

FEEDBACK ON CONSULTATION PAPER NO. 10 2009

AML/CFT HANDBOOK FOR REGULATED FINANCIAL SERVICES BUSINESS

Sector specific section for trust company business

ISSUED DECEMBER 2009

CONSULTATION FEEDBACK

This paper reports on the responses received by the Jersey Financial Services Commission (the “**Commission**”) on Consultation Paper No. 10 2009: AML/CFT Handbook for Regulated Financial Services Business – Sector specific section for trust company business.

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Glossary of terms

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|-----------------------------|--|
| the AML/CFT Handbook | means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business regulated under the Regulatory Laws |
| the Commission | means the Jersey Financial Services Commission |
| the Money Laundering Order | means the Money Laundering (Jersey) Order 2008, as amended |
| a relevant person | means a person that is subject to the Money Laundering Order |
| the sector specific section | means the sector specific section for trust company business |

Contents

| | |
|---|----------|
| Glossary of terms..... | 3 |
| Contents | 4 |
| 1 OVERVIEW | 5 |
| 1.1 Background..... | 5 |
| 1.2 Feedback on the proposals contained in the Consultation Paper | 5 |
| 2 SUMMARY OF RESPONSES | 6 |
| 2.1 Structure of this section..... | 6 |
| 2.2 Providing a registered office address..... | 6 |
| 2.3 Termination of a relationship..... | 7 |
| 2.4 Employee benefit schemes..... | 7 |
| 2.5 Other matters..... | 8 |
| APPENDIX A | 9 |
| List of respondents. | 9 |

1 OVERVIEW

1.1 Background

- 1.1.1 The Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business regulated under the Regulatory Laws¹ (the “**AML/CFT Handbook**”) came into force on 4 February 2008. Since that date, a number of amendments have been made to the AML/CFT Handbook, which are summarised in Part 4 thereof.
- 1.1.2 The AML/CFT Handbook includes provisions that are applicable where a trustee of an express trust or a legal body (including a foundation) is the applicant for business or customer of a person that is subject to the Money Laundering (Jersey) Order 2008, as amended (the “**Money Laundering Order**”), referred to hereafter as a “**relevant person**”.
- 1.1.3 However, there are currently no specific provisions in the AML/CFT Handbook to assist with the application of customer identification measures where a business relationship is established or one-off transaction carried out by a relevant person in the course of “trust company business”.
- 1.1.4 Consultation Paper No. 10 2009 considered how those specific provisions should be presented.

1.2 Feedback on the proposals contained in the Consultation Paper

- 1.2.1 The Commission received five responses to the Consultation Paper. A summary of comments made can be found in section 2 of this Feedback Paper.
- 1.2.2 A list of the respondents is given in Appendix A.
- 1.2.3 The Commission is grateful to respondents for taking the time to consider and comment on the proposed sector specific section.

¹ The Regulatory Laws are: the Banking Business (Jersey) Law 1991; the Collective Investment Funds (Jersey) Law 1988; the Financial Services (Jersey) Law 1998; and the Insurance Business (Jersey) Law 1996.

2 SUMMARY OF RESPONSES

2.1 Structure of this section

- 2.1.1 The questions posed in the Consultation Paper and a summary of the responses received to each one are presented below. How the Commission intends to address the matter raised in response is set out in italicised text.
- 2.1.2 The Consultation Paper can be obtained from the Commission's website² or by contacting the Commission directly.

2.2 Providing a registered office address

Question 4.2.4.1

Do you agree that the application of identification measures in the sector specific section is proportionate to the risks that are presented by the provision of "registered-office only" services? If you do not, please explain what you consider would be proportionate.

