



CONSULTATION PAPER NO. 4 2006

HANDBOOK FOR THE PREVENTION AND DETECTION OF MONEY LAUNDERING AND THE FINANCING OF TERRORISM

Part of a review of Jersey's framework for preventing and detecting money laundering and the financing of terrorism

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Comments should reach the Commission by 14 August 2006.

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It is the policy of the Commission to make the content of all responses available for public inspection unless specifically requested otherwise.

CONSULTATION PAPER

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1 - EXECUTIVE SUMMARY

OVERVIEW

- 1.1 Money laundering methods and techniques change in response to developing counter-measures. In recent years, the Financial Action Task Force on Money Laundering (the “FATF”) has noted increasingly sophisticated combinations of techniques, such as the increased use of legal persons to disguise the true ownership and control of illegal proceeds, and an increased use of professionals to provide advice and assistance in laundering criminal funds. These factors, combined with the experience gained through the FATF’s non-cooperative countries and territories process, and a number of national and international initiatives, have led the FATF to review and revise the Forty Recommendations (the “**revised FATF Recommendations**”) into a new comprehensive framework for combating money laundering and terrorist financing. This framework was published in June 2003.
- 1.2 The FATF recognises that countries have diverse legal and financial systems and so all cannot take identical measures, especially over matters of detail. The revised FATF Recommendations therefore set minimum standards enabling countries to implement the detail according to their particular circumstances and constitutional framework.
- 1.3 The FATF has now called upon all countries to take the necessary steps to bring their national systems for combating money laundering and terrorist financing into compliance with the revised FATF Recommendations, and to effectively implement these measures.
- 1.4 At a meeting of the Offshore Group of Banking Supervisors (“OGBS”) in Mauritius in July 2003, each member was requested to convey to the relevant minister in their jurisdiction the suggestion of a ministerial commitment to implementation of the revised FATF Recommendations. Such a commitment was provided by Senator Walker on behalf of the Policy and Resources Committee of the States of Jersey in September 2003.
- 1.5 At the same time, there is some evidence of dissatisfaction with implementation of existing requirements to prevent and detect money laundering, and, in particular, customer identification and verification. Whilst there is recognition that identification and verification of identity is an important tool in the fight against money laundering and terrorist financing, there is a feeling that:
 - too much emphasis has been placed on this area and that it should play a more proportionate role alongside other tools; and
 - there should be greater flexibility in implementation, e.g. allowing for greater reliance on a single document to verify identity in lower risk scenarios.

WHAT IS PROPOSED AND WHY?

1.6 This consultation paper proposes replacing the Money Laundering (Jersey) Order 1999 and Anti-Money Laundering Guidance Notes for the Finance Sector (“**Guidance Notes**”), both of which came into force on 1 July 1999, with the Money Laundering (Jersey) Order 200- (the “**draft Money Laundering Order**”) and Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism (the “**Handbook**”). The draft Money Laundering Order and Handbook are appended to this consultation paper.

1.7 Changes are proposed for two reasons:

- As part of the Island’s resolve to comply with the revised FATF Recommendations.
- To ensure that measures to verify identity of applicants for business and customers of financial services businesses are applied proportionately, reasonably and sensibly.

1.8 The draft Money Laundering Order and Handbook propose a number of important changes. In particular:

- A risk-based approach to customer due diligence is set out, that permits reduced or simplified measures in the case of “lower” risk relationships, and requires enhanced customer due diligence in the case of “higher” risk relationships. In particular, reduced customer due diligence measures are proposed where an applicant for business or customer is a financial institution (defined in the draft Money Laundering Order), and also where an applicant for business or customer is a trust company business (though the concession is different for reasons covered later in this paper).
- Much more emphasis is placed on customer due diligence measures other than identification and verification of identity, and, in particular, on ongoing monitoring of unusual, complex, and “higher” risk activity and transactions.
- More “customer friendly” ways of verifying the identity of applicants for business or customers, including scope for greater reliance on a single document to verify identity in “lower” risk circumstances. In the case of an applicant for business that is an individual and is assessed as presenting “lower risk”, identity will consist of just name, address, and date of birth, and just name and date of birth need be verified. This means that it will be possible to verify the identity of such applicants using just one document, e.g. a passport.
- Measures to guard against the financial exclusion of Jersey residents have been clarified. In particular, in the case of a lower risk minor, whose parent or guardian is unable to provide standard documentation to verify the minor’s identity, identity may be verified through use of the minor’s birth certificate.

