing Law*, a~~A~~ designated person means any natural or *legal person*, group or entity which is:

(a) designated by the Policy and Resources Committee under *the Terrorist Asset-Freezing Law*;
(b) the subject of a designation under and within the meaning of the UK's Terrorist Asset-Freezing etc. Act 2010; or
(c) included in the list provided for by Article 2(3) of Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism (as amended from time to time).

12.8. Licences

21. The States of Guernsey's Policy and Resources Committee may grant a licence permitting the release of specified *funds* which would otherwise be caught by the provisions of *the Terrorist Asset-Freezing Law* and of *the Restrictive Ordinances*. No offence is committed in respect of such *funds* provided that the terms of the licence are complied with.

22. The Policy and Resources Committee will consider applications for licences under *the Terrorist Asset-Freezing Law* and *the Restrictive Ordinances* from any party. Such licences will normally only be issued in respect of funding for necessities such as food, medical treatment and accommodation, but funding for extraordinary expenses will also be considered.

12.9. Policies, Procedures and Controls

23. The firm must have in place appropriate and effective policies, procedures and controls to identify, in a timely manner, whether a prospective or existing *customer*, or any *beneficial owner*, *key principal* or other connected party, is the subject of a sanction issued by the UN, the EU or the States of Guernsey's Policy and Resources Committee.

~~24. Regardless of the method or system utilised, the firm must ensure that the lists of individuals and legal entities designated by the UN, the EU and the States of Guernsey's Policy and Resources Committee are consulted when identifying whether a *customer* or prospective *customer*, *beneficial owner* or any *underlying* is subject to sanction.~~

24. Examples of other connected parties for the purposes of *Commission Rule* 12.23. above include individuals or groups not deemed to be *beneficial owners* but who own rights or interests in a *legal person customer* and third party recipients of transactions.

25. For the purposes of *Commission Rule* 12.23., HM Treasury maintains a list which includes all persons whose designations are effective in *the Bailiwick* (including designations by the EU and UN), other than those persons specifically designated by the Policy and Resources Committee under *the Terrorist Asset-Freezing Law* who are separately listed by the States of Guernsey. Both lists can be found through the below links:

www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets/consolidated-list-of-targets

www.gov.gg/sanctionsmeasures

26. It should be noted that the UN and EU do not have a notification facility for advising when the lists of designated persons maintained by them are updated. However, HM Treasury (including UN and EU designations) and OFAC both offer facilities for notification by e-mail when a financial sanctions related release is published. Below are links to both facilities:

public.govdelivery.com/accounts/UKHMTREAS/subscriber/new

service.govdelivery.com/accounts/USTREAS/subscriber/new?topic_id=USTREAS_61

27. In addition, as referenced previously, OFAC sanctions apply to all transactions in US Dollars. Therefore where the firm is party to such a transaction it should be mindful of the US sanctions regime. ~~to the above,~~ OFAC publishes a list of individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups and entities, such as terrorists and narcotics traffickers designated under programmes that are not country specific. Collectively such individuals and companies are called Specially Designated Nationals

("SDNs"). The assets of SDNs are blocked and US entities are prohibited from dealing with them. The list of SDNs, and a free OFAC search facility, can be found through the below links:

www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx

sdnsearch.ofac.treas.gov

28. The firm must have in place a system and/or control to detect and block transactions connected with those natural persons, *legal persons* and *legal arrangements* designated by *the Bailiwick's* sanctions regime.

29. The transaction monitoring systems and/or controls used should enable the firm to identify:

(a) transactions, both incoming and outgoing, involving designated persons; and
(b) where the firm is a *bank* or *PSP*, transactions where insufficient ~~limited~~ identifying information has been ~~input~~ provided in accordance with the *wire transfer* requirements, ~~with the intention~~potentially for the purpose of circumventing sanctions monitoring controls (see Chapter 14 of this *Handbook*).

12.10. Customer Screening

30. In order to comply with *Commission Rule* 12.23. above, as a minimum the firm should undertake sanctions screening for all new *business relationships* and *occasional transactions*, including the *customer*, *beneficial owner*~~, any underlying principals~~ and other *key principals*, at the time of take-on, during periodic reviews and when there is a trigger event generating a relationship review.

31. Following changes to the lists of persons designated by the UN or EU, the States of Guernsey Policy and Resources Committee will issue sanctions notices to alert firms to such changes. These sanctions notices are issued by the *FIS* via THEMIS and *the Commission* through its website.

mlro.gov.gg

www.gfsc.gg/news/category/sanctions

32. The firm should have appropriate procedures and controls in place to ensure that the content of such notices is reviewed without delay, including a comparison of the firm's *customer* base against the designated persons listed within the notices. Where a positive match is identified the firm should ensure that the requisite report is filed in accordance with the legislation relevant to the particular sanctions notice.

33. Where t~~T~~he firm utilises an automated method of sanctions screening, the firm should maintain, or have access to, an audit trail of the ~~sanctions~~ screening conducted by the system. The audit trail should ~~allow~~ enable ~~for~~ the firm to demonstrate the dates on which screening checks have been undertaken and~~,~~ the results of those checks, thus allowing the firm to *satisfy* itself, and demonstrate to third parties, that the system is operating effectively. ~~and any follow up action taken.~~

34. Where the firm is part of a wider group and utilises a group-wide screening system, the firm should seek written confirmation from its head office that such an audit trail exists and that the firm can have access to any specific records upon request.

12.11. Compliance Monitoring Arrangements

~~34.~~35. The firm must ensure that its compliance monitoring arrangements include an assessment of the effectiveness of the firm's sanctions controls and their compliance with *the Bailiwick's* sanctions regime.

~~35.~~36. Testing undertaken in respect of any sanctions screening system should cover the following:

(a) ensuring that the screening system has been correctly configured and that the relevant pre-set rules have been activated;

~~(a)~~(b) assessing the accuracy of the screening system or method utilised, for example, through an analysis of the alerts generated, to ensure that designated persons are promptly identified;

(c) determining the appropriateness of the firm's controls for the business undertaken, including the method and frequency of testing;

~~(b)~~(d) where upgrades have been applied, ensuring that the system performs as expected;

~~(c)~~(e) where reliance is placed upon a third party for sanctions screening, the firm should verify the effectiveness of the screening being undertaken by that party; and

~~(d)~~(f) determining the appropriateness of the action taken by the firm where a sanctions match has been identified to ensure that the proceeds associated with designated persons are ~~appropriately~~ controlled and the necessary reporting undertaken in compliance with applicable regulatory requirements.

~~36.~~37. As part of its compliance testing, the firm should give consideration to assessing the sensitivity of any screening tools used, i.e. testing the system's "fuzzy logic". Such tests could be conducted by using real-life case studies, entering the name of sanctioned natural or *legal persons* to ensure that the expected results are achieved.

Chapter 13
Reporting Suspicion

Contents of this Chapter

13.1. Introduction

1. This Chapter outlines the statutory provisions concerning the disclosure of information; the policies, procedures and controls necessary for reporting and disclosing suspicion; and the provision of information for the purposes of the reporting and disclosing of suspicion.

2. The obligations to report and disclose suspicion are set out within *the Disclosure Law* and *the Terrorism Law* (together "*the Reporting Laws*"). Additional obligations are set out in the Disclosure (Bailiwick of Guernsey) Regulations, 2007 as amended ("*the Disclosure Regulations*") and the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007 as amended (together "*the Reporting Regulations*"), together with *Schedule 3*.

3. References in this Chapter to suspicion are references to suspicion that another person is engaged in *ML* or *FT*, or that certain property is, or is derived from, the proceeds of criminal conduct or terrorist property, as the case may be.

~~3.~~4. References in this Chapter to criminal ~~activity~~conduct are references to any~~ll~~ conduct which constitutes a criminal offence under the law of any part of *the Bailiwick*, or is, or corresponds to, conduct which, if it all took place in any part of *the Bailiwick*~~criminal acts that~~, would constitute an ~~predicate~~ offence under the law of that part of *the Bailiwick*~~for ML~~.

5. References in this Chapter to *ML* are references to offences under Sections 38, 39 and 40 of *the Law* or Part IV of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 as amended ("*the Drug Trafficking Law*").

6. The overall purpose of Sections 38, 39 and 40 of *the Law* and Part IV of *the Drug Trafficking Law* is to create extremely wide ranging 'all crime' prohibitions on *ML*, covering the following activities:

(a) concealing or transferring the proceeds of criminal conduct or drug trafficking;
(b) assisting another person to retain the proceeds of criminal conduct or drug trafficking; and
(c) the acquisition, possession or use of the proceeds of criminal conduct or drug trafficking.

7. References in this Chapter to *FT* are references to offences under Sections 8, 9, 10 or 11 of *the Terrorism Law*, Sections 9, 10, 11, 12 or 13 of *the Terrorist Asset-Freezing Law* or under Ordinances implementing international sanctions measures in respect of terrorism that are listed at Section 79 of *the Terrorism Law*. These offences apply not only to ~~terrorist financing are references to~~ the financing of terrorist acts, but also to the financing of ~~or~~ terrorist organisations, or individual terrorists, even in the absence of a link to a specific terrorist act or acts. The offences cover the following activities:

(a) fund raising for the purpose of terrorism;
(b) using or possessing money or other property that is intended to be, or may be, used for the purposes of terrorism;
(c) funding arrangements for the purposes of terrorism;
(d) money laundering of terrorist property; and
~~(a)~~(e) making funds or other economic resources available to persons included in terrorism-related sanctions lists.

8. The *ML* offences in Sections 38 to 40 of *the Law* and Part IV of *the Drug Trafficking Law* are expressed as not applying to acts carried out with the consent of a *police officer*, where that consent is given following a disclosure of suspicion. The same applies in respect of the *FT* offences at Sections 9 to 11 of *the Terrorism Law*. The effect of these provisions is that if, following the making of a report and disclosure of suspicion under *the Reporting Laws*, the *FIS* consents to the firm or person in question carrying out a relevant act, the firm or person will have

a defence to a possible charge of *ML* or *FT*, as the case may be, in relation to that act. This is referred to informally as the consent regime and is covered further at Section 13.12. of this Chapter.

9. Pursuant to *the Reporting Regulations*, the firm shall report and disclose suspicion to the *FIS* using the prescribed manner, specifically the online reporting facility THEMIS. Further information on the form and manner of disclosing suspicion can be found in Section 13.8. of this Chapter.

~~4.~~10. The firm should note that the court will take account of the *Commission Rules* and *guidance* provided in this *Handbook* in considering compliance with the disclosure requirements of *the Reporting Laws*, *the Reporting Regulations* and *Schedule 3*.

~~5.~~11. References in this Chapter to a transaction or activity include an attempted or proposed transaction or activity, or an attempt or proposal to enter into a *business relationship* or undertake an *occasional transaction*.

13.2. Definition of Knowledge or Suspicion

~~6.~~12. ~~Suspicion is a subjective issue. However, it is something less than personal or subjective knowledge but which falls short of proof based on firm evidence.~~ *The Reporting Regulations* do not define suspicion, though there is a body of UK case law which has been applied in *the Bailiwick* and which can assist *employees* of the firm in determining if there is sufficient knowledge or suspicion to file an internal disclosure with the *MLRO*, and in turn assist the *MLRO* in determining whether to make an external disclosure ~~report~~ to the *FIS*.

~~7.~~13. In the case of R v Hilda Gondwe Da Silva[1], the following was considered to amount to suspicion:

> 'there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice. But the statute does not require the suspicion to be 'clear' or 'firmly grounded and targeted on specific facts', or based upon 'reasonable grounds''.

~~8.~~14. In the case of Shah v HSBC[2], the English High Court took the view that there is a very low threshold for suspicion, which does not have to be either reasonable or rational.

15. The English courts have therefore defined suspicion as beyond mere speculation, being based on some substance. It is something less than personal or subjective knowledge and does not require proof based on firm evidence. The individual filing a ~~SAR~~ disclosure must think there is a possibility, more than merely fanciful, that the relevant facts exist and the suspicion must be of a settled nature, i.e. more than an 'inkling' or 'fleeting thought'.

13.3. Obligation to Disclose

~~9.~~16. In accordance with the requirements of *the Reporting Laws*, all suspicious transactions and activity, including attempted transactions and activity, are to be reported regardless of the value of the transaction.

~~10.~~17. A suspicion may be based upon:

[1] R v Hilda Gondwe Da Silva [2006] 2 Crim App R 35
[2] Shah v HSBC Private Bank (UK) Limited [2012] EWHC 1283

(a) a transaction or attempted transaction or activity which is inconsistent with a *customer's* (or *beneficial owner's*) known legitimate business, activities or lifestyle or is inconsistent with the normal business for that type of product/service; or

~~(b) a belief that the firm has committed an *ML* and/or *FT* offence by becoming involved in:~~

~~(i) concealing or transferring the proceeds of crime;~~

~~(ii) assisting another person to retain the proceeds of criminal conduct; or~~

~~(iii) the acquisition, possession or use of the proceeds of criminal conduct; or~~

~~(c)~~(b) information from other sources, including law enforcement agencies, other government bodies (for example, Income Tax), the media, intermediaries, or the *customer* themselves.

~~11.~~18. An important precondition for the recognition of suspicious activity is for the firm to know enough about the *business relationship* or *occasional transaction* to recognise that a transaction or activity is unusual in the context. Such knowledge would arise mainly from complying with the monitoring and on-going *CDD* requirements in Paragraph 11 of *Schedule 3* and Chapter 11 of this *Handbook*.

~~12.~~19. The *board* of the firm 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 the firm 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.

~~13.~~20. 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~~employed by ~~a~~the firm would have inferred knowledge or formed the suspicion that another was engaged in *ML* or *FT*.

~~14.~~21. 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. As an example, an out of the ordinary transaction or activity within a *business relationship* should prompt the firm to conduct enquiries about the transaction or activity.

~~15.~~22. There may be a number of reasons why the firm is not entirely happy with *CDD information* or where the firm otherwise needs to ask questions. Examples of such are provided within Section 13.5. of this Chapter. Where the firm has queries, regardless of the level of suspicion, to assist them in formulating or negating a suspicion, any enquiries of the *customer* or other *key principal* should be made having due regard to the tipping off provisions.

~~16.~~23. The firm should consider whether the nature of a particular suspicion is such that all of the assets of the *business relationship* are potentially suspect. Where it is not possible to separate assets which are suspicious from those which are legitimate, it will be necessary to carefully consider all future transactions or activity and the nature of the continuing relationship. The firm should also consider~~, and to~~ implementing an appropriate *risk*-based strategy to deal with any *risk* associated with the *business relationship*.

~~17.~~24. It should be ~~borne in mind~~noted that suspicion of *ML* or *FT* could relate to assets whether they directly or indirectly relate to criminal conduct.

~~18.~~25. While the firm is not expected to conduct the kind of investigation carried out by law enforcement agencies, it must act responsibly when asking questions to satisfy any gaps in ~~the~~its *CDD*, or its understanding of a particular transaction or activity or proposed transaction or activity.

13.4. Attempted Transactions

~~19.~~26. The~~re is no generic~~ definition of *ML* and *FT*~~an attempted *transaction*~~ in ~~either~~ *the Reporting Laws* includes an attempt to carry out an offence of *ML* or *FT*. This means that attempted transactions fall within the scope of the reporting obligations~~*Relevant Enactments*~~. An attempted transaction could be classified as one that a *customer* intended to conduct with the firm and took some form of action or activity to do so but failed to complete. An attempted transaction is different from a single request for information, such as an enquiry as to the fee applicable to a specific transaction. The *customer* must enter into negotiations or discussions with the firm to conduct the transaction or activity and such activity must involve specific measures to be taken by either the *customer* or the firm.

~~20.~~27. The obligation to report suspicion applies to all types of activity and attempted transactions or activity, including circumstances where there is no existing *business relationship* with the *customer* and no such *business relationship* is subsequently established.

~~21.~~28. During the course of attempting to set up a new *business relationship*, due consideration should be given during the *CDD* process to key points raised with or by the *customer*, for example, if the *customer* fails to explain the source of funds; if the purpose of the *account* or advice required does not make sense; or if questions are asked about the disclosure to tax authorities of the existence of an *account* or the disclosure to other similar authorities. Depending upon the information received, the firm may form a suspicion of *ML* and/or *FT* in which case a disclosure shall be submitted to the *FIS* in accordance with *the Disclosure Law* or *the Terrorism Law*.

~~22.~~29. The *FIS* has published a guidance document concerning 'Attempted Transactions'. The objective of the document is to assist firms in the determination of whether a disclosure should be submitted to the *FIS*.

http://www.guernseyfiu.gov.gg/CHttpHandler.ashx?id=91507&p=0

13.5. Potential Red Flags

~~23.~~30. The following is a non-exhaustive list of possible *ML* and *FT* red flags that the firm should be mindful of when dealing with a *business relationship* or *occasional transaction*:

(a) The deposit or withdrawal of unusually large amounts of cash from an *account*.
(b) Deposits or withdrawals at a frequency that is inconsistent with the firm's understanding of that *customer* and its circumstances.
(c) Transactions involving the unexplained movement of *funds*, either as cash or wire transfers.
(d) Payments received from, or requests to make payments to, unknown or un-associated third parties.
(e) Personal and business related money flows that are difficult to distinguish from each other.
(f) Financial activity which is inconsistent with the legitimate or expected activity of the *customer*.
(g) An *account* or *business relationship* becomes active after a period of dormancy.
(h) The *customer* is unable or reluctant to provide details or credible explanations for establishing a *business relationship*, opening an *account* or conducting a transaction.
(i) The *customer* holds multiple ~~bank~~ *accounts* for no apparent commercial or other reason.
(j) *Bank* drafts cashed in for foreign currency.
(k) Cash deposited domestically with the *funds* subsequently withdrawn from ATMs in another jurisdiction.
(l) Early surrender of an insurance policy incurring substantial loss.
(m) Frequent early repayment of loans.

(n) Frequent transfers indicated as loans sent from relatives.
(o) *Funds* transferred to a charity or NPO with suspected links to a terrorist organisation.
(p) High level of *funds* placed on store value cards.
(q) Insurance policy being closed with a request for the payment to be made to a third party.
(r) Large amounts of cash from unexplained sources.
(s) Obtained loan and repaid balance in cash.
(t) Purchase of high value assets followed by immediate resale with payment requested via cheque.
~~(i)~~(u) Request by a third party (outside of *the Bailiwick*) to pay cash (in excess of €10,000) for purchase of high value assets, for example, vehicles.

31. The above list is not exhaustive and its content is purely provided to reflect examples of possible red flags. The existence of one or more red flag does not automatically indicate suspicion and there may be a legitimate reason why a *customer* has acted in the manner identified.