- 2.2.1 Of the three responses received to this question, one respondent said that they were in full agreement with the Commission's proposals.
- 2.2.2 Another respondent said that, whilst they agreed that the provision of registered office only business should be considered to present a high risk in the majority of cases, risk will be lower where there is a proven track record of a regular information flow and:
- 2.2.2.1 the client is registered on a well-regulated stock exchange; or
- 2.2.2.2 the client is an equivalent regulated business.
- 2.2.3 The respondent added that the risk based approach should allow for a distinction between services provided to corporate clients such as mentioned above and private clients.
- 2.2.4 The third respondent said that insufficient guidance had been proposed to assist with the assessment of risk that is presented when registered office only services are provided. The respondent also thought that more rigorous identification measures should be applied in respect of registered office only services. The respondent observed that the corroboration of relationship information provided by a customer could not mitigate the risk of "not having control" over a business relationship, and highlighted the general difficulty in obtaining financial statements.
- 2.2.5 *The following additional guidance has been added to the sector specific section:*
- "The risk that a legal body may be used to launder money or to finance terrorism is likely to be mitigated where a customer to whom a registered office only service is provided is a body corporate the securities of which are listed on a regulated market, or*

² http://www.jerseyfsc.org/pdf/Consultation_Paper_No_10_2009_TCB_section_for_Handbook.pdf

where a customer is a regulated person (or person who carries on equivalent business to any category of regulated business)."

2.2.6 *Otherwise, requirements and guidance for the provision of registered office only services will be kept under review.*

2.3 Termination of a relationship

Question 4.3.4.1

Do you agree that Article 14 of the Money Laundering Order should be applied in the way that is described? Please provide support for your response.

2.3.1 Two responses were received to this question and both respondents agreed with the Commission's proposals.

2.3.2 One said that it was imperative that a third party should not be prejudiced due to the behaviour of another individual. The other said that the Commission's proposals would allow a relevant person to act in a reasonable manner and not force it to terminate a relationship, in order to comply with Article 14 of the Money Laundering Order, when difficulties in carrying out identification measures were being experienced with one of a number of beneficiaries. That respondent also noted that the proposals would not affect the requirement to consider making a suspicious activity report to the Joint Financial Crimes Unit.

2.3.3 *Guidance has been clarified to make it clearer that termination of a relationship may be delayed rather than avoided (in line with the text used in the Consultation Paper). Guidance has also been updated to explain the basis for permitting a delay in termination (again in line with the text used in the Consultation Paper).*

2.4 Employee benefit schemes

Question 4.4.5.1

In the case of a trust that is considered to be lower risk, do you agree that it should be possible to limit verification of the identity of the members of such a scheme to confirming that members are bona fide employees of the sponsoring employer?

2.4.1 Of the two responses received to this question, one respondent agreed with the Commission's proposal.

2.4.2 The other respondent said that the names of all employees should be disclosed as part of the trustee's due diligence checks to allow the trustee to complete, at the very least, external searches particularly as the trustee would not be aware of the employment screening checks in place used by the sponsoring employer.

2.4.3 *Guidance has been clarified to make it clearer that the concession covers only the verification of identity of scheme members, and not also the identification of those members.*

Question 4.4.5.2

Should paragraph 38 of the sector specific section be expanded to include other relevant factors? If so, what factors should be added?

2.4.4 Two responses were received. Both respondents felt that guidance provided was sufficient.

2.4.5 *No changes are proposed.*

Question 4.4.5.3

Do you consider that Article 18 of the Money Laundering Order should be extended to cover employee benefit schemes other than pension schemes?

2.4.6 Of the two responses received to this question, one considered that Article 18 of the Money Laundering Order should be extended to cover employee benefit schemes other than pension schemes.

2.4.7 The other did not think that Article 18 should be amended, on the basis that there should continue to be a requirement to establish the identity of the members of a particular employee benefit scheme.

2.4.8 *A change to Article 18 will be considered to cover all employee benefit schemes, in relation to verification of the identity of scheme members.*

2.5 Other matters

Question 4.5.1.1

Do you have any other comments on the sector specific section? If so, please set out those comments.

2.5.1 Two responses were received to this question, one of which was a “nil” response.

2.5.2 The other respondent asked whether the concession that is available for “lower risk legal services” in the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector could be publicised in the sector specific section.

2.5.3 Under certain circumstances, this concession allows lawyers to provide legal services to trust companies without those trust companies having to provide details of their underlying clients.

2.5.4 *Additional guidance has been added to publicise this concession.*

APPENDIX A

List of respondents.

- Dominion Corporate Services Limited
- Jersey Finance Limited
- Minerva Financial Services Limited
- Mourant du Feu and Jeune
- STM Fiduciaire Limited