

Chapter 17

Transitional Provisions

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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 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 contains suitable, sufficient and separate assessments of the *ML* and *FT risks* to the firm.

8. For the purposes of Paragraph 17.6. above:

- (a) the firm must have reviewed its *business risk assessment* and have had the revised *ML* and *FT* assessments approved by the *board* of the firm by no later than ~~30 September~~ **1 May** 2020; and
- (b) the conclusions of *the Bailiwick’s NRA* must be taken into account as part of the next review of the *business risk assessment* as required by Paragraph 3(1) of *Schedule 3*.

17.3. Policies, Procedures and Controls

9. 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.

10. 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*.

11. For the purposes of Paragraph 17.10.:

- (a) the firm must have reviewed and revised its policies, procedures and controls, and these must have been approved by the *board*, by no later than ~~30 September~~ **1 May** 2020; and
- (b) the conclusions of the *Bailiwick's NRA* must be taken into account as part of the next review of the firm's policies, procedures and controls as required by Paragraph 3(6) of *Schedule 3*.

12. In reviewing its policies, procedures and controls, the firm should 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 *relationship risk-assessment* process are taken into account, together with any changes to the *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* 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.

13. 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

14. 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.

15. 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 email address of the *MLRO* does not apply to any such persons.

16. 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. Notification of 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

18. 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.

19. Further information on the role of the *MLCO*, including the requirements in respect of the individual appointed, can be found in Section 2.8.1. of this *Handbook*.

20. The *board* of the firm must ensure that a suitable *MLCO* is appointed by 31 March 2019 and *the Commission* must be notified by 14 April 2019 of that person's appointment

21. Notification of an individual's appointment as *MLCO* should be made via *the Commission's* Online PQ Portal.
22. For the avoidance of doubt, in accordance with Paragraph 2.64. 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

23. 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.

24. 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*.

25. 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 *business relationships* at appropriate times on the basis of materiality and *risk*. This provides for 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.

26. 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, taking into account whether and when any *CDD* measures have previously been applied and the adequacy of the *identification data* held. Whilst *Commission Rules 17.27. and 17.28.* below, enable the firm to determine how best to manage the review within the timeframe set, *the Commission* would encourage the firm to take a *risk based approach* to ensure that current *CDD* measures, including *ECDD* and/or *enhanced measures* where relevant, are applied to its high *risk business relationships* well in advance of 31 December 2021. Setting a 30 June 2021 deadline for reviewing all high *risk business relationships* would be prudent.

27. 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~~ are reviewed by 31 December 2021.

28. 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, including *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*.

29. 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 11.43. of this *Handbook* the firm is not required to re-verify the identity of the *customer*, *beneficial owner* and other *key principals*.

30. When determining whether it is necessary to gather additional *CDD information*, 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*.

31. 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.

32. 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

33. 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.

34. 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 deal with them in accordance with the requirements of *Schedule 3* and this *Handbook*.

35. 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.

36. As an initial means of *notifying 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/>