13.6. Policies, Procedures and Controls

~~24.~~32. In accordance with Paragraph 12(1)(h) of *Schedule 3*, the firm shall ensure that it establishes and maintains such other appropriate and effective procedures and controls as are necessary to ensure compliance with requirements to make disclosures under Part I of *the Disclosure Law*, and Sections 15 and 15A or Section 12 (as appropriate) of *the Terrorism Law*.

~~25.~~33. In ~~The firm must~~ establishing appropriate and effective policies, procedures and controls ~~in order~~ to facilitate compliance with the ~~reporting~~ requirements of *the Reporting Laws* and *the Reporting Regulations*, the firm's policies, procedures and controls must ensure that:

(a) each suspicion of *ML* or *FT* is reported to the *ML~~FC~~RO*, or in his or her absence a *Nominated Officer*, 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*;
(b) where an *employee* of the firm knows or suspects, or has reasonable grounds for knowing or suspecting, that someone is engaged in *ML* and/or *FT*, an internal disclosure is made to the *MLRO*, or in his or her absence a *Nominated Officer*, of the firm;
(c) the *ML~~FC~~RO* or ~~/~~*Nominated Officer* promptly considers each ~~such internal suspicion report~~internal disclosure and determines whether it results in there being knowledge or suspicion, or reasonable grounds for knowledge or suspicion, that someone is engaged in *ML* and/or *FT* or that certain property represents, or is derived from, the proceeds of criminal conduct or terrorist property;
(d) where the *ML~~FC~~RO* or *Nominated Officer* has determined that an internal disclosure~~suspicion report~~ does result in there being such knowledge or suspicion, or reasonable grounds for knowledge or suspicion, that someone is engaged in *ML* and/or *FT*, that the *~~FC~~MLRO* or *Nominated Officer* discloses that suspicion to the *FIS*; and~~where, during the *CDD* process, the firm knows or suspects that someone is engaged in ML and/or FT a disclosure is made to the *FIS* under *the Reporting Laws*.~~
~~(d)~~(e) all internal and external disclosures made in the above manner are of a high quality and meet the standards set out in this *Handbook* and in any feedback and guidance notices issued by the *FIS* and *the Commission*.

13.7. Internal Disclosures

~~26.~~34. In accordance with Paragraph 12(1)(e) *Schedule 3*, the firm shall ensure that where an *employee*, other than the *MLRO*, is required to make a disclosure under Part I of *the Disclosure Law*, or Section 15 or Section 12 (as appropriate) of *the Terrorism Law*, that this is done by way of a report to the *MLRO*, or, in that officer's absence, to a *Nominated Officer*.

~~27.~~35. The firm must have appropriate and effective internal ~~reporting~~ disclosure policies, procedures and controls to ensure that:

(a) all *employees* know to whom within the firm and in what format their suspicions must be ~~reported~~disclosed;

(b) all ~~suspicion reports~~internal disclosures are considered by the *ML~~FC~~RO*, or in his or her absence a *Nominated Officer*, and where the *~~FC~~MLRO* or *Nominated Officer* makes a decision not to make an external disclosure to the *FIS*, the reasons for the decision not to disclose are documented and retained;

(c) enquiries made by an *MLRO* or *Nominated Officer* in respect of disclosures are~~must be~~ recorded and documented; and

(d) once an external disclosure has been made to the *FIS*, the *ML~~FC~~RO* or *Nominated Officer* immediately informs the *FIS* where subsequent relevant information or documentation is received.

~~28.~~36. The *ML~~FC~~RO* should consider whether to include within the firm's procedures the provision of an acknowledgment to evidence the submission of an internal disclosure~~SAR~~. Such an acknowledgement would provide confirmation to the submitter that his or her statutory obligations have been fulfilled.

13.8. Form and Manner of Disclosure to the FIS

~~29.~~37. In accordance with the requirements of *the Reporting Laws*, suspicion of *ML* ~~(including drug *ML*)~~ shall be disclosed under the provisions of *the Disclosure Law* and suspicions relating to *FT* shall be disclosed under *the Terrorism Law*.

~~30.~~38. *The Reporting Laws* require that information contained in an internal disclosure~~reports~~ made to an *ML~~FC~~RO* or *Nominated Officer* is disclosed to the *FIS* where the *ML~~FC~~RO* or *Nominated Officer* knows or suspects, or has reasonable grounds for knowing or suspecting, as a result of the internal disclosure~~report~~, that a person is engaged in *ML* and/or *FT*.

~~31.~~39. In accordance with Paragraph 12(1)(f) of *Schedule 3*, the firm shall ensure that the *MLRO*, or in that officer's absence a *Nominated Officer*, in determining whether or not he or she is required to make a disclosure under Part I of *the Disclosure Law*, or Section 15A or Section 12 (as appropriate) of *the Terrorism Law*, takes into account all relevant information.

~~32.~~40. *The Reporting Regulations* provide that disclosures to the *FIS* are to be made in the prescribed manner, specifically through the online reporting facility THEMIS:

mlro.gov.gg

41. In exceptional circumstances a disclosure can be made using the form set out in the Schedule to *the Disclosure Regulations*. However, in accordance with Regulation 1(2) of *the Disclosure Regulations*, the firm shall obtain the consent of an authorised officer (*SIO*, Inspector or above) prior to submitting such a form.

~~33.~~42. In accordance with Paragraph 12(1)(g) of *Schedule 3*, the firm shall ensure that the *MLRO*, or, in his or her absence, a *Nominated Officer*, is given prompt access to any other information which may be of assistance to him or her in considering any report.

~~34.~~43. Prior to making a disclosure to the *FIS*, the firm should consider all available information in respect of the *business relationship* or *occasional transaction*. Notwithstanding this

consideration, disclosures to the *FIS* should be made promptly following a determination by the *ML~~FC~~RO* or *Nominated Officer* that a disclosure is appropriate.

~~35.~~44. Where the *ML~~FC~~RO* or *Nominated Officer* considers that a disclosure should be made urgently, for example, where the *customer's* product is already part of a current investigation, initial notification to the *FIS* may be made by telephone on +44(0) 1481 714081.

http://www.guernseyfiu.gov.gg/article/5991/FIU-Contact

13.9. Information to be Provided with a Disclosure

~~36.~~45. The firm should provide the *FIS* with a full account of the circumstances and grounds (suspected underlying criminality) for suspicion. In providing such detail the firm should~~must~~ include as much relevant information and documentation as possible (for example, *CDD* ~~*documentation*~~*information*, statements, contract notes, ~~correspondence,~~ minutes, transcripts, etc.) ~~as possible~~ to demonstrate why suspicion has been raised and to enable the *FIS* to fully understand the purpose and intended nature of the *business relationship* or *occasional transaction*.

~~37.~~46. The firm should examine all connected *accounts* and/or relationships and provide detailed, current balances of such to the *FIS*. Research of connected *accounts* or relationships should not delay the firm making a disclosure to the *FIS*.

~~38.~~47. *The Reporting Laws* provide that a disclosure made in good faith 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. Additionally, *the Reporting Laws* ~~both~~ require that disclosures made under them include information or documentation relating to the knowledge, suspicion, or reasonable grounds for suspicion, that the person in respect of whom the disclosure is made is engaged in *ML* and/or *FT*, and any fact or matter upon which such knowledge, suspicion, or reasonable grounds for suspicion, is based.

~~39.~~48. The firm is also required to provide the *FIS* with the reasons for suspicion. The firm should clearly define the grounds for suspicion and any specific indicators or suspected criminality within the main body of the ~~report~~disclosure. The firm may have multiple grounds, i.e. *ML* and tax evasion or bribery and corruption and fraud.

~~40.~~49. For the purposes of the above, 'information' or 'document' includes any information or document relating to:

(a) any money or property;
(b) any transaction concerning such money or property; or
(c) the parties to any such transaction.

50. Where the firm is a legal professional, consideration should be given to Section 13.18. of this *Handbook* which provides guidance in respect of information or documentation which may be subject to legal professional privilege.

13.10. Group Reporting

~~41.~~51. It is for each firm or group to consider whether, in addition to any disclosure made in *the Bailiwick*, the *ML~~FC~~RO* should report suspicions within the firm 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 to disclose suspicions to the *FIS*.

42.52. When deciding whether to report within the firm or group, consideration should be given to the sensitivity of the disclosure and the risks involved in the sharing of this information, for example, if the subject of the disclosure is under ongoing investigation by the *FIS*. In this respect, consideration should be given by the firm to anonymising disclosures prior to onward reporting.

13.11. The Response of the FIS

43.53. Upon submitting a d~~D~~isclosure~~s~~ to the *FIS* via ~~made through~~ THEMIS, a response ~~are~~ acknowledging~~ed~~ receipt will be sent automatically~~immediately~~. Similarly if, following appropriate permission from the *FIS*, a paper disclosure has been submitted, a response acknowledging receipt will be sent to the firm.

44.54. If the *FIS* consider that the disclosure, whether through THEMIS or in paper form, contains information that is not of a qualitative nature as detailed in Section 13.9. above, the firm will be notified and sufficient additional information should be provided to the *FIS*.

~~45. If the disclosure does not refer to a specific *transaction* or activity that could constitute an *ML* or *FT* offence, the response from the *FIS* will simply acknowledge receipt of the disclosure.~~

~~If the disclosure does include reference to a specific *transaction* or activity that has led to the suspicion and ultimately a disclosure, the firm should indicate whether or not it intends to carry out the *transaction* or activity and if so request consent from the *FIS* to continue with the particular *transaction* or activity. The *FCRO* should exhaust all avenues at his disposal to either negate or confirm whether or not there is a suspicion before seeking *FIS* consent.~~

~~46. Upon receipt of such a request the *FIS* will consider whether or not it may give consent under the relevant provisions. The *FIS* will, except in exceptional circumstances, advise in writing the nature of its decision regarding the request within seven days of receipt of the disclosure. In urgent matters, consent may be given orally by the *FIS*, but will be followed by written confirmation.~~

47.55. Access to disclosures will be restricted to appropriate authorities and any information provided by the *FIS* emanating from such disclosures will normally be anonymous. In the event of a prosecution, the source of the information will be protected as far as the law allows.

48.56. 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.

13.12. Consent Requests

49.57. It is for each firm, group or person to consider whether any disclosure of suspicion made to the *FIS* concerns an 'act' that would constitute an *ML* offence as detailed in Section 13.1. above.

58. If the firm, group or person suspects such an 'act' may be committed and the firm, group or person intends to carry out such an 'act', a request should be submitted, as part of the firm's disclosure to the *FIS*, outlining the suspected 'act' and seeking consent from a *police officer* to undertake the 'act'.

59. Upon receipt of a request, the *FIS* will consider whether or not to grant consent under the provisions of the relevant legislation:

(a) If the disclosure and/or request does not contain sufficient information to demonstrate why suspicion has been raised and to enable the *FIS* to fully understand the purpose and

intended nature of the *business relationship* or *occasional transaction*, a reply may be sent stating that:

'Based upon the information provided the *FIS* does not consider the request made to be a consent issue'.

Such a response does not imply that the intended transaction or activity could not constitute an offence, only that the *FIS* has not received sufficient information in order to make that determination and therefore if consent would apply.

(b) If consent is granted a response may be sent stating that:

'Based upon the information provided you have consent to continue or maintain the account(s) or other relationship'.

It should be noted that a consent to continue or maintain an *account* or relationship, granted by a *police officer*, only provides a criminal defence to the offence in relation to the 'act' specified in the request. It should also be noted that such a consent does not release the firm, group or person from their obligation in respect of all future transactions and activity on the *account* or arising from the relationship.

(c) If there are cogent grounds to suspect that the *funds* represent the proceeds of crime, the *FIS* may withhold consent and advise the firm accordingly.

60. The firm, group or person may wish to consider submitting a further disclosure should the circumstances detailed in the original disclosure change in such a way as to give rise to further knowledge or suspicion of *ML* or *FT* not already disclosed to the *FIS*.

61. The *FIS* will endeavour to reply to a consent request as soon as practicable. Nevertheless, it should be noted that the *FIS* is not mandated by law to respond within a specified timeframe. The firm should not continue with the intended transaction or activity until a response from the *FIS* has been received.

~~13.12.~~13.13. Tipping Off

~~50.~~62. The *Reporting Laws* provide that it is a criminal offence for a person, who knows or suspects that an internal disclosure ~~SAR~~ to an *ML~~FC~~RO* or an external disclosure to the *FIS* has been or will be made, or any information or other matter concerning a ~~*SAR* or~~ disclosure has been or will be communicated to an *ML~~FC~~RO* or the *FIS*, to disclose to any other person information or any other matter about, or relating to, that knowledge or suspicion unless it is for a purpose set out in *the Reporting Laws*.

~~51.~~63. The purposes detailed in *the Reporting Laws* include, but are not limited to, the prevention, detection, investigation or prosecution of criminal offences, whether in *the Bailiwick* or elsewhere.

~~52.~~64. Reasonable enquiries of a *customer*, 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 on-going monitoring, and should not give rise to tipping off.

~~53.~~65. If the firm identifies open source information on the *customer* (for example, a media article indicating that the *customer* is or has been subject to criminal proceedings) this should not give rise to tipping off. However, the firm should consider disclosing ~~reporting~~ the matter to the *FIS* ~~by way of a disclosure~~in accordance with Section 13.3. above).

~~54.~~66. HM Procureur has issued a paper entitled 'Guidance on Prosecution for Tipping Off' which permits~~provides for~~ disclosures to be made to members of the same organisation or linked organisations to discharge their AML and CFT responsibilities, save where there are grounds to believe that this may prejudice an investigation.

https://www.gov.gg/CHttpHandler.ashx?id=4637&p=0

~~55.~~67. The firm's policies, procedures and controls must enable the~~an~~ *ML~~FC~~RO* to consider whether it is appropriate to disclose a suspicion to the *FIS* 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 with ~~this process~~the decision. Such procedures must also provide for the *ML~~FC~~RO* to consider whether it would be more appropriate to decline to proceed with a transaction and to give due thought to the future of the *business relationship* as a whole before proceeding.

~~13.13.~~13.14. Terminating a Business Relationship

~~56.~~68. Whether or not to terminate a *business relationship* is a commercial decision, except where required by law, for example, where the firm cannot obtain the required *CDD information* (see Chapter 4 of this *Handbook* and Paragraph 9 of *Schedule 3*).

~~57.~~69. There will be occasions where it is feasible for the firm to agree a joint strategy with the *FIS*, but the *FIS* will not seek to influence what is ultimately a decision for the firm regarding the future of its *business relationship* with the *customer* and the online reporting facility cannot be used for this purpose.

~~58.~~70. Where the firm takes the decision to terminate a *business relationship* after it has made a disclosure or requested *FIS* consent and is concerned that, in doing so, it may prejudice an investigation or contravene the tipping off ~~rules~~obligations, it ~~must~~ should engage with the *FIS* accordingly. However, the decision whether or not to terminate a *business relationship* is a decision that ultimately rests~~however, remains~~ with the firm.

~~13.14.~~13.15. FIS Requests for Additional Information

~~59.~~71. Under Regulation 2 of *the Reporting Regulations*, the *FIS* may serve a written notice on a person who has made a disclosure requiring that person to provide additional information relating to the disclosure. Such additional information may provide clarification of the grounds for suspicion and allow the person to whom the disclosure has been made to make a judgement as to how to proceed.

~~60.~~72. An amendment to *the Reporting Regulations* came into force on 7 August 2014 providing that, if a disclosure has been made, the *FIS* can request information relating to that disclosure from a third party if it is satisfied that there are reasonable grounds to believe that the third party possesses relevant information and that there are reasonable grounds to believe that the information is necessary for the *FIS* to properly discharge its functions.

~~61.~~73. Regulation 2A of *the Reporting Regulations* applies where a person has made a disclosure under Section 1, 2 or 3 of *the Disclosure Law* and/or under Section 12, 15 or 15C of *the Terrorism Law* and the *police officer* to whom the disclosure was made believes, as a result, that a third party may possess relevant information.

~~62.~~74. A *police officer* may, by notice in writing served upon a third party, require that third party to provide the *police officer* or any other specified officer with such additional information relating

to the initial disclosure as it may require. Any such additional information will be requested in writing.

~~63.~~75. Ordinarily the information requested under Regulation 2 or Regulation 2A of *the Reporting Regulations* shall be provided within seven days, though the *FIS* may extend that time period when justification is provided by the firm regarding the need to extend the period. The time period may also be reduced if the information is required urgently.

~~64.~~76. The firm has a statutory obligation to provide additional information pursuant to Regulation 2 or Regulation 2A of *the Reporting Regulations*. The *police officer* would have obtained authority from the head of the *FIS* or an officer of the rank of *SIO* or Inspector (or above) for a notice to be served. Failure without reasonable excuse to comply with a notice (including within the specified time frame) is a criminal offence.

~~13.15.~~13.16. Management Information

~~65.~~77. The regular receipt of adequate and appropriate MI is beneficial in helping ~~to~~ the *board* ensure that the ~~*board* of the~~ firm can discharge its responsibilities fully under Paragraph 12(1)(h) of *Schedule 3*.

78. The MI provided to the *board* must include, as a minimum:

(a) the number of internal disclosures received by the *MLRO* or a *Nominated Officer*;
(b) the number of external disclosures reported onward to the *FIS*;
(c) an indication of the length of time taken by the *MLRO or Nominated Officer* in deciding whether or not to externalise an internal disclosure; and
(d) the nature of the disclosures.

~~13.16.~~13.17. Record Keeping

~~66.~~79. In accordance with *Commission Rule* 16.17., in addition to the record keeping requirements in respect of individual ~~SARs and~~ disclosures, the firm~~a register~~ must also ~~be~~ maintain~~ed~~ a register recording~~noting~~ all ~~SARs~~ internal and external disclosures to allow for the *ML~~F~~C~~F~~RO* to maintain oversight of matters. This will assist in, amongst other things, identifying trends in ~~SARs~~internal and external disclosures and vulnerabilities across the firm's *customer* base.

~~13.17.~~13.18. Legal Professional Privilege and Privileged Circumstances

13.18.1. Introduction

80. There may be times when there are tensions between lawyers' professional and ethical obligations to their *customers* and their reporting obligations under *the Reporting Laws*, *the Reporting Regulations* and *Schedule 3*. Lawyers are subject to unique ethical and legal obligations that mean that in limited circumstances they may be restricted in their ability to disclose a suspicion of *ML* or *FT*. The concept of legal professional privilege ("LPP") recognises a *customer's* fundamental human right to be candid with his or her legal adviser, without fear of later disclosure to his or her prejudice.

81. ~~Pursuant to s~~Section 3(6)(c)-(d) of *the Disclosure Law* and Sections 12(6)(c)-(d) and 15(6)(a)-(b) of the *Terrorism Law* recognise that there may be limited circumstances in which a failure to report may be excused by providing that~~,~~ a person does not commit an offence for failing to disclose~~report~~ a suspicion of *ML* or *FT* where:

(a) he or she has some other reasonable excuse for not disclosing the information or other matter; or

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

82. The same provisions are included in the equivalent UK legislation and at the time the publication of this *Handbook* there is no judicial guidance (either in the UK or *the Bailiwick*) on what might constitute a "reasonable excuse" under Section 3(6)(c) of *the Disclosure Law* and Sections 12(6)(c) and 15(6)(a) of *the Terrorism Law* referenced above.