- The scope for reliance on identification and verification of identity of applicants and customers conducted by other financial services businesses is more clearly set out.
- The responsibilities of senior management in preventing and detecting money laundering are also emphasised as part of a section addressing corporate governance.
- There is provision for an “objective test” in the reporting procedures required under the draft Money Laundering Order. This is in anticipation of the introduction of a similar test in other legislation.

WHO WOULD BE AFFECTED?

- 1.9 Persons carrying on financial services business activities in or from within Jersey (“**financial services businesses**”), as defined in the Second Schedule to the Proceeds of Crime (Jersey) Law 1999 (“**Proceeds of Crime Law**”), will be affected, as will any dependent overseas branches and subsidiaries of such businesses. Jersey companies conducting financial services business outside Jersey will also be affected.
- 1.10 The consultation paper also highlights proposals to extend the list of activities considered to be financial services business to include the activities of estate agents, casino operators, dealers in goods whenever a transaction involves accepting a total cash payment of £10,000 or more, insolvency practitioners, tax advisors, accountants, auditors, and lawyers.
- 1.11 Applicants for business and customers of financial services businesses will also be affected by the adoption of a more risk-based approach to customer due diligence on relationships. This will provide for reduced customer due diligence measures on “lower” risk relationships, including scope for reliance on a single document to verify identity, and enhanced measures in the case of “higher” risk relationships. In practice, this means the “customer experience” for many “lower” risk applicants and customers will be improved.

WHAT IS NOT COVERED IN THE CONSULTATION?

- 1.12 The draft Money Laundering Order and Handbook do not address the application of requirements and guidance to “existing customers” (those customers in a relationship or one-off transaction at the time that the draft Money Laundering Order comes into force). This will be the subject of later consultation, once the application of the Handbook to new customers has been agreed, and the approach adopted in other jurisdictions for “existing customers” becomes clearer (though in any event before the draft Money Laundering Order and Handbook are brought into force).
- 1.13 Revised FATF Recommendation 5 is clear that customer due diligence requirements should apply to existing customers on the basis of materiality and risk, and that financial

institutions¹ and designated non-financial businesses and professions² should conduct customer due diligence on such existing relationships at appropriate times.

- 1.14 Neither does the Handbook include sector specific sections or all appendices, which will be issued for consultation at a later stage and finalised before the draft Money Laundering Order and Handbook are brought into force. Work on sector specific sections will start in May 2006. In particular, the Handbook does not explicitly address customer due diligence measures that a trust company business must conduct when acting as a company or partnership formation agent, acting as or fulfilling the function of a director or company secretary, providing a correspondence address or registered office address, or acting as or fulfilling the function of trustee of an express trust; these measures will be contained in a trust company business specific section which will be issued for consultation later in 2006. It does, however, address measures to be undertaken where a trustee or legal body is itself an applicant for business.
- 1.15 In putting together sector specific sections, extensive reference will be made, inter alia, to: the Commission's anti-money laundering industry steering group, the Basel Committee on Banking Supervision's ("**Basel Committee**") paper on *Customer Due Diligence for Banks* (published October 2001); the International Organisation of Securities Commissions' ("**IOSCO**") *Principles on Client Identification and Beneficial Ownership for the Securities Industry* (published May 2004) and IOSCO's *Anti-money laundering guidance for collective investments schemes* (published in October 2005); and the International Association of Insurance Supervisors' ("**IAIS**") *Guidance Paper on Anti-Money Laundering and Combating the Finance of Terrorism* (published October 2004). Reference will also be made to Wolfsberg Group

¹ Financial institution means any person or entity who conducts as a business one or more of the following activities or operations for or on behalf of a customer:

- Acceptance of deposits and repayable funds from the public.
- Lending.
- Financial leasing.
- The transfer of money or value.
- Issuing and managing means of payment.
- Financial guarantees and commitments.
- Trading in: money market instruments; foreign exchange; exchange, interest rate and index instruments; transferable securities; and commodity futures.
- Participation in securities issues and the provision of financial services related to such issues.
- Individual and collective investment portfolio management.
- Safekeeping and administration of cash or liquid securities on behalf of other persons.
- Otherwise investing, administering, or managing funds or money on behalf of other persons.
- Underwriting and placement of life insurance and other investment related insurance.
- Money and currency changing.