83. Whilst it will ultimately be for the courts to decide if a reason for not making a disclosure was a reasonable excuse, *the Commission* agrees with the position taken by the UK Legal Sector Affinity Group[3] that a person will have a reasonable excuse for not making an authorised disclosure when the knowledge or suspicion of *ML* or *FT* is based on privileged information and LPP is not excluded by the exceptions set out below.

84. In any given case a person should clearly document his or her reasons for concluding that there is a reasonable excuse for non-disclosure.

85. As noted above, distinct from LPP, in accordance with Section 3(6)(d) of *the Disclosure Law* and Sections 12(6)(d) and 15(6)(b) of *the Terrorism Law*, a legal professional adviser may also have a defence from prosecution for failure to report where information or another matter giving rise to knowledge or suspicion of *ML* or *FT* "came to him in privileged circumstances".

~~67.~~86. *The Reporting Laws* in turn state that i~~I~~nformation or another matter comes to a professional legal adviser in privileged circumstances if it is communicated or given to them:

(a) by (or by a representative of) a *customer* in connection with the provision of legal advice;
(b) by (or by a representative of) a person seeking legal advice; or
(c) by a person in connection with legal proceedings or contemplated legal proceedings.

~~68.~~87. Neither LPP nor the privileged circumstances exemption will apply if ~~It should be noted, however, that~~the information is communicated or given to the legal professional ~~held~~ with the intention of furthering a criminal purpose ~~would not be subject to LPP~~.

88. The remainder of this section examines the tension between a legal professional's duties and the provisions of *the Reporting Laws* and *the Reporting Regulations* and should be read in conjunction with the rest of this Chapter. If you are still in doubt as to your position, you should seek independent legal advice.

13.18.2. Overview of LPP

~~69.~~89. LPP is a privilege against disclosure~~,~~; ensuring *customers* know that certain documents and information provided to legal professionals cannot be disclosed at all. It recognises the *customer's* fundamental human right to be candid with his or her legal adviser, without fear of later disclosure to his or her prejudice. It is an absolute right and cannot be overridden by any other interest.

~~70.~~90. LPP does not, however, extend to everything legal professionals have a duty to keep confidential. LPP protects only those confidential communications falling under either (or both) of the two heads of privilege — ~~legal~~ advice privilege or litigation privilege.

[3] The group of AML supervisors for the UK legal sector. The Commission's position as set out here is based on guidance issued by the UK Legal Sector Affinity Group in March 2018: https://www.lawsociety.org.uk/policy-campaigns/articles/anti-money-laundering-guidance/.

~~71.~~91. LPP belongs to the *customer*, not the legal professional, and may only be waived by the *customer*.

13.18.3. Advice Privilege

92. ~~legal advice privilege protects confidential c~~Communications between a legal professional adviser, ~~lawyers~~ acting in ~~their~~his or her capacity as a legal professional ~~capacity,~~ and ~~the~~i~~s~~r or her *customer*~~s~~, are privileged if they are both:

(a) confidential; and
(b) made for the ~~made for the~~ dominant purpose of seeking ~~or giving~~ legal advice from a legal professional or providing legal advice to a *customer*.~~; or~~

93. Communications are not privileged merely because a *customer* is speaking or writing to a legal professional. The protection applies only to those communications that directly seek or provide advice, or which are given in a legal context, that involves the legal professional using his or her legal skills and which are directly related to the performance of the legal professional's professional duties.

13.18.4. Litigation Privilege

94. L~~l~~itigation privilege, which is wider than advice privilege, ~~applies where there is 'a real likelihood' of litigation or litigation is actually underway and which~~ protects confidential communications made after litigation has started, or is reasonably in prospect, between any of the following:

(a) a legal professional ~~lawyers~~ and a *customer*;
(b) a legal professional and an agent, whether or not that agent is a legal professional; or
~~(d)~~(c) ~~between lawyers~~a legal professional and a third party.~~ies and documents created by, or on behalf of, a lawyer or his customer.~~

95. These communications are to be for the sole or dominant purpose of litigation, for any of the following:

(a) seeking or giving advice in relation to it;
(b) obtaining evidence to be used in it; or
(c) obtaining information leading to obtaining such evidence.

13.18.5. Important Points to Consider with LPP

96. An original document not brought into existence for privileged purposes and so not already privileged, does not become privileged merely by being given to a legal professional for advice or other privileged purpose.

97. Further, where the *customer* of a legal professional is a corporate entity, communication between the legal professional and the employees of a corporate *customer* may not be protected by LPP if the employee cannot be considered to be the *customer* for the purposes of the retainer. As such, some employees will be *customers*, while others will not.

98. It is not a breach of LPP to discuss a matter with the firm's *MLRO* for the purposes of receiving advice on whether to make a disclosure.

13.18.6. Exceptions to LPP

~~72.~~99. LPP protects advice given by a ~~lawyer~~ legal professional adviser to a *customer* on avoiding committing a crime or warning them that proposed actions could attract prosecution. LPP does not, however, 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 the ~~lawyer~~ legal professional is aware that they are~~is~~ being used for that purpose.

~~73.~~100. It is not just the *customer'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~~legal professional/communication to be made with that purpose (for example, where the innocent *customer* is being used by a third party).

~~74.~~101. If the ~~firm~~ legal professional knows the transaction or activity being worked on constitutes criminal conduct~~is a principal offence~~, ~~t~~the or she ~~firm~~ risks committing an offence by facilitating criminal conduct and/or failing to disclose knowledge or suspicion of *ML* or *FT*. In those circumstances~~Also~~, communications relating to the transaction or activity are not privileged and can be disclosed.

~~75.~~102. If the firm merely suspects a transaction or activity might constitute an *ML* and/or *FT* offence, the position is more complex. If the suspicions are correct, communications with the *customer* are not privileged. If the suspicions are unfounded, the communications should remain privileged and are therefore not~~n~~ required to be disclosed~~able~~.

103. LPP will also be lost where there has been an express or implied waiver. This may occur where the communication is no longer confidential, as confidentiality is a requirement for both types of LPP.

13.18.7. Privileged Circumstances

104. Distinct from LPP, and as noted in Paragraph 13.85. above, *the Reporting Laws* both recognise another type of protected communication, one which is received in "privileged circumstances". This is not the same as LPP, it is merely an exemption from the requirement to disclose knowledge or suspicion of *ML* or *FT*, although in many cases the communication will also be covered by LPP.

105. The essential elements of the privileged circumstances exemption are:

(a) the information or material is communicated to a "professional legal adviser" (not defined in *the Reporting Laws*):

(i) by a *customer* (or their representative) in connection with the giving of legal advice;
(ii) by a person (or their representative) seeking legal advice; or
(iii) by a person in connection with actual or contemplated legal proceedings; and

(b) the information or material was not communicated or given to the professional legal adviser with a view to furthering a criminal purpose.

106. The exceptions set out in Section 13.18.6. above should be considered when assessing what constitutes furthering a criminal purpose.

13.18.8. Differences Between LPP and Privileged Circumstances

107. Where litigation is neither contemplated nor reasonably in prospect, except in very limited circumstances, communications between a legal adviser and third parties will not generally be protected by LPP.

108. However, the extension of the privileged circumstances concept to cover information communicated by representatives of a *customer* or person seeking legal advice, means that this exemption may apply in circumstances where LPP would not. For example, it may include communications with:

(a) a junior employee of a *customer* (if it is reasonable in the circumstances to consider them to be a representative of the *customer*); or
(b) other professionals who are providing information to the legal adviser on behalf of the *customer* as part of the transaction.

109. The specific facts of each case should be considered when deciding whether or not a person is a representative for the purposes of privileged circumstances, and the legal adviser is encouraged to document this consideration.

110. Confidentiality is also not a necessary element of the privileged circumstances exemption. Disclosure of a communication to a third party may not therefore exclude the application of the privileged circumstances exception in the same way that it would result in LPP being lost.

13.18.9. Making a Disclosure

111. When faced with information or matter that forms the basis of suspicion, it is recommended that a legal professional ask himself the following questions:

(a) What information would I need to include in a disclosure?
(b) Is any of that information subject to LPP?
(c) Did any of that information come to me in "privileged circumstances"?
(d) If the answer to (b) and (c) is no, the disclosure should be filed without disclosing any privileged communications;
(e) If information is subject to LPP and/or came to me in privileged circumstances, has it for any reason lost its privileged status?

(i) Has LPP been lost due to disclosure?
(ii) Has the *customer* otherwise waived their LPP?
(iii) Is there reasonable evidence for me to conclude that the material was communicated to me with a view to furthering a criminal purpose?

(f) Can I file a coherent disclosure without disclosing the material that came to me in privileged circumstances?

112. If the privileged status has not been lost and a coherent internal disclosure can be filed without disclosing the protected material, a disclosure should be filed on this basis. If privileged status has been lost then the legal professional should disclose the information.

113. In all cases the legal professional should document his or her reasons and ethical considerations which formed the basis of his or her decision whether or not to make a disclosure.

~~13.18.~~13.19. THEMIS Notices

~~76.~~114. THEMIS has the facility to provide firms with notices which are sent via a generic e-mail address to individual users. These notices are a mechanism through which the *FIS* provides information to all THEMIS users or to specific 'targeted' distribution groups or firms, dependent upon the information or guidance that is being issued.

~~77.~~115. Notices sent via THEMIS include updates on changes to the legislative framework, news of forthcoming presentations or seminars and updates in respect of EU, UN and other sanctions ~~related updates~~. In addition to generic updates, the *FIS* may specifically 'target' certain distribution groups or firms in respect of a notification that a certain entity or group of entities is under investigation by the *FIS* or other law enforcement agencies. In this respect, THEMIS is the mechanism by which specific 'targeted' notices will be distributed to *ML~~FC~~ROs*.

~~78.~~ The *ML~~FC~~RO* should refer to the THEMIS portal ~~regularly and also~~ whenever a notification is issued by the *FIS* and additionally at regular intervals on an ad hoc basis. Where targeted notices are issued, the firm should establish if it maintains a *business relationship*, or has conducted an *occasional transaction*, with the entities listed on the notice, or if ~~there~~ it~~s~~ has information which may assist the *FIS*. The firm should consider whether the receipt of a targeted notice~~if this approach (by~~ from law enforcement~~)~~ is sufficient grounds for suspicion to make an external disclosure~~report a SAR~~ to the *FIS* in accordance with Section 13.3. of this *Handbook*. It should be noted that the *FIS* have the facility to monitor whether notices have been received and/or read by the recipient.~~.~~

Chapter 14
Wire Transfers

Contents of this Chapter

14.1. Introduction

1. The Transfer of Funds (Guernsey) Ordinance 2017, along with the parallel ordinances for Alderney and Sark, were brought into force on 26 June 2017 following the EU's enactment of Regulation (EU) 2015/847 on Information Accompanying Transfers of Funds ("*the EU Regulation*") on 20 May 2015. References in this Chapter to "*the Transfer of Funds Ordinance*" should be read as referring to the Transfer of Funds (Guernsey, Sark or Alderney) Ordinance 2017 relevant to the island within which the firm is operating.

2. Article 1 of *the Transfer of Funds Ordinance* gives *the EU Regulation* full force and effect in *the Bailiwick*, subject to certain adaptations, exceptions and modifications as set out in Schedule 1 to *the Transfer of Funds Ordinance*.

3. *The Bailiwick* and the other *Crown Dependencies* have received a derogation enabling *wire transfers* between the *British Islands* to contain the reduced information requirements as compared to those which apply to transfers of funds within the internal market of the EU. The derogation was issued because the EU considered that *the Bailiwick* and the other *Crown Dependencies* had transfer of funds legislation which is equivalent to *the EU Regulation*.

4. Where the firm is a *PSP*, it shall comply with *the Transfer of Funds Ordinance* and should note that in accordance with Article 11 of *the Transfer of Funds Ordinance*, the court will take account of the *Commission Rules* and *guidance* issued by *the Commission* in considering compliance with *the Transfer of Funds Ordinance* and *the EU Regulation*. For the avoidance of doubt, the *Commission Rules* and *guidance* contained in this section have been made in accordance with Article 11 of *the Transfer of Funds Ordinance.*

5. The FATF's principle purposes for developing standards on the *payer* and *payee* information to accompany *wire transfers* are to prevent terrorists and criminals from having unfettered access to *wire transfers* for moving funds and to enable the detection of the misuse of *wire transfers* when it occurs. Key parts of *the FATF Recommendations* include requiring that information about the *payer* and *payee* accompany *wire transfers* throughout the payment chain. This is to ensure the traceability of funds to assist in preventing, detecting and investigating *ML* and *FT* and to facilitate the effective implementation of restrictive measures against persons and entities designated under UN and EU sanctions legislation. The standards also require *PSPs* to have appropriate mechanisms for detecting where information is incomplete or missing for the purpose of considering whether it is suspicious and should be reported to the *FIS*.

6. *The Transfer of Funds Ordinance* and *the EU Regulation* require full *customer* information details on the *payer* and certain identity information on the *payee* on all transfers of funds in any currency except where there are derogations from the requirements of *the EU Regulation* which allow for less information about a *payer* and *payee* to accompany a transfer. This section explains the *payer* and *payee* information that is required and the derogations which permit *PSPs* to effect transfers with reduced levels of information about the *payer* and the *payee* in certain specified circumstances, including transfers between the *British Islands*.

7. *The EU Regulation* sets out the *payer* and *payee* information which shall accompany a transfer and requires both the *PSP* of the *payee* and intermediary *PSP* to have appropriate and effective measures in place to detect when the required *payer* and/or *payee* information is missing or incomplete. *The EU Regulation* also requires that *PSPs* shall have *risk*-based procedures in place to assist where a transfer lacks the required information so as to enable the *PSP* to decide whether to execute, reject or suspend a transfer and to determine the appropriate action to take.

8. *The Transfer of Funds Ordinance* and *the EU Regulation* also introduce increased reporting obligations upon *PSPs* to identify breaches and areas of non-compliance which shall be reported to *the Commission*. *The Transfer of Funds Ordinance* prescribes the manner in which such reports shall be made.

9. Under Article 22 of *the EU Regulation the Commission* is responsible for monitoring compliance with *the EU Regulation*. This includes implementing the measures which are necessary to ensure compliance with those requirements by *PSPs* established in *the Bailiwick*.

10. Parts of this Chapter in clear boxes summarise the requirements of *the EU Regulation* and *the Transfer of Funds Ordinance*. Any paraphrasing of that text within this Chapter represents *the Commission's* own explanation of *the EU Regulation* and *the Transfer of Funds Ordinance* and is for the purposes of information and assistance only. *The Transfer of Funds Ordinance* and *the EU Regulation* remain the definitive texts for the legal requirements upon *PSPs*.

11. As *the Transfer of Funds Ordinance* is based on *the EU Regulation*, *PSPs* may find it of benefit when developing their policies, procedures and controls for *wire transfers* to review guidance issued by the ESAs on the measures *PSPs* should take to detect missing or incomplete information on the *payer* or the *payee* and the procedures they should put in place to manage a transfer of funds lacking the required information.

14.2. Scope

12. The requirements summarised in this section apply to transfers of funds, in any currency, which are sent or received by a *PSP* or an intermediary *PSP* established in *the Bailiwick*.

13. These requirements do not apply to the transfers set out in Part II of the Schedule to *the Transfer of Funds Ordinance* regarding modification of Article 2 of *the EU Regulation* covering the following transfers:

(a) transfers of funds corresponding to services referred to in points (a) to (m) and (o) of Article 3 of Directive 2007/64/EC of the European Parliament (Directive on Payment Services in the Internal Market). The services referred to in points (a) to (m) and (o) are set out in Paragraph 14.15. below;
(b) transfers of funds carried out using a payment card, electronic money instrument or a mobile phone, or any other digital or information technology ("IT") prepaid or post-paid device with similar characteristics where that card, instrument or device is used exclusively to pay for goods or services and that the number of that card, instrument or device accompanies all transfers flowing from the transaction;
(c) transfers of funds involving the *payer* withdrawing cash from the *payer's* own payment *account*;
(d) transfers of funds to a public authority (construed as to include any Committee of the States or Parochial officers) as payment for taxes, fines or other levies within the *British Islands*;
(e) transfers of funds where both the *payer* and the *payee* are *PSPs* acting on their own behalf; and
(f) transfers of funds carried out through cheque images exchanges, including truncated cheques.

14. It should be noted that the exemption set out in Paragraph 14.13. does not apply when the card, instrument or device is used to effect a person-to-person transfer of funds. Therefore, when a credit, debit or prepaid card is used as a payment system to effect a person-to-person *wire transfer*, the transaction is included within the scope of *the Transfer of Funds Ordinance*.

15. *The EU Regulation* does not apply to the following:

(a) payment transactions made exclusively in cash directly from the *payer* to the *payee*, without any intermediary intervention;

(b) payment transactions from the *payer* to the *payee* through a commercial agent authorised to negotiate or conclude the sale or purchase of goods or services on behalf of the *payer* or the *payee*;

(c) professional physical transport of banknotes and coins, including their collection, processing and delivery;

(d) payment transactions consisting of the non-professional cash collection and delivery within the framework of a non-profit or charitable activity;

(e) services where cash is provided by the *payee* to the *payer* as part of a payment transaction following an explicit request by the payment service user just before the execution of the payment transaction through a payment for the purchase of goods or services;

(f) money exchange business, i.e. cash-to-cash operations, where the funds are not held on a payment *account*;

(g) payment transactions based on any of the following documents drawn on the *PSP* with a view to placing funds at the disposal of the *payee*:

(i) paper cheques in accordance with the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

(ii) paper cheques similar to those referred to in point (i) and governed by the laws of Member States which are not party to the Geneva Convention of 19 March 1931 providing a uniform law for cheques;

(iii) paper-based drafts in accordance with the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

(iv) paper-based drafts similar to those referred to in point (iii) and governed by the laws of Member States which are not party to the Geneva Convention of 7 June 1930 providing a uniform law for bills of exchange and promissory notes;

(v) paper-based vouchers;

(vi) paper-based traveller's cheques; or

(vii) paper-based postal money orders as defined by the Universal Postal Union;

(h) payment transactions carried out within a payment or securities settlement system between settlement agents, central counterparties, clearing houses and/or central banks and other participants of the system, and *PSPs*, without prejudice to Article 28 of *the EU Regulation*;

(i) payment transactions related to securities asset servicing, including dividends, income or other distributions, or redemption or sale, carried out by persons referred to in point (h) or by investment firms, credit institutions, collective investment undertakings or asset management companies providing investment services and any other entities allowed to have the custody of financial instruments;

(j) services provided by technical service providers, which support the provision of payment services, without them entering at any time into possession of the funds to be transferred, including processing and storage of data, trust and privacy protection services, data and entity authentication, IT and communication network provision, provision and maintenance of terminals and devices used for payment services;

(k) services based on instruments that can be used to acquire goods or services only in the premises used by the issuer or under a commercial agreement with the issuer either within a limited network of service providers or for a limited range of goods or services;

(l) payment transactions executed by means of any telecommunication, digital or IT device, where the goods or services purchased are delivered to and are to be used through a telecommunication, digital or IT device, provided that the telecommunication, digital or IT operator does not act only as an intermediary between the payment service user and the supplier of the goods and services;

(m) payment transactions carried out between *PSPs*, their agents or branches for their own *account*; or

(n) services by providers to withdraw cash by means of automated teller machines acting on behalf of one or more card issuers, which are not a party to the framework contract with the customer withdrawing money from a payment *account*, on condition that these providers do not conduct other payment services.

14.3. Outgoing Transfers – Obligations upon the PSP of the Payer

14.3.1. Transfers for Non-Account Holders

16. In accordance with Article 4 of *the EU Regulation*, where a transfer of funds is not made from or to an *account* the *PSP* shall obtain *customer* identification information on the *payer* and *payee*, record that information and verify the *customer* information on the *payer*.

17. Where all of the *PSPs* involved in the transfer are established in the *British Islands* and the transfer is in excess of EUR 1,000 in a single transaction or in a linked series of transactions which together exceed EUR 1,000, the transfer shall, in accordance with Article 5(1) of *the EU Regulation*, include a *unique transaction identifier* (which can trace a transaction back to the *payer* and *payee*) for the *payer* and *payee*. If further information (for example, the name and address of the *payer*) is requested by the *PSP* of the *payee* or the Intermediary *PSP*, such information shall be provided within three working days of the receipt of a request for such information.

18. Where a transfer is carried out within the *British Islands* which is at or below the EUR 1,000 threshold, the *customer* identification information on the *payer* and the *payee* shall be obtained and recorded but it is not necessary to verify the *customer* information on the *payer* unless the funds to be transferred have been received in cash or in anonymous electronic money, or the *PSP* has reasonable grounds for suspecting *ML* and/or *FT*.

19. Where a transfer is being made to a *PSP* in any other country or territory, Article 4 of *the EU Regulation* requires that such a transfer include the following *customer* identification information (complete information):

    (a) the name of the *payer*;
    (b) a *unique transaction identifier* (which can trace a transaction back to the *payer*);
    (c) one of either the *payer's* address (residential or postal), national identity number, *customer* identification number or date and place of birth;
    (d) the name of the *payee*; and
    (e) a *unique transaction identifier* which can be traced back to the *payee*.

20. Where the *payer* is an existing *customer* of the *PSP*, the *PSP* may deem verification to have taken place if it is appropriate to do so taking into account the risk of *ML* and *FT*.

21. A national identity number should be any government issued personal identification number or other government issued *unique identifier*. Examples of such would include a passport number, national identity card number or social security number.

22. A *customer* identification number may be an internal reference number that is created by a *PSP* which uniquely identifies a *customer* (rather than an *account* that is operated for a *payer* or a transaction) and which will continue throughout a *business relationship*, or it may be a number that is contained within an official document.

14.3.2. Transfers for Account Holders

23. In accordance with Article 4 of *the EU Regulation*, where a *PSP* is seeking to make a transfer from an *account*, the *PSP* shall:

    (a) obtain *customer* identification information on the *payer*, verify that information, and record and retain that information;
    (b) have undertaken *CDD* procedures and retained records in connection with the opening of that *account* in accordance with the requirements of *Schedule 3* and this *Handbook*; and
    (c) obtain information on the identity of the *payee* and the number of the *payee's* payment *account*.

24. Where all of the *PSPs* involved in a transfer are established in the *British Islands*, Article 5 of *the EU Regulation* requires that the transfer includes a payment *account* number of the *payer* and the *payee*. The *account* number could be, but is not required to be, expressed as the IBAN. If further information (for example, the name and address of the *payer*) is requested by the *PSP* of the *payee* or the Intermediary *PSP*, such information shall be provided by the *PSP* within three working days of the receipt of a request for such information.

25. Where a transfer is carried out within the *British Islands* which is at or below the EUR 1,000 threshold, the *customer* identification information on the *payer* and the *payee* shall be obtained and recorded but it is not necessary to verify the *customer* information on the *payer* unless the funds to be transferred have been received in cash or in anonymous electronic money, or the *PSP* has reasonable grounds for suspecting *ML* and *FT*.

26. Where the *payer* is an existing *customer* of the *PSP*, the *PSP* may deem verification to have taken place if it is appropriate to do so taking into account the *risk* of *ML* and *FT*.

27. The permission for transfers, where all *PSPs* involved are established in the *British Islands*, to only include a payment *account* number arises from technical limitations required to accommodate transfers by domestic systems like BACS which are currently unable to include complete information. However, where the system used for such a transfer has the functionality to carry complete information, it would be good practice to include it and thereby reduce the likelihood of inbound requests from *payee PSPs* for complete information.

28. Where the transfer is being made to a *PSP* in any other country or territory, the transfer shall include the following customer identification information:

    (a) the name of the *payer*;
    (b) the *payer's account* number (or IBAN);
    (c) one of either the *payer's* address (residential or postal), national identity number, customer identification number or date and place of birth;
    (d) the name of the *payee*; and
    (e) the *payee's account* number (or IBAN).

29. There may be occasions when the *PSP* of the *payer* does not know the full name of the *payee*. This may arise when the *payer* knows only the surname and the initials of the *payee's* first name(s). In such circumstances it would be acceptable for the *PSP* of the *payer* to use initials with the surname subject to consideration by the *PSP* that the information given by the *payer* on the identity of the *payee* is not misleading and that it is reasonable for the *payer* not to know the full name of the *payee*. The *PSP* of the *payer* should also be mindful that using the initials of the first name(s) of the *payee* may not be accepted by the *PSP* of the *payee*, which could revert with questions on the identity of the *payee* or reject the transfer. The full surname of the *payee* should always be obtained by the *PSP* of the *payer*.

30. In the case of a *payer* that is a company, a transfer must include either the address at which the company's business is conducted or the *customer* identification number of the company.

31. Where the *payer* is a foreign incorporated company administered in *the Bailiwick*, the address referred to in *Commission Rule* 14.30. would be that of its administrator.

32. In the case of a *payer* that is a trust, a transfer must be accompanied by the address of the trustee or the *customer* identification number of the trust.

33. Where a trust has multiple co-trustees, the address referred to in *Commission Rule* 14.32. should be that given to open and maintain the *account*. Where more than one address has been given to open and maintain that *account*, those addresses should be used.

34. *PSPs* must ensure that when messaging systems such as SWIFT MT202 (which provide for transfers where both the *payer* and the *payee* are *PSPs* acting on their own behalf) are used on behalf of another *FSB*, the transfers are accompanied by the *customer* identification information necessary to meet the requirements of *the Transfer of Funds Ordinance*.

14.3.3. Detection of Missing or Incomplete Information

35. Under Article 4 of *the EU Regulation* the *PSP* shall ensure that no transfer is executed before ensuring that the transfer includes the required *customer* identification information on the *payer* and the *payee*.

14.4. Batch Files – Transfers Inside or Outside the British Islands

36. In accordance with Article 6 of *the EU Regulation*, batch files from a single *payer* to multiple *payee*s shall carry the information identified in Paragraph 14.19. of this *Handbook* for the *payer* and that information shall have been verified. However, the individual transfers within the batch file need only carry the *payer's* payment *account* number (or *unique transaction identifier* if there is no *account* number).

37. Where the transfer is at or below the EUR 1,000 threshold it need only include:

(a) the names of the *payer* and or *payee*; and
(b) the payment *account* numbers of the *payer* and the *payee* or a *unique transaction identifier* if there is no payment *account* for one or both parties.

38. The information requirements of Paragraphs 14.17., 14.24., 14.37. of this *Handbook* are the minimum standards. It is open to *PSPs* to elect to supply complete information with transfers which are eligible for a reduced information requirement and thereby limit the likely incidence of inbound requests for complete information.

14.5. Incoming Transfer – Obligations upon the *PSP* of the *Payee*

39. In accordance with Article 7 of *the EU Regulation* the *PSP* of the *payee* shall obtain *customer* identification information on the *payee*, verify that information and record and retain that information, or to have applied *CDD* measures and retained records in connection with the opening of that *account* in accordance with *Schedule 3* and the *Commission Rules*.

40. Where the *payee* is an existing *customer* of the *PSP*, the *PSP* may deem verification to have taken place if it is appropriate to do so taking into account the *risk* of *ML* and *FT*.

41. Articles 7 and 8 of *the EU Regulation* require *PSPs* to have effective policies, procedures and controls for checking that incoming payments contain the required *customer* identification information (which will depend on the location of the *PSPs* involved in the transfer process and the value of the funds being transferred) – see *Commission Rule* 14.63.

14.5.1. Detection of Missing or Incomplete Information

42. PSPs will need to be able to: identify empty message fields; have procedures in place to detect whether the required *customer* identification information is missing on the *payer* or the *payee* (for example, by undertaking sample testing to identify fields containing incomplete information on the *payer* and *payee*) and where information is incomplete, take specified action.

43. SWIFT payments on which mandatory information fields are not completed will automatically fail ~~anyway~~ and the *payee PSP* will not receive the payment. Current SWIFT validation prevents payments being received where the mandatory information on the *payer* and the *payee* is not present at all. However, it is accepted that where the information fields are completed with incorrect or meaningless information, or where there is no *account* number, the payment may pass through the system. Similar considerations apply to non-SWIFT messaging systems which also validate that a field is populated in accordance with the standards applicable to that system (for example, BACS).

44. Under Article 7 of *the EU Regulation* a *PSP* of a *payee* shall have effective policies, procedures and controls:

(a) to detect whether or not the information on the *payer* and the *payee* is complete in accordance with the conventions of the messaging or payment and settlement system being used; and
(b) have effective procedures in place to detect the absence of required information on the *payer* and *payee*.

45. A *PSP* must have in place appropriate and effective policies, procedures and controls to subject incoming payment transfers to an appropriate level of real time and post-event monitoring in order to detect incoming transfers which are not compliant with the relevant information requirements.

46. A *PSP*'s policies, procedures and controls should:

(a) take into account the *ML* and *FT risks* to which it is exposed;
(b) set out which transfers will be monitored in real time and which can be monitored ex-post and why; and
(c) set out what *employees* should do where required information is missing or incomplete.

47. The level of monitoring should be appropriate to the *risk* of the *PSP* being used in connection with *ML* and *FT*, with high *risk* transfers monitored in real time. Consideration should be given to areas such as:

(a) the value of the transaction;
(b) the country or territory where the *PSP* is established and whether that country or territory applies *the FATF Recommendations*, particularly Recommendations 10 (*CDD*); 11 (record keeping) and 19 (*wire transfers*);
(c) the country or territory of the *payer*;
(d) the history of previous transfers with the *PSP* of the *payer*, i.e. whether it has failed previously to comply with the *customer* identification requirement; and
(e) the complexity of the payment chain within which the *PSP* operates.

48. *The Commission* would expect a *PSP*'s ex-post monitoring to include *risk*-based sampling of transfers. Records should be retained and findings periodically reported to the *board* of the *PSP*.

49. Under Article 8 of *the EU Regulation* a *PSP* shall implement effective *risk*-based policies, procedures and controls for determining whether to

(a) reject a transfer; or
(b) execute or suspend the transfer; and

ask for complete information on the *payer* or *payee* before or after crediting the *payee's account* or making funds available to the *payee* on a *risk* sensitive basis where it has identified in the course of processing a transfer that the required information on the *payer* or *payee* is missing or incomplete or if the information fields have been incorrectly filled in.

50. A *PSP* should take a *risk*-based approach when considering the most appropriate course of action to take in order to meet the requirements of Article 8 of *the EU Regulation*. If a decision is made to ask for complete information on the *payer*, a *PSP* should also consider, on the basis of the perceived *risk*, whether to make the payment or to hold the funds until such time as complete information has been received.

51. Where a *payee PSP* becomes aware subsequent to processing the payment that information on the *payer* or *payee* is missing or incomplete either as a result of random checking or other monitoring mechanisms under the *PSP*'s *risk*-based approach, it must seek the complete information on the *payer* and *payee* relevant to the type of transfer it was (either in terms of value or if it was within or outside the *British Islands*).

14.6. Failure to Supply Information

52. Article 8 of *the EU Regulation* also sets out the action required where a *PSP* repeatedly fails to supply information on the *payer* or *payee* required by *the EU Regulation* and reporting obligations. This action may include issuing warnings and setting deadlines, prior to either refusing to accept further transfers from that *PSP* or deciding whether or not to restrict or terminate the *business relationship*.

53. A *PSP* must have appropriate policies, procedures and controls for determining what measures to take when a *PSP* repeatedly fails to provide required information on the *payer* or *payee*.

54. Such policies, procedures and controls should take into account whether the *PSP* is located in a country or territory which has been identified through mutual evaluations or other assessments by the FATF as insufficiently applying *the FATF Recommendations*, particularly Recommendations 10 (*CDD*), 11 (record keeping) and 19 (*wire transfers*).

55. Where the *PSP* has sought complete information on the *payer* and it has not been provided to the *PSP* within a reasonable time frame, the *PSP* must consider, on a *risk*-based approach, the most appropriate course of action to be undertaken.

56. Where a *PSP* of a *payer* is identified as having regularly failed to comply with the information requirements, then the *PSP* of the *payee* must notify *the Commission* of that fact and the steps it has taken to attempt to ensure that such information is supplied.

57. The report to *the Commission* should contain the name and address of the *PSP*, and a summary of the measures taken by the *PSP* of the *payee* to obtain the missing or incomplete information from the *PSP* of the *payer*, including the issuing of warnings or deadlines up until the decision to restrict or terminate the relationship was made.

58. This reporting requirement does not apply to instances where a request for the missing or incomplete information which accompanied a transfer is fulfilled by the *PSP* of the *payer*. The obligation to report applies to circumstances where information requests are not fulfilled and the *PSP* of the *payee* invokes measures which restrict or terminate the *business relationship* with that *PSP*.

14.7. Obligations upon an Intermediary *PSP*

59. In accordance with Article 10 of *the EU Regulation* intermediary *PSPs* (for example, those acting as agents for other *PSPs* or who provide correspondent banking facilities) shall, subject to technical limitations, ensure that all information received on a *payer* and *payee* which accompanies a transfer of funds is retained with the transfer.

60. Under Article 11 of *the EU Regulation* an intermediary *PSP* shall have effective policies, procedures and controls:

(a) to detect whether or not the information on the *payer* and the *payee* is complete in accordance with the conventions of the messaging or payment and settlement system being used; and
(b) have effective procedures in place to detect the absence of required information on the *payer* and *payee*.

61. Under Article 12 of *the EU Regulation* an intermediary *PSP* shall implement effective *risk*-based policies, procedures and controls for determining whether to:

(a) reject a transfer; or
(b) execute or suspend the transfer; and

ask for complete information on the *payer* or *payee* before or after crediting the *payee's account* or making funds available to the *payee* on a *risk* sensitive basis where it has identified in the course of processing a transfer that the required information on the *payer* or *payee* is missing or incomplete of if the information fields have been incorrectly filled in.

62. Article 12 of *the EU Regulations* prescribes the action required where a *PSP* repeatedly fails to supply information on the *payer* or *payee* required by *the EU Regulation* and reporting obligations. This action may include issuing warnings and setting deadlines, prior to either refusing to accept further transfers from that *PSP* or deciding whether or not to restrict or terminate the *business relationship*.

63. An intermediary *PSP* must have appropriate policies and procedures for determining what measures to take when a *PSP* repeatedly fails to provide required information on the *payer* or *payee*.

64. Such policies and procedures should take into account whether the *PSP* which is failing to provide the information is located in a country or territory which has been identified through mutual evaluations or other assessments by the FATF as insufficiently applying *the FATF Recommendations*, particularly Recommendations 10 (*CDD*), 11 (record keeping) and 16 (*wire transfers*).

65. Where a *PSP* is identified as having repeatedly failed to comply with the information requirements, then the intermediary *PSP* must notify *the Commission* of that fact and of the steps it has taken to attempt to ensure that such information is supplied.

66. The report to *the Commission* should contain the name and address of the *PSP* and a summary of the measures taken by the *PSP* of the *payee* to obtain the missing or incomplete information from the *PSP* of the *payer*, including the issuing of warnings or deadlines up until the decision to restrict or terminate the relationship was made.

67. This reporting requirement does not apply to instances where a request for the missing or incomplete information which accompanied a transfer is fulfilled by the *PSP* of the *payer*. The obligation to report applies to circumstances where information requests are not fulfilled and the intermediary *PSP* invokes measures which restrict or terminate the *business relationship* with that *PSP*.

14.8. Reporting

68. The *EU Regulation* and *the Transfer of Funds Ordinance* contain certain reporting requirements upon a *PSP*, whether acting in the capacity of *PSP* of the *payer*, *PSP* of the *payee* or an intermediary *PSP*. Irrespective of the capacity within which the *PSP* is acting there are three distinct reporting requirements which are to report:

(a) missing or incomplete information on a transfer which may give rise to a suspicion which should be reported to the *FIS*;
(b) breaches by a PSP of *the EU Regulation* or *the Transfer of Funds Ordinance* to *the Commission*; and
(c) repeated failure by a *PSP* to provide the required *payer* or *payee* information (see Articles 8(2) and 12 (2) of *the EU Regulation* and *Commission Rules* 14.56. and 14.65. above) to *the Commission*.

14.8.1. Reporting Suspicions

69. Articles 9 and 13 of *the EU Regulation* require the *PSP* of the *payee* and an Intermediary *PSP* to take into account as a factor missing or incomplete information on the *payer* or the *payee* in assessing whether a transfer of funds or any related transaction is suspicious and whether it should be reported to the *FIS* in accordance with Part I of *the Disclosure Law* and Part II of *the Terrorism Law*.

70. In this respect *the Commission* would expect the *PSP*'s internal reporting procedures to apply where an *employee* of a *PSP* forms a suspicion that a transfer may be connected to *ML* and/or *FT*, or that funds are derived from the proceeds of crime or terrorist property. For further information on reporting suspicion reference should be made to Chapter 13 of this *Handbook*.

71. *Employees* who are involved in the handling or processing of transfers would be considered *relevant employees* for training purposes and a *PSP* should ensure that its training programme includes training on the requirements of *the EU Regulation* and *the Transfer of Funds Ordinance*, as well as the *PSP*'s policies, procedures and controls on handling transfers of funds and reporting suspicion.