² Designated non-financial businesses and professions means:

- Casinos.
- Real estate agents.
- Dealers in precious metals.
- Dealers in precious stones.
- Lawyers, notaries, other independent legal professionals and accountants.
- Trust and company service providers providing certain defined services to third parties as a business.

statements on mutual funds and investment and commercial banking (published March 2006).

- 1.16 In addition, the help of Jersey Finance Limited (whose members include the Jersey Bankers Association and Jersey Association of Trust Companies) and the Society of Trust and Estate Practitioners has been requested in identifying vulnerabilities for sector specific sections.

TIMING

- 1.17 The consultation paper does not address detailed timing of the introduction of the draft Money Laundering Order or Handbook, nor the need for transitional provisions where new requirements are introduced. However, the Commission hopes that it will be possible to finalise the draft Money Laundering Order and Handbook before 31 October 2006, and to agree on a date to bring both into force in the first half of 2007. This will allow financial services businesses to have had some practical experience in implementing the draft Money Laundering Order and Handbook in advance of the next review of Jersey's financial sector regulation and supervision by the International Monetary Fund (the "IMF"), which will take place in the final quarter of 2007 or first quarter of 2008.

OTHER CHANGES TO JERSEY'S FRAMEWORK FOR PREVENTING AND DETECTING MONEY LAUNDERING AND THE FINANCING OF TERRORISM

- 1.18 Following on from this consultation paper, other papers might be expected during the course of 2006 and 2007 outlining further changes to Jersey's framework for preventing and detecting money laundering and the financing of terrorism. These will address:
- The implementation in Jersey of FATF Special Recommendation VII on wire transfers and the consequential impact on Jersey of the introduction of similar legislation in the European Union ("EU"). A consultation paper might be expected on this in the second quarter of 2006 setting out changes that may be necessary in order for Jersey businesses and individuals to continue to use UK payment systems - BACS and CHAPS - in the way that they currently do.
 - The implementation in Jersey of FATF Special Recommendation VI on money transmission.
 - The implementation in Jersey of other revised FATF Recommendations that are not addressed in this consultation paper, where there is a need to first amend primary legislation, including provision for the oversight of compliance with requirements to prevent and detect money laundering and terrorist financing by all financial services businesses. A consultation paper dealing with some of these changes might be expected by the third quarter of 2006.
 - The provision of sections of the Handbook specifically addressing customer due diligence requirements for existing customers and issues particular to industry sectors.

APPLICANT FOR BUSINESS AND CUSTOMER

- 1.19 Throughout this consultation paper, references to an “applicant for business” or “applicant” relate to a prospective customer, and references to a “customer” relate to a person with whom a business relationship has been formed or one-off transaction conducted.