14.8.2. Reporting Breaches

72. Under Article 4 of *the Transfer of Funds Ordinance* a *PSP* shall notify *the Commission* of breaches of *the EU Regulation* and *the Transfer of Funds Ordinance*.

73. The *board* of a *PSP* must ensure that any failure by it (the *PSP*) to comply with *the EU Regulation* or *the Transfer of Funds Ordinance* is promptly reported to *the Commission*. A *PSP* must report all material failures to comply with the *Commission Rules* in this Chapter and any serious breaches of the *PSP*'s policies, procedures and controls in respect of transfers of funds.

74. Notifications to *the Commission* should be made promptly and contain the following information:

(a) the specific provision in *the EU Regulation*, *the Transfer of Funds Ordinance*, *Commission Rules* and all of the *PSP*'s policies, procedures and controls which have been breached;
(b) the nature of the breach, including its cause;
(c) the date the breach was identified by the *PSP*; and
(d) where possible a summary of the measures taken by the *PSP* in relation to the breach and any subsequent changes to its policies, procedures and controls to mitigate against a recurrence.

75. In order to ensure that the breach is reported promptly, a *PSP* should consider filing an initial report covering items (a) to (c) in Paragraph 14.74. above, together with the steps it is considering taking under (d).

76. A *PSP* must establish policies and procedures for the internal reporting by *employees* of breaches of *the EU Regulation* or *the Transfer of Funds Ordinance*, and maintain a record of those breaches and action taken. Such policies and procedures must ensure sufficient confidentiality and protection for *employees* who report breaches committed within the *PSP*.

~~14.11. Data Protection~~

~~1. In order to ensure that information provided under *the Transfer of Funds Ordinance* is also processed in line with *the Data Protection* (Bailiwick of Guernsey) *Law*, 2001, it may be advisable for a *PSP* to ensure that its terms and conditions of business include reference to the information that it may provide under the requirements set out in Article 4 of *the Transfer of Funds Ordinance.*~~

14.9. Record Keeping

~~2.~~77. Article 16 of *the EU Regulations* requires the *PSP* of the *payer* and of the *payee* to retain all records of any information received on the *payer* and *payee* of a transfer of funds for at least five years from the date of the transfer of funds.

~~3.~~78. Except where the relevant derogations from *the EU Regulation* apply, the *PSP* of the *payer* shall retain the following information for a period of at least five years from the date of the transfer:

(a) the name of the *payer*, the *payer's* payment *account* number and the *payer's* address, national identity number, *customer* identification number or date and place of birth; and
(b) the name of the *payee* and the *payee's* payment *account* number.

~~4.~~79. Except where the relevant derogations from *the EU Regulations* apply, the *PSP* of the *payee* shall retain verification information on the *payee* for a period of at least five years from the date of the transfer.

Chapter 15
Employee Screening and Training

Contents of this Chapter

15.1. Introduction

1. One of the most important tools available to the firm to assist in the prevention and detection of financial crime is to have appropriately screened *employees* who are alert to the potential *risks* of *ML* and *FT* and who are well trained in the requirements concerning *CDD* and the identification of unusual activity, which may prove to be suspicious.

2. The effective application of even the best designed systems, policies, procedures and controls can be quickly compromised if *employees* lack competence or probity, are unaware of, or fail to apply, the appropriate policies, procedures and controls or are not adequately trained.

3. The term *employee* is defined in *Schedule 3* as any person working for the firm and includes individuals working under a contract of employment (including on a temporary basis), as well as those working under a contract for services or otherwise. This includes directors, both executive and non-executive, partners and persons employed by external parties fulfilling a function in relation to the firm under an outsourcing agreement or a contract for services.

15.2. Board Oversight

4. The *board* must be aware of the obligations of the firm in relation to *employee* screening and training.

5. ~~The firm must establish and maintain procedures to monitor and test, on an ongoing basis, the effectiveness of the firm's training policies and procedures.~~ The firm must ensure that the training provided to *relevant employees* is comprehensive and ongoing~~.~~ and that *employees* are aware of *ML* and *FT*, the *risks* and vulnerabilities of the firm to it, and their obligations in relation to it.

6. The firm must establish and maintain mechanisms to measure the effectiveness of the AML and CFT training provided to *relevant employees*.

~~6.~~7. Further information on the monitoring and testing of the firm's training policies and procedures ~~and the content of training~~ can be found within Section 2.4. of this *Handbook*.

~~7.~~8. ~~With regard to the monitoring and testing of *employee* awareness of ML and *FT*~~In order to measure the effectiveness of AML and CFT training, the firm ~~may~~could consider it appropriate to incorporate an exam or some~~imilar~~ form of assessment into its on-going training programme, either as part of the periodic training provided to *relevant employees* or during the intervening period between training.

~~8.~~9. Regardless of the methods utilised, the *board* should ensure that it is provided with adequate information on a sufficiently regular basis in order satisfy itself that the firm's *relevant employees* are suitably trained to fulfil their personal and corporate responsibilities.

~~9.~~10. Where the firm outsources its *ML~~F~~FCRO* and/or *ML~~F~~FCCO* functions to a third party ~~service provider~~, it should also consider the content of Section 2.5. of this *Handbook*, which sets out the steps the firm should take to ensure that the outsourced service provider has appropriate policies, procedures and controls surrounding the hiring and training of *employees*.

15.3. Screening Requirements

~~10.~~11. In accordance with Paragraph 13(1) of *Schedule 3*, the firm shall maintain appropriate and effective procedures, proportionate to the nature and size of the firm and to its *risks*, when hiring *employees* or admitting any person as a partner in the firm, for the purpose of ensuring high standards of *employee* and partner probity and competence.

~~11.~~12. In order to ensure that *employees* are of the required standard of competence and probity, which will depend on the role of the *employee*, the firm must give consideration to the following prior to, or at the time of, recruitment:

(a) obtaining and confirming appropriate references;
(b) obtaining and confirming details of any regulatory action or action by a professional body taken against the prospective *employee* ~~or action taken by a professional body~~;
(c) obtaining and confirming details of any criminal convictions, including the provision of a check of the~~ir~~ prospective *employee's* criminal record (subject to the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 as amended); and
(d) obtaining and confirming details of employment history, qualifications and professional memberships.

~~12.~~13. The firm must ensure that its consideration under *Commission Rule* 15.12. above, together with the results of any checks undertaken, are documented and retained.

~~13.~~14. In addition, the firm should give consideration to consulting the lists of specified countries and persons against whom sanctions have been imposed by the UN and the EU to ensure that a prospective *employee* does not have suspected or known involvement in terrorist activity.

15.4. Training Requirements for Relevant Employee

~~14.~~15. In accordance with Paragraph 13(2) of *Schedule 3*, the firm shall ensure that *relevant employees*, and any partners in the firm, receive comprehensive ongoing training (at a frequency which has regard to the *ML* and *FT risks* to the firm).

~~15.~~16. The requirements of *Schedule 3* concerning training apply to *relevant employees*, being those *employees* whose duties relate to actual *specified business* activities, including *board* members and senior management, and not necessarily to all *employees*.

~~16.~~17. When determining whether an *employee* is a *relevant employee* for the purposes of *Schedule 3* and this *Handbook*, the firm should take into account the following:

(a) whether the *employee* is undertaking any *customer* facing functions or handles, or is responsible for the handling of, *business relationships* *or occasional transactions*, or transactions conducted in respect of such;
(b) whether the *employee* is directly supporting a colleague who carries out any of the above functions;
(c) whether an *employee* is otherwise likely to be placed in a position where they might see or hear anything which may lead to a suspicion; and
(d) whether an *employee*'s role has changed to involve any of the functions mentioned above.

15.5. Training Requirements for Other Employees

~~17.~~18. There may be some *employees* who, by virtue of their function, fall outside of the definition of a *relevant employee*, for example, receptionists, filing clerks, messengers etc. The firm should consider, on a case-by-case basis, whether an *employee* falls within the definition of a *relevant employee*, as the scope of a person's role and the tasks undertaken will vary from person to person. The firm should also be aware that an employee's function may change over time.

~~18.~~19. Where the firm has concluded that an individual's role does not make them a *relevant employee*, it should be aware that those *employees* will still have obligations under *the Law*, *the Disclosure Law*, *the Terrorism Law* and other legislation. As a consequence, all *employees*, regardless of

their function, ~~will need to~~should have a basic understanding of *ML* and *FT*, together with an awareness of the firm's internal reporting procedures and the identity of the *ML~~FC~~RO* and *Nominated Officer(s)*.

~~19.~~20. In order to achieve this the firm must as a minimum:

(a) provide any *employee* who has not been classified as a *relevant employee* with a written explanation of the firm's and the *employee's* obligations and potential criminal liability under *the Relevant Enactments*, including the implications of failing to make an internal disclosure ~~SAR~~; and

(b) require the employee to acknowledge that they understand the firm's written explanation and the procedure~~s~~ for making an internal disclosure ~~SARs~~.

15.6. Methods of Training

~~20.~~21. While there is no single or definitive way to conduct training, the critical requirement is that training is adequate and relevant to those being trained and that the content of the training reflects good practice.

~~21.~~22. The guiding principle of all AML and CFT training should be to encourage *relevant employees*, irrespective of their level of seniority, to understand and accept their responsibility to contribute to the protection of the firm against the *risks* of *ML* and *FT*.

~~22.~~23. The precise approach adopted will depend upon the size, nature and complexity of the firm's business. Classroom training, videos and technology-based training programmes can all be used to good effect, depending on the environment and the number of *relevant employees* to be trained.

~~23.~~24. Training should highlight to *relevant employees* the importance of the contribution that they can individually make to the prevention and detection of *ML* and *FT*. 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 in the dissemination of important information because of mistaken assumptions that the information will have already been identified and dealt with by more senior colleagues.

15.7. Frequency of Training

~~24.~~25. The firm must provide the appropriate level of AML and CFT induction training, or a written explanation, to all new *relevant employees* or other *employees* respectively, before they become actively involved in the day-to-day operations of the firm.

~~25.~~26. Consideration should be given by the firm to establishing an appropriate minimum period of time by which, after the start of their employment, new *employees* should have completed their AML and CFT induction training. Satisfactory completion and understanding of any mandatory induction training should be a requirement of the successful completion of a *relevant employee's* probationary period.

~~26.~~27. The firm must provide AML and CFT training to all *relevant employees* at least every two years. Training will need to be more frequent to meet the requirements of *Schedule 3* if new legislation or significant changes to this *Handbook* are introduced, or where there have been significant technological developments within the firm or the introduction of new products, services or practices.

15.8. Content of Training

~~27.~~28. The firm must, in providing the training required pursuant to *Schedule 3* and this *Handbook*:

(a) provide appropriate training to *relevant employees* to enable them to competently analyse information and documentation so as to enable them to form an opinion on whether a *business relationship* or *occasional transaction* is suspicious in the circumstances;
(b) provide *relevant employees* with a document outlining their own obligations and potential criminal liability and those of the firm under *Schedule 3* and *the Relevant Enactments*;
(c) prepare and provide to *relevant employees* a copy, in any format, of the firm's policies, procedures and controls manual for AML and CFT; and
(d) ensure *relevant employees* are fully aware of all applicable legislative requirements.

~~28.~~29. In accordance with Paragraph 13(2) of *Schedule 3*, the ongoing training provided by the firm shall cover –

(a) *the Relevant Enactments*, *Schedule 3* and this *Handbook*,
(b) the personal obligations of *employees*, and partners, and their potential criminal liability under *Schedule 3* and *the Relevant Enactments*,
(c) the implications of non-compliance by *employees*, and partners, with any rules (including *Commission Rules*), guidance, instructions, notices or other similar instruments made for the purposes of *Schedule 3*, and
(d) the firm's policies, procedures and controls for the purposes of forestalling, preventing and detecting *ML* and *FT*.

~~29.~~30. In addition to the requirements of Paragraph 15.29. above, the firm must ensure that the ongoing training provided to *relevant employees* in accordance with *Schedule 3* and this *Handbook* also covers, as a minimum:

(a) the requirements for the internal and external ~~reporting~~ disclosing of suspicion;
(b) the criminal and regulatory sanctions in place, both in respect of the liability of the firm and personal liability for individuals, for failing to report information in accordance with the policies, procedures and controls of the firm;
(c) the identity and responsibilities of the *ML~~FC~~RO*, *MLCO* and *Nominated Officer*;
(d) dealing with *business relationships* or *occasional transactions* subject to an internal disclosure~~SAR~~, including managing the risks of tipping off and handling questions from *customers*;
(e) those aspects of the firm's business deemed to pose the greatest *ML* and *FT* risks, together with the principal vulnerabilities of the products and services offered by the firm, including any new products, services or delivery channels and any technological developments;
~~(f) the *business risk assessments* and risk appetite of the firm and the implications of these on the day-to-day functions of *relevant employees*, for example, in relation to new business;~~
~~(g)~~(f) new developments in *ML* and *FT*, including information on current techniques, methods, trends and typologies;
~~(h)~~(g) the firm's policies, procedures and controls surrounding *risk* and *risk* awareness, particularly in relation to the application of *CDD* measures and the management of high *risk* and existing *business relationships*;
~~(i)~~(h) the identification and examination of unusual transactions or activity outside of that expected for a *customer*;
~~(j)~~(i) the nature of terrorism funding and terrorist activity in order that *employees* are alert to ~~*customer*~~ transactions or activit~~y~~ies that might be terrorist-related;

~~(k)~~(j) the vulnerabilities of the firm to financial misuse by *PEPs*, including the effective ~~determination~~ identification of *PEPs* and the understanding, assessing and handling of the potential *risks* associated with *PEPs*; and

~~(l)~~(k) UN, EU and other sanctions and the firm's controls to identify and handle natural persons, *legal persons* and other entities subject to sanction.

~~30.~~31. The list included in *Commission Rule* 15.30. above is not exhaustive and there may be other areas that the firm deems it appropriate to include based on the business of the firm and the conclusions of its *business risk assessments*.

~~31.~~32. In accordance with Paragraph 13(3) of *Schedule 3*, the firm shall also identify *relevant employees* and partners in the firm who, in view of their particular responsibilities, should receive additional and ongoing training, appropriate to their roles, in the matters set out in Paragraph 15.29. above and it shall provide such additional training.

33. Sections 15.9. – 15.11. below set out those categories of *relevant employee* who are to be provided with additional training, together with the particular focus of the additional training provided. The categories below are not exhaustive and the firm may identify other *relevant employees* who it considers require additional training in accordance with Paragraph 15.32. above.

15.9. The Board and Senior Management

~~32.~~34. The *board* and senior management are responsible for ensuring that the firm has appropriate and effective policies, procedures and controls to counter the *risk* of *ML* and *FT*. In accordance with Paragraph 13(3) of *Schedule 3*, the *board* and senior management must therefore be identified as *relevant employees* to whom additional training must be given in order that they remain competent to give adequate and informed consideration as to the effectiveness of those policies, procedures and controls.

~~33.~~35. The additional training provided to the *board* and senior management must include, at a minimum, a clear explanation and understanding of:

(a) *Schedule 3*, this *Handbook* and *the Relevant Enactments*, including information on the offences and related penalties, including potential director and shareholder liability;

(b) the conducting and recording of *ML* and *FT business risk assessments* and the formulation of a *risk appetite*, together the establishment of appropriate, relevant and effective policies, procedures and controls; and

(c) methods to assess the effectiveness of the firm's systems and controls and its compliance with *Schedule 3*, this *Handbook* and other *Relevant Enactments*.

15.10. The Money Laundering Reporting Officer and Nominated Officer

~~34.~~36. The *ML~~FC~~RO* and *Nominated Officer* are responsible for the handling of ~~SARs~~internal and external disclosures. In accordance with Paragraph 13(3) of *Schedule 3*, the *ML~~FC~~RO* and *Nominated Officer* must be identified as *relevant employees* to whom additional training must be given.

~~35.~~37. The additional training provided to the *ML~~FC~~RO* and *Nominated Officer* must include, at a minimum:

(a) the handling of internal disclosure~~SAR~~s of suspicious activity;

~~(a)~~(b) the making of high quality~~and the reporting of~~ external disclosures to the *FIS*;

~~(b)~~(c) the handling of production and restraining orders including, but not limited to, the requirements of the *Relevant Enactments* and how to respond to court orders;
~~(c)~~(d) liaising with the *Commission* and law enforcement agencies; and
~~(d)~~(e) the management of the risk of tipping off.

15.11. The Money Laundering Compliance Officer

~~36.~~38. The *ML~~FC~~CO* is responsible for monitoring and testing the effectiveness and appropriateness of the firm's policies, procedures and controls to counter the *risk* of *ML* and *FT*. In accordance with Paragraph 13(3) of *Schedule 3*, the *ML~~FC~~CO* must be identified as a *relevant employee* to whom additional training must be given.

~~37.~~39. The training provided to the *ML~~FC~~CO* must address the monitoring and testing of compliance systems and controls (including details of the firm's policies and procedures) in place to prevent and detect *ML* and *FT*.

Chapter 16
Record Keeping

Contents of this Chapter

16.1. Introduction

1. This Chapter outlines the requirements of *Schedule 3* and the *Commission Rules* in relation to record keeping and provides guidance to the firm for the purpose of countering the threat of *ML* and *FT*.

2. Record keeping is an essential component required by *Schedule 3* 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. If law enforcement agencies, either in *the Bailiwick* or elsewhere, are unable to trace criminal property due to inadequate record keeping, then prosecution for *ML* and *FT* and confiscation of criminal property may not be possible. Likewise, if the *funds* used to finance terrorist activity cannot be traced back through the financial system, then the sources and destinations of terrorist financing will not be identifiable.

3. Sound record keeping is also essential to facilitate effective supervision, allowing *the Commission* to supervise compliance by the firm with its statutory obligations and regulatory requirements. For the firm, sound record keeping provides evidence of the work it has undertaken to comply with those statutory obligations and regulatory requirements, as well as allowing for it to make records available on a timely basis, i.e. promptly to domestic competent authorities pursuant to *Schedule 3* or *the Relevant Enactments* and to auditors.

4. To ensure that the record keeping requirements of *Schedule 3* and this *Handbook* are met, the firm must have appropriate and effective policies, procedures and controls in place which require that records are prepared, kept for the stipulated period and in a readily retrievable form.

16.2. Relationship and Customer Records

5. In accordance with Paragraph 14(2) of *Schedule 3*, the firm shall keep:

   (a) all *transaction documents* (as detailed in Section 16.3. below), *relationship risk assessments*, and any *CDD information*, or
   (b) copies thereof,

   for the *minimum retention period*.

6. In order to meet the requirements of Paragraph 14(2) of *Schedule 3* in relation to *transaction documents*, relationship *risk assessments* and *CDD information*, the firm must keep the following records:

   (a) copies of the *identification data* obtained to verify the identity of all *customers*,~~,~~ *beneficial owners* ~~and underlying principals~~ and other key principals (for example, copies of records of official identification *documents* such as passports, identity cards, driving licences or similar);
   (b) copies of any ~~customer~~ relationship *risk assessments* carried out in accordance with Paragraph 3(4) of *Schedule 3* and Chapter 3 of *this Handbook*; and
   (c) copies of any *customer* files, *account* files, business correspondence and information relating to the *business relationship* or *occasional transaction*, including the results of any analysis undertaken (for example, inquiries to establish the background and purpose of complex, unusual or large transactions); or
   (d) information as to where copies of the *CDD information* may be obtained.

7. In accordance with Paragraph 21(1) of *Schedule 3*, the *minimum retention period* in the case of any *CDD information* is:

   (i) a period of five years starting from the date –

      (A) where the *customer* has established a *business relationship* with the firm, that relationship ceased,
      (B) where the *customer* has carried out an *occasional transaction* with the firm, that transaction was completed, or

   (ii) such other longer period as *the Commission* may direct.

16.3. Transaction Records

8. In accordance with Paragraph 14(1) of *Schedule 3*, the firm shall keep a comprehensive record of each transaction with a *customer* or an *introducer*, including the amounts and types of currency involved in the transaction (if any); and such a record shall be referred to as a "*transaction document*".

9. In order to meet the requirements of Paragraph 14(1) of *Schedule 3* to keep each *transaction document*, all transactions carried out on behalf of or with a *customer* in the course of business, both domestic and international, must be recorded by the firm. In every case sufficient information must be recorded to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

10. The firm must ensure that, in order to meet the record keeping requirements for a *transaction, documentation* is maintained which must include:

   (a) the name and address of the *customer* and *beneficial owner* ~~and~~*underlying principal*;
   (b) for a monetary transaction, the amounts and types of currency ~~and amou~~ involved~~nt of~~ in the transaction;
   (c) the *account* name and number or other information by which it can be identified;
   (d) details of the counterparty, including *account* details;
   (e) the nature of the transaction; and
   (f) the date of the transaction.

11. Records relating to unusual and complex transactions and high *risk* transactions must include the firm's own reviews of such transactions.

12. In accordance with Paragraph 21(1) of *Schedule 3*, the *minimum retention period* is, in the case of any *transaction document* –

   (i) a period of five years starting from the date that the transaction and any related transaction were completed, or
   (ii) such other longer period as *the Commission* may direct.

13. In accordance with Paragraph 14(4) of *Schedule 3*, where the firm is required by any enactment, rule of law or court order to provide a *transaction document* or any *CDD information* to any person before the end of the minimum retention period, the firm shall –

   (a) keep a copy of the *transaction document* or *CDD information* until the period has ended or the original is returned, whichever occurs first, and
   (b) maintain a register of *transaction documents* and *CDD information* so provided.

16.4. Wire Transfers

14. Section 7 of the *Transfer of Funds Ordinance* requires the *PSP* of the *payee* to retain all records of any information received on the *payer* of a transfer of *funds* for five years from the date of the transfer of *funds*.

14.9. Wire Transfers – Record Keeping

16.5. Internal and External Disclosures

15. In accordance with Paragraph 14(5)(a) of *Schedule 3*, the firm shall keep records of any internal disclosures made to the *MLRO* or a *Nominated Officer* and of any external disclosures made under Part I of *the Disclosure Law* or Section 15 or 15A, or Section 12 (as appropriate), of *the Terrorism Law* made other than by way of an internal disclosure to the *MLRO*.

16. In ~~order to~~ meeting the requirements of Paragraph 14(5)(a) of *Schedule 3* related to ~~to keep records of SARs made to the *FCRO*~~disclosures, the firm must keep:

(a) the ~~SAR~~ internal disclosure and any supporting *documentation*;
(b) records of actions taken under the internal and external reporting requirements;
(c) evidence of the enquiries made in relation to that ~~SAR~~internal disclosure;
(d) where the *ML~~FC~~RO* (or a *Nominated Officer*) has considered information or other material concerning possible *ML* and *FT*, but has not made an external disclosure to the *FIS*, a record of the other material that was considered and the reason for the decision; and
(e) where an external disclosure has been made to the *FIS*, evidence of the *~~FC~~ML~~RO~~*'s (or *Nominated Officer's*) decision and copies of all relevant information passed to the *FIS*.

17. In addition to the above, the firm must maintain a register ~~including~~ covering both ~~SARs~~ internal disclosures and external disclosures made to the *FIS*,~~.~~ ~~The register must~~and include the following as a minimum:

(a) the date the ~~SAR~~ internal disclosure was received by the *ML~~FC~~RO* (or the *Nominated Officer*);
(b) the name of the person submitting the ~~SAR~~internal disclosure;
(c) the date of the disclosure to the *FIS* (if applicable);
(d) the name of the person who submitted the disclosure to the *FIS* (if applicable);
(e) the value of the transaction or activity subject to the ~~SAR/~~disclosure (where available);
(f) a reference by which supporting evidence is identifiable; and
(g) the date(s) of any update(s) (additional information) that have been submitted to the *FIS*.

18. In accordance with Paragraph 14(5)(a)(i)-(iii) of *Schedule 3*, the *minimum retention period* for disclosures is five years starting from –

(a) in the case of an internal or external disclosure in relation to a *business relationship*, the date the *business relationship* ceased,
(b) in the case of an internal or external disclosure in relation to an *occasional transaction*, the date that the transaction was completed, or
(c) in any other case, the event in respect of which the internal or external disclosure was made.

16.6. Training Records

19. In accordance with Paragraph 14(5)(b) of *Schedule 3*, the firm shall keep records of any training carried out under Paragraph 13 of *Schedule 3* for five years starting from the date the training was carried out.

20. In order to meet the requirements of Paragraph 14(5)(b) of *Schedule 3* to keep records of AML and CFT training undertaken, the firm must record the following as a minimum:

(a) the dates training was provided;
(b) the nature of the training; and
(c) the names of the *employees* who received the training.

16.7. Business Risk Assessments

21. In accordance with Paragraph 14(3) of *Schedule 3*, the firm shall keep copies of *business risk assessments* carried out under Paragraph 3(1) of *Schedule 3* until the expiry of the period of five years starting from the date on which they cease to be operative.

16.8. Policies, Procedures, Controls and Compliance Monitoring

22. In accordance with Paragraph 14(5)(c)-(d) of *Schedule 3*, the firm shall keep any minutes or other *documents* prepared pursuant to Paragraph 15(1)(c) of *Schedule 3*, until –

(i) the expiry of a period of five years starting from the date they were finalised, or
(ii) they are superseded by later minutes or other documents prepared under that paragraph,

whichever occurs later, and its policies, procedures and controls which it is required to establish and maintain pursuant to *Schedule 3*, until the expiry of a period of five years starting from the date that they ceased to be operative.

23. In order to meet the requirements Paragraph 14(5)(c)-(d) of *Schedule 3*, ~~to keep records of documents prepared in connection with the requirement of the board to review compliance and of its compliance review policy and other policies, procedures and controls relating to compliance,~~ the firm must retain:

(a) reports made by the *MLFCRO* and *MLCO* to the *board* and senior management;
(b) records or minutes of the *board's* consideration of those reports and of any action taken as a consequence; and
~~(c) copies of any *business risk assessments* prepared in accordance with paragraph 3(1) of *Schedule 3*; and~~
~~(d)~~(c) any records made within the firm or by other parties in respect of the firm's compliance with *Schedule 3* and this *Handbook*.

16.10. Closure or Transfer of Business

24. Where the firm terminates activities or disposes of a business or a block of *business relationships* (for example, by way of asset sale to another firm) the person taking on that business must ensure that the record keeping requirements of *Schedule 3* and this *Handbook* are complied with in respect of such business.

16.11. Ready Retrieval

25. In accordance with Paragraph 14(6) of *Schedule 3*, *document*s and *CDD information*, including any copies thereof, kept in accordance with *Schedule 3*, may be kept in any manner or form, provided they are readily retrievable.

~~25. Regardless of the manner in which information and documentation is stored, the overriding factor is that records are readily retrievable and can be accessed as required, without delay.~~

26. Periodically the firm must review the ease of retrieval~~,~~, and condition, of paper and electronically retrievable records.

27. In accordance with Paragraph 14(6)(b) of *Schedule 3*, *documents* and *CDD information*, including any copies thereof, kept in accordance with *Schedule 3*, shall be made available promptly:

(i) to an auditor; and
(ii) to any *police officer*, the *FIS*, *the Commission* or any other person, where such *documents* or *CDD information* are requested pursuant to *Schedule 3* or any of *the Relevant Enactments*.

28. The firm must consider the implications for meeting the requirements of *Schedule 3* where *documentation*, data and information is held overseas or by third parties, such as under outsourcing arrangements, or where reliance is placed upon an *introducer*.

~~28.~~29. The firm must not enter into outsourcing arrangements or place reliance on third parties to retain records where access to those records is likely to be restricted~~, as this would be in breach of Schedule 3 which requires records to be readily retrievable.~~

~~29.~~30. Where the *FIS* or another domestic competent authority requires sight of records, either under *Schedule 3* or another of *the Relevant Enactments*, which according to the applicable procedures would ordinarily have been destroyed, the firm must nonetheless conduct a search for those records and provide as much detail to the *FIS* or other domestic competent authority as possible.

16.12. Manner of Storage

~~30.~~31. 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.

~~31.~~32. Records may be retained:

(a) by way of original *documents*;
(b) by way of photocopies of original *documents* (certified where appropriate);
(c) on microfiche;
(d) in a scanned form; or
(e) in a computer or electronic form (including cloud storage).

~~32.~~33. The use of technology to collect and/or store data and *documents* does not alter the obligations and requirements described in this *Handbook*.

~~33.~~34. Where the firm utilises an electronic method of gathering *identification data*, for example, an App. or other system as set out in Section 5.6. of this *Handbook* or a *CDD* Utility, the firm should include within its ~~technology~~ *risk* assessment of that technology~~,~~ an evaluation of the policy for the retention of *documents*. ~~in electronic format~~ This evaluation should enable the firm to ensure that its use of the technology~~they~~ complies with the requirements of *Schedule 3* and this *Handbook* and ~~do~~ that the firm will not incur legal evidential difficulties (for example, in civil court proceedings).

Chapter 17
Transitional Provisions

Contents of this Chapter

17.1. Introduction

1. This Chapter details the measures to be implemented by the firm in order to transition existing compliance arrangements under the Criminal Justice (Proceeds of Crime) (Financial Services Business) (Bailiwick of Guernsey) Regulations, 2007 as amended ("*the FSB Regulations*") and/or the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 as amended ("*the PB Regulations*") to the requirements of *Schedule 3* and the *Commission Rules* set out in this *Handbook*. This Chapter also provides the deadlines by which such revised controls are required to be implemented.

2. In accordance with Paragraph 4(1) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018 ("*the Amendment Ordinance*"), the requirements of *Schedule 3* shall come in to force on 31 March 2019.

3. In order to assist the firm in transitioning to the new regime, a tiered approach to the review of existing *business relationships* has been provided, allowing the firm to update its *relationship risk assessments* and *CDD* *information* as part of its regular monitoring and ongoing *CDD* arrangements.

4. This Chapter covers the particular aspects of *Schedule 3* and the *Commission Rules* where material changes have been made to the requirements of the previous regime. There may be other changes required which are not covered in this Chapter. The firm should therefore have regard to the content of *Schedule 3* and this *Handbook* in their entirety when considering the full scope of the changes required to be made.

17.2. Business Risk Assessments

5. As identified in Chapter 3 of this *Handbook*, a *risk*-based approach starts with the identification and assessment of the *risk* that has to be mitigated and managed. Consideration of the information obtained ~~during~~ as part of the firm's *ML* and *FT* *business risk assessments* will enable the firm to assess the appropriate controls required to mitigate and manage any *risks* arising.

6. In accordance with Paragraphs 3(1) and 3(8) of *Schedule 3*, the firm shall carry out and document a suitable and sufficient *ML business risk assessment* and a suitable and sufficient *FT business risk assessment*, which are specific to the firm, as soon as reasonably practicable after 31 March 2019 (and this shall be construed consistently with the provisions of this *Handbook*).

~~7.~~ In order to meet the requirements of Paragraph 3 of *Schedule 3* and Chapter 3 of this *Handbook*, the firm must review its existing *business risk assessment* to ensure that it ~~:~~

~~(a)~~ contains suitable, sufficient and separate assessments of the *ML* and *FT risks* ~~posed~~ to the firm~~;~~

~~(b) incorporates, or makes reference to, any other pertinent assessments conducted in accordance with the requirements of this *Handbook*, for example, in respect of outsourcing or the use of technology;~~ and

~~(c)~~(a) takes account of the conclusions of *the Bailiwick's NRA*.

~~8.~~7. For the purposes of Paragraph 17.6. above, the firm must have ~~revised~~ reviewed its *business risk assessment* and have had the revised *ML* and *FT* assessments approved by the *board* of the firm by ~~31 December 2017 or as soon as reasonably practicable thereafter~~ no later than four months from the effective date of *the Amendment Ordinance*, or the date of publication of *the Bailiwick's NRA*, whichever is later.

~~9. For the purposes of Commission Rules 17.2.(2) and 17.2.(3), it is the Commission's expectation that the firm will have revised its business risk assessments and that the revised document(s) will have been approved by the board of the firm by no later than 28 February 2018.~~

17.3. Policies, Procedures and Controls

~~10.~~8. As part of a *risk*-based approach, the policies, procedures and controls devised and utilised by the firm will be determined by its assessment of the *risks* of *ML* and *FT* to its business. In this regard, the policies, procedures and controls of the firm should be reviewed in parallel with the *business risk assessments* to ensure that any changes in the perceived threats and vulnerabilities of the firm are mitigated and managed by its controls.

~~11.~~9. In accordance with Paragraphs 3(6) and 3(8) of *Schedule 3*, the firm shall review its policies, procedures and controls as soon as reasonably practicable after 31 March 2019 to ensure that they remain appropriate and effective, in light of both the revisions to the *business risk assessments* of the firm in accordance with Paragraph 17.6. above and the requirements of *Schedule 3*, this *Handbook* and the *risks* relevant, or potentially relevant, to the firm identified in the *NRA*.

~~12.~~10. For the purposes of Paragraph 17.10., the ~~*board* of the~~ firm must ~~ensure that a~~have reviewed and revised its policies, procedures and controls, and these must have been approved by the *board* ~~is conducted, and must approve the revised policies, procedures and controls~~, by ~~31 December 2017~~no later than three months from the deadline for the approval of the revised *business risk assessments* as set out in *Commission Rule* 17.8. above.

~~13.~~11. In ~~addition to~~ reviewing its policies~~, and~~ procedures and controls, the firm should ~~also review its controls~~seek to ensure that they appropriately mitigate any *risks* arising from the revised *business risk assessments*. Examples include, but are not limited to:

(a) *customer* take-on procedures: to ensure that any changes required to the ~~*customer*~~ *relationship risk-assessment* process are taken into account, together with any changes to the ~~*due diligence*~~*CDD* and *CDD information* required for various types of *customer*;
(b) *employee* training arrangements: to ensure that any new or amended *risks* identified as part of the revised *business risk assessment* ~~process~~ are communicated to *employees*, together with the firm's *risk appetite* and tolerance; and
(c) any automated screening/monitoring tools used to identify *PEPs*: to ensure that *domestic PEPs* and *international organisation PEPs* are flagged as appropriate.

~~14.~~12. In accordance with Paragraph 3(9) of *Schedule 3*, without prejudice to Paragraph 17.10. above, until the firm has complied with Paragraph 3(6)(a) of *Schedule 3*, it shall continue to maintain the policies, procedures and controls it was required to establish and maintain under *the FSB Regulations* and/or *the PB Regulations*.

17.4. Money Laundering Reporting Officer

~~15.~~13. In accordance with Paragraph 12(1)(a) of *Schedule 3*, the firm shall appoint a person of at least management level as the *MLRO*, provide the name, title and email address of that person to the *Commission* as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment, and ensure that all *employees* are aware of the name of that person.

~~16.~~14. Paragraph 12(2) of *Schedule 3* provides that a person who, immediately prior to the coming into force of *Schedule 3*, was the *MLRO* of the firm, having been appointed as such under Part III of *the FSB Regulations* or Part III of *the PB Regulation*, as the case may be, shall be deemed to have been appointed as the *MLRO* under Paragraph 12(1)(a) of *Schedule 3* as at the date that *Schedule*

3 comes into force. Accordingly, Paragraph 12(4) of *Schedule 3* affirms that the requirement to notify *the Commission* and the *FIS* of the name, title and e-mail address of the *MLRO* does not apply to any such persons.

15. Where the firm's *MLRO* appointed under *the FSB Regulations* and/or *the PB Regulations* will not take such an appointment under *Schedule 3*, the firm must ensure that *the Commission* and the *FIS* are *notified* by 14 April 2019.

~~17. The board of the firm must ensure that a suitable FCRO is appointed by 31 December 2017 and that notification has been made to the Commission by 14 January 2018 confirming the name and title of the natural person who will hold the position of FCRO and confirming the resignation of the current Money Laundering Reporting Officer.~~

~~18. For the avoidance of doubt, the natural person who previously held the role of Money Laundering Reporting Officer can be appointed as the FCRO; however the above notification is still required.~~

~~19.~~16. Notification of ~~the appointment of the *FCRO* and the resignation of the Money Laundering Reporting Officer~~any changes to the *MLRO* should be made via *the Commission's* Online PQ Portal.

https://online.gfsc.gg

17.5. Money Laundering Compliance Officer

~~20.~~17. In accordance with Paragraph 15(1)(a) of *Schedule 3*, the firm shall, if it comprises more than one individual, appoint a person of at least *management level* as the *MLCO* and provide the name, title and email address of that person to *the Commission* as soon as is reasonably practicable and, in any event, within fourteen days starting from the date of that person's appointment.

~~21.~~18. Further information on the role of the *ML~~FC~~CO*, including the requirements in respect of the individual appointed, can be found in Section 2.8.1. of this *Handbook*.

~~22.~~19. The *board* of the firm must ensure that a suitable *ML~~FC~~CO* is appointed by 31 March 2019 and ~~that notification has been made to~~ *the Commission* must be *notified*~~,~~ by 14 April 2019 ~~confirming the name and title~~ of ~~the natural~~ that person's appointment~~who will hold the position of *FCCO*.~~

~~23.~~20. Notification of an individual's appointment as *MLCO* should be made via *the Commission's* Online PQ Portal.

21. For the avoidance of doubt, in accordance with Paragraph 2.63. of this *Handbook*, the natural person who holds the role of *MLRO* can also be appointed as the firm's *MLCO*.