2 - CONSULTATION

- 2.1 The Commission has issued this consultation paper in accordance with Article 8(2) of the Financial Services Commission (Jersey) Law 1998 (“**Financial Services Commission Law**”) as amended, under which the Commission “*may, in connection with the carrying out of its functions -consult and seek the advice of such persons or bodies whether inside or outside the Island as it considers appropriate*”.
- 2.2 Publication of this consultation paper is the culmination of an extensive period of consultation with an industry steering group, which started back in 2002 and which comprises representatives of Jersey Finance Limited and all of the following industry bodies: the Association of Private Client Investment Managers and Stockbrokers; the Jersey Association of English Solicitors; the Jersey Association of Trust Companies; the Jersey Bankers Association; the Jersey Chamber of Commerce; the Jersey Compliance Officers Association; the Jersey Funds Association; the Jersey Society of Chartered and Certified Accountants; the Jersey Taxation Society; the Law Society of Jersey; and the Society of Trust and Estate Practitioners. Individual members of the steering group are listed on the Commission’s website (www.jerseyfsc.org).
- 2.3 Whilst the steering group has supported publication of this consultation paper in order to extend consultation to a wider audience, it should not be assumed that the steering group agrees with all of the content of the Handbook or draft Money Laundering Order. Indeed, the Handbook includes bracketed text at Section 1.7 and Section 4.10, which is still under discussion and will be reviewed in light of the conclusion of this discussion and consultation responses.
- 2.4 The Commission invites comments in writing from interested parties on the proposals included in this consultation paper. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.5 To assist in analysing responses to the consultation paper, respondents are asked to:
- prioritise comments and to indicate their relative importance; and
 - respond as specifically as possible and, where they refer to costs, to quantify those costs.
- 2.6 This paper will be submitted to Jersey Finance Limited and to the Jersey Chamber of Commerce, which have agreed to distribute it to all relevant members, to provide a discussion forum for members, and to respond to the Commission on this.
- 2.7 This paper will also be published on the Commission’s website for public access. This will be brought to the attention of the public through appropriate media announcements.

- 2.8 The Commission also plans to hold a series of seminars and discussion forums. Further information on these will be available on the Commission's website.

3 - THE COMMISSION

3.1 The Commission is a statutory body corporate established under the Financial Services Commission Law. It is responsible for the supervision of financial services provided in or from within Jersey.

3.2 The Commission's guiding principles require it to have regard to:

- the reduction of risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within the Island;
- the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- the best economic interests of the Island; and, in pursuit of the above,
- contributing to the fight against financial crime.

4 - INTERNATIONAL DEVELOPMENTS

FATF

Coverage of revised FATF Recommendations

4.1 The revised FATF Recommendations (see www.fatf-gafi.org) include some major changes. In particular, they extend their coverage beyond financial institutions to designated non-financial businesses and professions in the following situations:

- casinos – when customers engage in financial transactions equal to or above an applicable designated threshold;
- real estate agents – when they are involved in transactions for a client concerning the buying and selling of real estate;
- dealers in precious metals and dealers in precious stones – when they engage in any cash transaction with a customer equal to or above an applicable designated threshold (approximately £10,000);
- lawyers, notaries, other independent legal professionals and accountants – when they prepare for or carry out transactions for their clients concerning the following activities: buying and selling of real estate; management of client money, securities or other assets; management of bank, savings or securities accounts; organisation of contributions for the creation, operation or management of companies; and the creation, operation or management of legal persons or arrangements, and buying and selling of business entities; and
- trust and company service providers – when they prepare for and when they carry out transactions for a client in relation to the following activities: acting as a formation agent of legal persons; acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement; acting as (or arranging for another person to act as) a trustee of an express trust; and acting as (or arranging for another person to act as) a nominee shareholder for another person.

Risk

4.2 An important consideration underlying the revised FATF Recommendations is the degree of risk of money laundering or terrorist financing for particular types of financial institutions or for particular types of customers, products or transactions. A country may therefore take

risk into account and may decide to limit the application of certain of the revised FATF Recommendations provided that either of the following conditions are met:

- when a financial activity of a financial institution is carried out on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering or terrorist financing activity occurring; and
- in other circumstances where there is a proven low risk of money laundering and terrorist financing, a country may decide not to apply some or all of the requirements in one or more of the revised FATF Recommendations. However this should only be done on a strictly limited and justified basis.

4.3 In revised FATF Recommendation 5 on customer due diligence there are a number of criteria which allow countries to permit a financial institution or designated non-financial business or profession to take risk into account when determining the extent of the customer due diligence measures that the institution must take. This is not intended to allow financial institutions or designated non-financial businesses or professions to completely avoid applying the required measures, but could allow them to reduce or simplify the measures they have to take.

Money laundering and terrorist financing

4.4 The revised FATF Recommendations now apply not only to money laundering but also to terrorist financing. The revised FATF Recommendations combine with what were Eight Special Recommendations on terrorist financing, but which are now Nine Special Recommendations (see www.fatf-gafi.org). This provides an enhanced, comprehensive and consistent framework of measures for combating not only money laundering but also terrorist financing.