17.6. Existing Business Relationships

~~24.~~22. In accordance with Paragraph 4(1)(b) of *Schedule 3*, the firm shall ensure that the *CDD* measures set out at Paragraph 4(3) of *Schedule 3* are applied to all *business relationships* established prior to the coming in to force of *Schedule 3* –

(a) in respect of which there is maintained an anonymous *account* or an *account* in a fictitious name, as soon as possible after the coming in to force of *Schedule 3* and in any event before such *account* is used again in any way, and

(b) where it does not fall within (a) and to the extent that such steps have not already been carried out, at appropriate times on a *risk*-sensitive basis.

~~25.~~23. Additionally, in accordance with Paragraph 8(1)(b) of *Schedule 3*, the firm shall, in relation to all *customers*, maintain *accounts* in a manner which facilitates the meeting of the requirements of *Schedule 3*, and the relevant *Commission Rules* and *guidance* in this *Handbook*.

~~26.~~24. The firm should apply the *relationship risk assessment* and *CDD* requirements of *Schedule 3* and this *Handbook*, including the application of *enhanced measures* as necessary, to existing ~~*customers*~~ *business relationships* at appropriate times on ~~a~~the basis of materiality and *risk* ~~based approach~~. This provides for~~allows~~ the firm to apply the requirements of *Schedule 3* and the *Commission Rules* sensibly and to consider all relevant factors rather than carrying out a 'tick box' exercise.

~~27.~~25. The review of *relationship risk assessments* and *CDD information*, and the application of *CDD* and *enhanced measures* in accordance with *Schedule 3* and this *Handbook*, should be conducted at appropriate times, ~~e.g. depending upon the *risk* rating of a *customer* or changes to the circumstances of a *customer*,~~ taking into account whether and when any *CDD* measures have previously been ~~undertaken~~ applied and the adequacy of the *identification data* held~~obtained~~. ~~Any reviews undertaken on existing *customers* should be viewed as an opportunity to consider and build upon the firm's understanding of the *customer's* profile and circumstances.~~

~~28.~~26. Notwithstanding the above, the *board* must ensure that all *business relationships* rated *high risk* as at the time of *Schedule 3* coming in to force are subject to review by 31 December 2020, with all remaining *business relationships* reviewed by 31 December 2021.

~~29.~~27. In complying with Paragraph 8 of *Schedule 3*, as part of the reviews conducted by the firm in accordance with *Commission Rule* 17.27. above, the firm must take all steps deemed necessary to ensure that *relationship risk assessments* are conducted and appropriate *CDD measures applied*~~is held~~, including ~~*ACDD and/or*~~ *ECDD* and/or *enhanced measures* where relevant, in accordance with Paragraphs 2 to 8 of *Schedule 3* and Chapters 3 to 9 of this *Handbook*.

~~30.~~28. Where, following a review, the firm has concluded that the overall *risk* of a *business relationship* has not changed and it considers that the *CDD information* held appropriately verifies the identity of, and mitigates the specific *risks* associated with, that *customer* (and the *beneficial owner* and any other key principals thereof), in accordance with Paragraph 11.42. of this *Handbook* the firm is not required to re-verify the ~~*customer's*~~ identity of the *customer*, *beneficial owner* and other key principals.

~~31.~~29. When determining whether ~~extra~~ it is necessary to gather additional *CDD information* ~~or documentation is required, particularly in respect of ACDD~~, the firm should review and research whether existing records contain the required items. The firm may have had a *business relationship* for many years and therefore already hold considerable information concerning the *customer*. In these circumstances research should be undertaken to clarify whether it is a matter of collating records before further approaching a *customer* or other key principal.

~~32.~~30. Where the firm has concluded that the *CDD information* held is not sufficient to enable compliance with *Schedule 3* and the *Commission Rules*, prior to reverting to a *customer* or other key principal the firm should consider the materiality of the extra information/documentation required and whether compliance could be achieved through alternate means. Such alternate means could be through the use of online databases or verification tools to provide additional *identification data*, or corroborate any *identification data* held.

~~33. Where the firm has been unable to obtain any supplementary *due diligence information* it deems to be required, either from the *customer* directly or through other means, then it must give consideration to the requirements of paragraph 9 of *Schedule 3*.~~

~~34.~~31. Where the firm holds certified *identification data* which was obtained prior to the coming in to force of *Schedule 3* and this *Handbook*, provided the firm is satisfied as to the veracity of the *identification data* held and the certification provided in connection with that *identification data*, the firm is not required to re-certify (or seek newly certified) *identification data*.

17.7. Collective Investment Schemes – Nominated Firm for Investor CDD

32. In accordance with Paragraph 4.57. of this *Handbook*, each CIS authorised or registered by *the Commission* must nominate a firm licensed under *the POI Law* to be responsible for the application of *CDD* measures to all investors in that CIS ~~*CDD*~~.

~~35.~~33. As required by *Commission Rule* 4.59., the nominated firm must treat the investors into the CIS for which it has been nominated as if they were its *customers* and ~~conduct customer *risk assessments* and undertake *CDD*~~ deal with them in accordance with the requirements of ~~paragraphs 3 to 6 of~~ *Schedule 3* and ~~chapters 3 to 9 of~~ this *Handbook*.

~~36.~~34. Where a CIS already holds an authorisation or registration issued by *the Commission*, the nominated firm must *notify the Commission* by the 31 May 2019 that it has been so nominated.

35. As an initial means of notifying of *the Commission* of the firm's nomination by a CIS in accordance with *Commission Rule* 17.35. above, a one-off form entitled 'Notification of the Firm's Nomination for Investor CDD' will be made available via *the Commission's* Online Submissions Portal for all firms licensed under *the POI Law*.

https://submit.gfsc.gg/

Appendix A

Glossary of Terms

The below list of terms includes those defined within *Schedule 3*, together with additional definitions of other terms used within this *Handbook*. Unless the context otherwise requires, terms within this *Handbook* should be read as having the following definition.

Any reference to an enactment is to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment.

"**account**" means a *bank* account and any other *business relationship* between a *specified business* and a *customer* which is of a similar nature having regard to the services offered by the *specified business*.

~~"**additional customer due diligence**" has the meaning in paragraph 5(3)(b) of Schedule 3.~~

"**the Amendment Ordinance**" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018.

"**Appendix C business**" means:

(a) a *financial services business* supervised by *the Commission*, or

(b) a business which is carried on from:

(i) a country or territory listed in Appendix C to this *Handbook* and which would, if it were carried on in *the Bailiwick*, be a *financial services business*, or

(ii) the United Kingdom, the Bailiwick of Jersey, *the Bailiwick* or the Isle of Man by a lawyer or an accountant,

and, in either case, is a business:

(A) 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,

(B) the conduct of which is subject to requirements to forestall, prevent and detect *ML* and *FT* that are consistent with those in the *FATF Recommendations* in respect of such a business, and

(C) the conduct of which is supervised for compliance with the requirements referred to in (B), by *the Commission* or an overseas regulatory authority.

~~"**appropriately qualified**" means that, in respect of a requirement for a person to be appropriately qualified, the person must have appropriate knowledge, skill or experience for the relevant position.~~

"**the Bailiwick**" means the Bailiwick of Guernsey.

"**bank**" means a person who accepts deposits, including a person who does so in a country or territory outside *the Bailiwick*, in the course of carrying on a deposit-taking business within the meaning of *the Banking Law* and related expressions shall be construed accordingly.

"**the Banking Law**" means the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

~~"**bearer negotiable instruments**" means monetary instruments in bearer form~~

~~(a) such as: travellers cheques;~~
~~(b) negotiable instruments (including cheques, promissory notes and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery;~~
~~(c) incomplete instruments (including cheques, promissory notes and money orders) signed, but with the payee's name omitted.~~

"**bearer share~~s~~**" means a negotiable instrument~~s~~ that accords ownership in a ~~*corporation*~~ *legal person* to the individual ~~person~~ who possesses the relevant bearer share certificate.

"**bearer warrant**" means a warrant or other instrument entitling the holder to subscribe for shares or other investments in the capital of a company, title of which can be transferred by delivery.

"**beneficial owner**" has the meaning in Paragraph 22 of *Schedule 3*.

"**the Beneficial Ownership Law**" means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017.

"**the Beneficial Ownership Regulations**" means the Beneficial Ownership (Definition) Regulations, 2017.

"**board**", in relation to a *specified business*, means:

(a) the board of directors of ~~a~~ that *specified business*, where it is a body corporate, or
(b) the senior management of ~~a~~ that *specified business*, where it is not a body corporate,

and references to the board of a *specified business* shall, where the *specified business* is a sole trader, be construed consistently with the provisions of this *Handbook*.

"**branch office~~s~~**" of a ~~*specified*~~ business means a~~re~~ place~~s~~ of business of that ~~*specified*~~ business ~~which~~that is~~are~~ physically separate from tha~~te main place of~~ business ~~of that *specified business*,~~ and that~~which~~ ha~~s~~ve no legal personality.

"**British Islands**" means *the Bailiwick*, the UK, the Bailiwick of Jersey and the Isle of Man.

"**business relationship**" means a business, professional or commercial relationship between a *specified business* and a *customer* which is expected by the *specified business*, at the time when contact is established, to have an element of duration. Such a relationship does not need to involve the firm in an actual transaction; giving advice may often constitute establishing a business relationship.

"**business risk assessment**" means, in accordance with Paragraph 3(3) of *Schedule 3*, an assessment which is appropriate to the nature, size and complexity of the firm and which is in respect of:~~documents the exposure of a business to *ML* or *FT* risks and vulnerabilities, taking into account its:~~

(a) *customers*, and the *beneficial owners* of *customers*,
(b) countries and geographic areas, ~~size, nature and complexity,~~ and
(c) ~~*customers*,~~ products, ~~and~~ services, transactions and delivery channels (as appropriate), and in particular in respect of the *ML* or *FT* risks that may arise in relation to ~~the ways in which it provides those services.~~

(i) the development of new products and new business practices, before such products are made available and such practices adopted, and
(ii) the use of new or developing technologies for both new and pre-existing products, before such technologies are used and adopted.

"**the Commission**" means the Guernsey Financial Services Commission established by *the Financial Services Commission Law*.

"**Commission Rules**" has the meaning in Paragraph 1.16.(a) of this *Handbook*.

"**the Code**" means the *Commission's* Finance Sector Code of Corporate Governance.

"**consolidated supervision**" means supervision by a regulatory authority of all aspects of the business of a group of bodies corporate carried on worldwide, to ensure compliance with:

(a) the *FATF Recommendations*; and
(b) other international requirements,

and in accordance with the Core Principles of Effective Banking Supervision issued by the Basel Committee on Banking Supervision as revised or reissued from time to time.

"**correspondent banking relationship**" means a *business relationship* which involves the provision of banking services by one *bank* to another *bank* ("the respondent *bank*").

"**Crown Dependencies**" means the *Bailiwick*, the Bailiwick of Jersey and the Isle of Man.

"**customer**" means a person or *legal arrangement* who:

(a) is seeking to establish, or has established, a *business relationship* with a *specified business*, or
(b) is seeking to carry out, or has carried out, an *occasional transaction* with a *specified business*,

except that where such a person or *legal arrangement* is an *introducer*, the *customer* is the person or *legal arrangement* on whose behalf the *introducer* is seeking to establish or has established the *business relationship*.

"**customer due diligence**" or "**CDD**" means the steps which a *specified business* is required to carry out pursuant to Paragraph 4(3) of *Schedule 3*, being that:

(a) the *customer* shall be identified and the identity of the *customer* verified using *identification data*,
(b) any person purporting to act on behalf of the *customer* shall be identified and that person's identity and authority to so act shall be verified,
(c) the *beneficial owner* shall be identified and reasonable measures shall be taken to verify such identity using *identification d*ata and such measures shall include, in the case of a *customer* which is a *legal person* or *legal arrangement*, measures to understand the ownership and control structure of the *customer*,
(d) a determination shall be made as to whether the *customer* is acting on behalf of another person and, if the *customer* is so acting, reasonable measures shall be taken to identify that other person and to obtain sufficient *identification data* to verify the identity of that other person,
(e) the purpose and intended nature of each *business relationship* and *occasional transaction* shall be understood, and information shall be obtained as appropriate to support this understanding, and
(f) a determination shall be made as to whether the *customer* or *beneficial owner* is a *PEP*, and, if so, whether he or she is a foreign *PEP*, a domestic *PEP* or a person who is or has been entrusted with a prominent function by an *international organisation*.

"**customer due diligence information**" or "**CDD information**" means:

(a) *identification data*;
(b) any *account* files and correspondence relating to the *business relationship* or *occasional transaction*; and
(c) all records obtained through *CDD* measures, including the results of any analysis undertaken.

"**the Data Protection Law**" means the Data Protection (Bailiwick of Guernsey) Law, 2017.

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

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

"**document**" includes data or information recorded in any form (including, without limitation, in electronic form).

"**the Drug Trafficking Law**" means the Drug Trafficking (Bailiwick of Guernsey) Law, 2000.

"**Economic Crime Division**" means the branch of the Customs and Immigration Service responsible for the investigation of financial and economic crime.

"**employee**" means an individual working, including on a temporary basis, for a *specified business* whether under a contract of employment, a contract for services or otherwise. For the purposes of this *Handbook*, references to *employee* include any partner of the *specified business*.

~~"**enactment**" includes a Law, an Ordinance or any *subordinate legislation* and any provision or portion of a Law, an Ordinance or any *subordinate legislation*.~~

"**enhanced customer due diligence**" or "**ECDD**"~~has the~~ means~~ing~~, in accordance with Paragraph 5(3)(a) of *Schedule 3*:

(i) obtaining senior management approval for establishing a *business relationship* or undertaking an *occasional transaction*,
(ii) obtaining senior management approval for, in the case of an existing *business relationship* with a foreign *PEP*, continuing that relationship,
(iii) taking reasonable measures to establish and understand the source of any *funds* and of the wealth of –

(A) the *customer*, and
~~(A)~~(B) the *beneficial owner*, where the *beneficial owner* is a *PEP*,

~~(iii)~~(iv) carrying out more frequent and more extensive ongoing monitoring, including increasing the number and timing of controls applied and selecting patterns of activity or transactions that need further examination, in accordance with Paragraph 11 of *Schedule 3*, and
~~(iv)~~(v) taking one or more of the following steps as would be appropriate to the particular *business relationship* or *occasional transaction* -

(A) obtaining additional information about the *customer*, such as the type, volume and value of the *customer's* assets and additional information about the *customer's beneficial owners*,
(B) verifying additional aspects of the *customer's* identity,
(C) obtaining additional information to understand the purpose and intended nature of each *business relationship* and *occasional transaction*, and

~~(C)~~(D) taking reasonable measures to establish and understand the source of funds and wealth of *beneficial owners* not falling within (c) above.

"**enhanced measures**" means, in accordance with Paragraph 5(3)(b) of *Schedule 3*, the carrying out of appropriate and adequate enhanced measures in relation to a *business relationship* or *occasional transaction*, to mitigate and manage the specific higher *risk* of *ML* and *FT* resulting from the matters listed in Paragraph 5(2) of *Schedule 3* that are relevant to that relationship or transaction.

"**the EU Regulation**" means Regulation (EU) 2015/847 on Information Accompanying Transfers of Funds.

"**express trust**" means 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**" means the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation issued by the Financial Action Task Force as revised or reissued from time to time.

"**the Fiduciaries Law**" means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.

~~"**Financial Crime Compliance Officer**" means a manager, partner or director appointed by a specified business to have responsibility for compliance with policies, procedures and controls to forestall, prevent and detect ML and FT.~~

~~"**Financial Crime Reporting Officer**" means a manager, partner or director nominated by a specified business to receive disclosures under Part I of the Disclosure Law and section 15 of the Terrorism Law.~~

"**financial exclusion**" means individuals being 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.

"**Financial Intelligence Service**" or "**FIS**" means the division of the Economic Crime Division comprising persons assigned to the division for the purpose of the receipt, analysis and dissemination within *the Bailiwick*, and elsewhere, of disclosures under Part I of *the Disclosure Law* which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports.

"**financial services business**" or "**FSB**" means any business specified in Schedule 1 to *the Law* and includes, unless the context otherwise requires, a person carrying on such a business in *the Bailiwick* or an *Appendix C business* conducting business equivalent to that specified in Schedule 1 to *the Law*. For the avoidance of doubt, a business is a financial services business only in respect of the businesses specified in Schedule 1, and only to the extent that it conducts one or more of those businesses.

"**the Financial Services Commission Law**" means the Financial Services Commission (Bailiwick of Guernsey) Law, 1987.

"**fixed trust**" means a trust in respect of which the beneficiaries of the trust, and the interests of those beneficiaries, are certain.

"**forming a suspicion**" of *ML* or *FT*, and any related expressions, are references to a person –

(a) knowing or suspecting, or
(b) having reasonable grounds for knowing or suspecting,

that another person is engaged in –

(i) *ML* or that certain property is or is derived from the proceeds of criminal conduct (within the meaning of *the Disclosure Law*), or
(ii) *FT* or that certain property is or is derived from terrorist property (within the meaning of *the Terrorism Law*),

as the case may be.

"**foundation**" means -

(a) a foundation created under the Foundations (Guernsey) Law, 2012, or
(b) an equivalent or similar body created or established under the law of another jurisdiction (and howsoever named).

"**foundation official**" means -

(a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and
(b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a).

"**founder**" means -

(a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a founder within the meaning of that Law; and
(b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person corresponding to a founder described in paragraph (a).

"**the FSB Regulations**" means the Criminal Justice (Proceeds of Crime) (Financial Services Business) (Bailiwick of Guernsey) Regulations, 2007.

"**funds**" means assets of all~~every~~ types,~~kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable~~ and ~~legal~~ documents or instruments evidencing title to~~,~~ or interest in~~,~~ such assets.

"**guidance**" has the meaning in Paragraph 1.16.(b) of this *Handbook*.

"**Handbook**" means this Handbook, as revised or re-issued from time to time by *the Commission*.

"**high risk relationship**" means a *business relationship* or an *occasional transaction* which has a high *risk* of involving *ML* or *FT* and related terms shall be construed accordingly.

"**the IB Law**" means the Insurance Business (Bailiwick of Guernsey) Law, 2002.

"**identification data**" means *documents*, data and information ~~which are~~ from a reliable and independent source.

"**the IMII Law**" means the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

"**intermediary**" means an *FSB* which is considered to be the *customer* of a *specified business* when establishing a *business relationship* or undertaking an *occasional transaction* in accordance with the provisions of Section 9.8. of this *Handbook*.

"**intermediary relationship**" means a *business relationship* in which the *customer* is an *intermediary*.

"**international organisation**" means an entity –

(a) which was established by a formal political agreement between its member states that has the status of an international treaty,

(b) the existence of which is recognised by law in its member states, and

(c) which is not treated as a resident institutional unit of the country in which it is located.

~~"**international organisation PEP**" means a natural person who is, or has been, entrusted with a prominent public function by an *international organisation*.~~

"**introducer**" means an *Appendix C business* ~~*specified business*, lawyer or accountant~~ who is seeking to establish or has established, on behalf of another person or *legal arrangement* who is its *customer*, a *business relationship* or undertake an *occasional transaction* with a *specified business*.

"**joint arrangement**" means, in accordance with Regulation 5 of *the Beneficial Ownership Regulations*:

(1) if shares or rights in a *relevant legal person* or other legal entity held by a person and shares or rights in the same person or other entity held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined shares or rights of both of them.

(2) a "joint arrangement" is an arrangement between the holders of shares (or rights) in a *relevant legal person* or other legal entity that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is pre-determined by the arrangement.

(3) "arrangement" includes-

(a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
(b) any convention, custom or practice of any kind.

(4) but something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

"**joint interests**" means, in accordance with Regulation 4 of *the Beneficial Ownership Regulations*, that if two or more persons each hold a share or right in a *legal person* or other legal entity jointly, each of them is treated as holding that share or right.

"**key principal**" means, in the context of a *business relationship* or *occasional transaction*, a natural person, *legal person* or *legal arrangement* falling within one or more of Paragraphs 4(3)(a)-(d) of *Schedule 3* in respect of that *business relationship* or *occasional transaction*, specifically:

(a) the *customer*;
(b) any person purporting to act on behalf of the *customer*;
(c) the *beneficial owner* of the *customer*; and
(d) any person on behalf of whom the *customer* is acting.

"**the Law**" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ~~as amended~~.

"**legal arrangement**" ~~means~~includes an *express trust* ~~or~~ and any ~~other~~ vehicle or arrangement whatsoever which has a similar legal effect to an *express trust*.

"**legal ~~body~~person**" means bodies corporate, *foundations*, anstalt, partnerships, or associations, or any similar bodies that can establish a ~~permanent~~*business* ~~customer~~ *relationship* or undertake an *occasional transaction* with a *specified business* or otherwise own property.

~~"**LLP Law**" means the Limited Liability Partnerships (Guernsey) Law, 2013.~~

"**low risk relationship**" means a *business relationship* or an *occasional transaction* which has a low *risk* of involving *ML* or *FT* and related terms shall be construed accordingly.

"**maintain**" means, in the context of the requirements of this *Handbook*, that relevant policies, procedures and controls must be established and implemented, and that the *specified business* must monitor such policies, procedures and controls to ensure that they are operating effectively.

"**minimum retention period**" means:~~–~~

(a) in the case of any *CDD information*-

(i) a period of five years starting from the date-

(A) where the *customer* has established a *business relationship* with the *specified business*, that relationship ceased,

(B) where the *customer* has carried out an *occasional transaction* with the *specified business*, that transaction was completed, or

(ii) such other longer period as *the Commission* may direct,

(b) in the case of a *transaction document*-

(i) a period of five years starting from the date that both the transaction and any related transaction were completed, or

(ii) such other longer period as *the Commission* may direct.

"**money laundering**" or "**ML**" has the same meaning as "money laundering offence" has in *the Law*, specifically:

(a) an offence under Section 38, 39 or 40 of *the Law*,
(b) an attempt, conspiracy or incitement to commit an offence specified in (a),
(c) aiding, abetting, counselling or procuring the commission of an offence specified in (a), or
(d) an offence committed outside *the Bailiwick* which would constitute an offence specified in (a), (b) or (c) if committed within *the Bailiwick*.

"**Money Laundering Compliance Officer**" or "**MLCO**" means a manager, partner or director appointed by a *specified business* to have responsibility for compliance with policies, procedures and controls to forestall, prevent and detect *ML* and *FT*.

"**Money Laundering Reporting Officer**" or "**MLRO**" means a manager, partner or director nominated by a *specified business* to receive disclosures under Part I of *the Disclosure Law* and Sections 12 and 15 of *the Terrorism Law*.

"**National Risk Assessment**" or "**NRA**" means the National Risk Assessment published by the States of Guernsey Policy & Resources Committee as amended from time to time.

"**nominated firm**" means a *specified business* licensed under *the POI Law* nominated by a CIS in accordance with Paragraph 4.57. of this *Handbook*.

"**Nominated Officer**" means a natural person nominated by a *specified business* in accordance with Paragraph 12(1)(b) or 12(1)(c) of *Schedule 3* to receive disclosures under Part I of *the Disclosure Law* and Section 15 of *the Terrorism Law* in the absence of the *MLRO* and otherwise carry out the functions of the *MLRO* in that officer's absence.

"**nominee director**" means, in accordance with Section 7.3.2. of this *Handbook*, a natural or *legal person* holding the position of director on the board of a *legal person* and acting on behalf of another natural or *legal person*.

"**nominee shareholder**" has the same meaning as "nominee" has in the Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017, specifically a legal or natural person in a nominee relationship in which that person is registered as the legal owner of a share or right in a company (or of an equivalent interest in a *foundation*, limited partnership or LLP) which is held or is exercisable by that person on behalf of a *beneficial owner* of that company, *foundation*, limited partnership or LLP as the case may be, whether directly or indirectly (other than as the trustee of a trust).

"**non-Guernsey collective investment scheme**" or "**NGCIS**" means any open or closed-ended collective investment scheme established outside *the Bailiwick* ~~of Guernsey~~.

"**notify**" means ~~notify~~ in writing, and includes for the purposes of this *Handbook*, notifications made to *the Commission* via the PQ Portal and Online Submissions Portal and to the *FIS* via THEMIS.

"**the NRFSB Law**" means the Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2009 ~~as amended~~.

"**occasional transaction**" means any transaction involving more than £10,000, carried out by the *specified business* in question in the course of that business, where no *business relationship* has been proposed or established and includes such transactions carried out in a single operation or two or more operations that appear to be linked.

~~"**omnibus account**" means a multi-client pooled/omnibus-type account or other arrangement used to collect together funds from a variety of sources for onward investment under the direct control of a *financial services business* or *Appendix C business*.~~

"**payer**" means a natural person, *legal person* or *legal arrangement* that holds a payment *account* and allows a transfer of *funds* from that payment *account*, or, where there is no payment *account*, that gives a transfer of *funds* order.

"**payee**" means a natural person, *legal person* or *legal arrangement* identified by the *payer* as the intended recipient of the transfer of *funds*.

"**payment service provider**" or "**PSP**" means any business undertaking the activities specified within Paragraphs 4 or 5 of Part I of Schedule 1 to *the Law*.

"**the PB Law**" means the Prescribed Business (Bailiwick of Guernsey) Law, 2008.

"**the PB Regulations**" means the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008.

"**physical presence**" means the presence of persons involved in a meaningful way in the running and management of the *bank* which, for the avoidance of doubt, is not satisfied by the presence of a local agent or junior staff.

"**the POI Law**" means the Protection of Investors (Bailiwick of Guernsey) Law, 1987 ~~as amended~~.

"**police officer**" means, in accordance with ~~has the meaning in~~ Section 51(1) of *the Law* -

(a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

(b) in relation to Alderney, a member of the said salaried police force, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed or deemed to be appointed pursuant to the provisions of an Ordinance made under Section 46A of the Government of Alderney Law, 1987,

(c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of the Island of Guernsey, and

(d) an officer within the meaning of Section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

"**politically exposed person**" or "**PEP**" ~~has the~~ means~~ing,~~ in accordance with Paragraph 5(4) of *Schedule 3* -

(a) a natural person who has, or has had at any time, a prominent public function, or who has been elected or appointed to such a function, including, without limitation:

(i) heads of state or heads of government,
(ii) senior politicians and other important officials of political parties,
(iii) senior government officials,
(iv) senior members of the judiciary,
(v) senior military officers, and
(vi) senior executives of state owned body corporates,

(and such a person shall be referred to as a "**foreign PEP**" unless he or she holds or has held or has been elected or appointed to the prominent public function in question in respect of *the Bailiwick*, in which case he or she shall be referred to as a "**domestic PEP**"),

(b) a person who is, or who has been at any time, entrusted with a prominent function by an *international organisation* ("**international organisation PEP**"),

(c) an immediate family member of a person referred to in (a) or (b) including, without limitation, a spouse, partner, parent, child, sibling, parent-in-law or grandchild of such a person and for the purposes of this definition "partner" means a person who is considered by the law of the country or territory in which the relevant public function is held as being equivalent to a spouse, or

(d) a close associate of such a person, including, without limitation:

(i) a person who is widely known to maintain a close business relationship with such a person, or
(ii) a person who is in a position to conduct substantial financial transactions on behalf of such a person.

"**prescribed business**" or "**PB**" means any business which is a relevant business for the purposes of *the Law*, but does not include a business of a type described in Paragraphs 2 or 4 of Schedule 2 to *the Law*.

"**proceeds**" means any property derived from or obtained, directly or indirectly, through the commission of an offence.

"**protector**" means,~~has the meaning~~ in accordance with Section 58 of *the Fiduciaries Law*, in relation to a trust, a person other than a trustee who, as the holder of an office created by the terms of the trust, is authorised or required to participate in the administration of the trust.

"**the Regulatory Laws**" means –

(a) the Banking Supervision (Bailiwick of Guernsey) Law, 1994;
(b) the Insurance Business (Bailiwick of Guernsey) Law, 2002;
(c) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;
(d) the Protection of Investors (Bailiwick of Guernsey) Law, 1987; and
(e) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000.

"**relationship risk assessment**" means the assessment of *risk* within a *business relationship* or *occasional transaction*.

"**relevant connection**" means, in accordance with Paragraph 5(10) of *Schedule 3*, for the purposes of a *customer* or *beneficial owner* having a relevant connection with a country or territory, the *customer* or *beneficial owner*:

(a) is the government, or a public authority, of the country or territory,
(b) is a *PEP* within the meaning of Paragraph 5(4) of *Schedule 3* in respect of the country or territory,
(c) is resident in the country or territory,
(d) has a business address in the country or territory,
(e) derives *funds* from –

(i) assets held by the *customer* or *beneficial owner*, or on behalf of the *customer* or *beneficial owner*, in the country or territory, or
(ii) income arising in the country or territory, or

(f) has any other connection with the country or territory which the *specified business* considers, in light of that business' duties under *Schedule 3* (including but not limited to its duties under Paragraph 2 of *Schedule 3*), to be a relevant connection for those purposes.

"**relevant employee~~s~~**" means any –

(a) member of the *board* of the *specified business*,
(b) member of the management of the *specified business*, and
(c) employee~~s~~ whose duties relate to the *specified business*.

"**the Relevant Enactments**" means –

(a) the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
(b) the Drug Trafficking (Bailiwick of Guernsey) Law, 2000;
(c) the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011;
(d) the Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011;
(e) the Afghanistan (Restrictive Measures) (Alderney) Ordinance, 2011;
(f) the Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011;
(g) the Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013;
(h) the Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013;

(i) the Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013;
(j) the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
(k) the Disclosure (Bailiwick of Guernsey) Law, 2007;
(l) the Transfer of Funds (Guernsey) Ordinance, 2017;
(m) the Transfer of Funds (Alderney) Ordinance, 2017;
(n) the Transfer of Funds (Sark) Ordinance, 2017;
(o) the Disclosure (Bailiwick of Guernsey) Regulations, 2007;
(p) the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007;
(q) the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008;
(r) the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008;
(s) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017;
(t) the Beneficial Ownership of Legal Persons (Alderney) Law, 2017;
(u) the Beneficial Ownership (Definition) Regulations, 2017;
(v) the Beneficial Ownership (Alderney) (Definitions) Regulations, 2017;
(w) the Beneficial Ownership of Legal Persons (Provision of Information) (Transitional Provisions) Regulations, 2017;
(x) the Beneficial Ownership of Legal Persons (Provision of Information) (Transitional Provisions) (Alderney) Regulations, 2017;
(y) the Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017;
(z) the Beneficial Ownership of Legal Persons (Nominee Relationships) (Alderney) Ordinance, 2017;
(aa) the Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017;

and such other enactments relating to *ML* and *FT* as may be enacted from time to time in *the Bailiwick.*

"**relevant person**" means, in the context of a *foundation*, the registered agent, *foundation official* or any other person who holds information on the identity of the *beneficial owners* ~~and *underlying principals*~~ of the *foundation*.

"**relevant legal person**" means, in accordance with Paragraph 41(1) of *the Beneficial Ownership Law*:

(a) a company incorporated under the Companies (Guernsey) Law, 2008,
(b) an LLP incorporated under the Limited Liability Partnerships (Guernsey) Law, 2013,
(c) a *foundation* established under the Foundations (Guernsey) Law, 2012, or
(d) a limited partnership with legal personality registered under the Limited Partnerships (Guernsey) Law, 1995.

"**the Reporting Laws**" means collectively *the Disclosure Law* and *the Terrorism Law*.

"**the Reporting Regulations**" means collectively the Disclosure (Bailiwick of Guernsey) Regulations, 2007 and the Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007.

"**the Restrictive Ordinances**" means collectively the Afghanistan (Restrictive Measures) Ordinance, 2011 and the Al-Qaida (Restrictive Measures) Ordinance, 2013.

"**risk**" means a risk of *ML* or *FT* occurring and "**risk assessment**" shall be construed accordingly.

"**risk appetite**" means, in accordance with Paragraph 3(2)(b) of *Schedule 3*, the type and extent of the *risks* that a *specified business* is willing to accept in order to achieve its strategic objectives.

"**satisfied**" means, in the context of a *specified business* being satisfied as to a matter, that the *specified business* must be able to justify and demonstrate its assessment to *the Commission*.

"**Schedule 3**" means Schedule 3 to *the Law*.

"**settlor**" means any natural person, *legal person* or *legal arrangement* who transfers ownership of their assets to a trustee.

"**shell bank**" means a *bank* that has no *physical presence* in the country or territory in which it is incorporated and licensed~~,~~ and which is not a member of a group of bodies corporate which is subject to effective ~~unaffiliated with a regulated financial services group that is subject to effective~~ *consolidated supervision*. ~~Physical presence means meaningful mind and management located within a country. The existence simply of a local agent or low level staff does not constitute physical presence.~~

"**simplified customer due diligence**" or "**SCDD**" has the meaning in Paragraph 6 of *Schedule 3*.

"**specified business**" ~~has the~~ means~~ing,~~ in accordance with Paragraph 1(1) of *Schedule 3* and for the purposes of *Schedule 3* and this *Handbook*, a *financial services business* or a *prescribed business*.

"**subordinate legislation**" means any ordinance, statutory instrument, paragraph, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect.

"**termination**" means the conclusion of a relationship between a *specified business* and the *customer*. In the case of a *business relationship*, termination occurs on the closing or redemption of a product or service or the completion of the last transaction. With an *occasional transaction*, termination occurs on completion of that *occasional transaction* or the last in a series of linked transactions or the maturity, claim on or cancellation of a contract or the commencement of insolvency proceedings against a *customer*.

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

"**the Terrorist Asset-Freezing Law**" means the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011.

"**terrorist financing**" or "**FT**"~~has the~~ means~~ing,~~ ~~given~~ in accordance with *the Terrorism Law*, doing any act which –

(a) constitutes an offence under Section 8, 9, 10 or 11 of *the Terrorism Law*, or Section 9, 10, 11, 12 or 13 of *the Terrorist Asset-Freezing Law*, or Section 1(2) of *the Restrictive Ordinances* and, for the purposes of this definition, the "purposes of terrorism" shall include, to the extent that they do not already do so –

(i) any attempt, conspiracy or incitement to carry out terrorism within the meaning of Section 1 of *the Terrorism Law*, or
(ii) aiding, abetting, counselling or procuring the carrying out of such terrorism,

(b) constitutes an attempt, conspiracy or incitement to commit an offence specified in (a),
(c) constitutes aiding, abetting, counselling or procuring the commission of an offence specified in (a), or
(d) would, in the case of an act done otherwise than in *the Bailiwick*, constitute an offence specified in (a), (b) or (c) if done in *the Bailiwick*,

irrespective of the value of the property involved, and for the purposes of this definition having possession of any property shall be taken to be doing an act in relation to it.

"**transaction document**" ~~has the~~ means~~ing~~, in accordance with Paragraph 14 of *Schedule 3*, a comprehensive record of a transaction with a *customer* or an *introducer*, including the amounts and types of currency involved in the transaction (if any).

~~"**transactions**" means, in the general context of this *Handbook*, an *occasional transaction*, any customer facing functions, or the handling of *business relationships*.~~

"**transfer agent**" means the financial institution assigned by a CIS to maintain records of investors into that CIS, together with their associated *account* balances.

"**the Transfer of Funds Ordinance**" means the Transfer of Funds (Guernsey, Sark or Alderney) Ordinance, 2017 relevant to the island within which the *specified business* is operating.

"**transparent legal person**" means, in accordance with Paragraph 22(10) of *Schedule 3*:

(a) a company that is listed on a recognised stock exchange within the meaning of *the Beneficial Ownership Regulations*, or a majority owned subsidiary of such a company;
(b) a States trading company within the meaning of the States Trading Companies (Bailiwick of Guernsey) Law, 2001;
(c) a legal person controlled by the States of Alderney through ownership within the meaning of the Beneficial Ownership (Alderney) (Definition) Regulations, 2017 (or any successor regulations made under Section 25 of the Beneficial Ownership of Legal Persons (Alderney) Law, 2017; or
(d) a regulated person within the meaning of Section 41(2) of *the Beneficial Ownership Law*.

~~"**underlying principal**" has the meaning in Paragraphs 21(2) to 21(6) of *Schedule 3*.~~

"**unique identifier**" means any unique combination of letters, numbers or symbols that refers to a specific natural person.

"**unique transaction identifier**" means any unique combination of letters, numbers or symbols that refers to a specific transaction.

"**vested interest**" means an interest which, whether or not currently in possession, is not contingent or conditional on the occurrence of any event.

"**voting rights**" means, in accordance with Regulation 7 of *the Beneficial Ownership Regulations*:

(1) a reference to the voting rights in a *relevant legal person* or other legal entity is to the rights conferred on shareholders in respect of their shares (or, in the case of an entity not having a share capital, on members or officers) to vote at general meetings of the *relevant legal person* or other entity on all or substantially all matters.

(2) in relation to a *relevant legal person* or other legal entity that does not have general meetings at which matters are decided by the exercise of voting rights:

(a) a reference to exercising voting rights in the *relevant legal person* or other legal entity is to be read as a reference to exercising rights in relation to a person or entity that are equivalent to those of a person entitled to exercise voting rights in a company, and
(b) a reference to exercising more than 25% of the voting rights in the *relevant legal person* or legal entity is to be read as a reference to exercising the right under the constitution of the *relevant legal person* or entity to block changes to the overall policy of the entity or to the terms of its constitution.

(3) in applying this definition, the voting rights in a *relevant legal person* or other legal entity are to be reduced by any rights held by the person or entity itself.

"**wire transfer**" means any transaction carried out on behalf of a *payer* (both natural and legal) through a *financial services business* by electronic means with a view to making an amount of money available to a beneficiary person at another *financial services business*. The *payer* and the beneficiary may be the same person.