Other changes

4.5 Inter alia, the revised FATF Recommendations also establish an extended list of predicate offences, require direct reporting by financial institutions and designated non-financial businesses and professions, and introduce an objective test for reporting knowledge and suspicion of money laundering or terrorist financing.

Law, regulations, and other enforceable means

4.6 Revised FATF Recommendations 5 to 16, 21 and 22 state that financial institutions or designated non-financial businesses and professions should take certain actions. These references require countries to take measures that will oblige financial institutions or designated non-financial businesses and professions to comply with each revised FATF Recommendation. The basic obligations under revised FATF Recommendations 5, 10, and 13 should be set out in law or regulation, while more detailed elements in revised FATF Recommendations 5, 10, and 13, as well as obligations under revised FATF

Recommendations 6 to 9, 11, 12, 14 to 16, 21, and 22, could be required either by law or regulation or by other enforceable means issued by a competent authority.

- 4.7 Law or regulation means primary and secondary legislation, such as law, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. Other enforceable means refers to guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non-compliance, and which are issued by a competent authority (e.g. a financial supervisory authority), such as regulatory requirements. In both cases the sanctions for non-compliance should be effective, proportionate and dissuasive.

Methodology

- 4.8 In addition to the revised FATF Recommendations, in February 2004 (subsequently updated in October 2005), an anti-money laundering/combating terrorist financing Methodology (see www.fatf-gafi.org) was published by the FATF to guide the assessment of a country's compliance with the revised FATF Recommendations and Special Recommendations on terrorist financing. The Methodology is a key tool to assist assessors when they are preparing detailed assessment reports or mutual evaluation reports (and is used by the IMF and World Bank in assessments of jurisdictions). It is intended to assist them in identifying the systems and mechanisms developed by countries with diverse legal, regulatory and financial frameworks, in order to implement robust systems.
- 4.9 The Methodology sets out the essential criteria for assessments, which are those elements that should be present in order to demonstrate full compliance with the mandatory elements of each of the revised FATF Recommendations. For each revised FATF Recommendation there are four possible levels of compliance: compliant, largely compliant, partially compliant and non-compliant. The Methodology also lists some additional elements which are options that can further strengthen systems and may be desirable. They are derived from non-mandatory elements in the revised FATF Recommendations or from best practice and other guidance issued by the FATF, or by international standard setters such as the Basel Committee. Although they form part of the overall assessment they are not mandatory and are not assessed for compliance purposes.
- 4.10 A number of jurisdictions have now been assessed using the Methodology, which provides a useful insight into how the revised FATF Recommendations are being interpreted and applied. To date, assessments have been published on the FATF's website for: Australia, Belgium, Italy, Norway, Sweden, Switzerland and Ireland.

OTHER STANDARD SETTERS

- 4.11 In anticipation of and in response to the revised FATF Recommendations, other international bodies - the Basel Committee, IOSCO, and the IAIS - have issued additional standards in the area of money laundering and terrorist financing.

4.12 The most important of these is the Basel Committee's paper on *Customer Due Diligence for Banks* (published October 2001), which highlights the importance of having a thorough knowledge of customers, and the reputational, operational, legal and concentration risk applying to banks that do not know, or hold insufficient information on, their customers. The paper underlines the importance of banks being in a position to look through corporate vehicles and trusts to those behind such vehicles (including beneficial owners of companies, settlors, protectors and beneficiaries of trusts) and emphasises the need to fill in any gaps in records that banks might hold in respect of customers.

EUROPEAN UNION

4.13 In 2001, Directive 2001/97/EC of the European Parliament and of the Council (the "**EU Second Money Laundering Directive**") amended Council Directive 91/308/EC on prevention of the use of the financial system for the purposes of money laundering (the "**EU Money Laundering Directive**"), and the process of implementing the EU Second Money Laundering Directive into domestic legislation in Member States of the EU ("**Member States**") is now largely complete.

4.14 One of the most important changes introduced in the EU Second Money Laundering Directive was the extension of the obligations laid down in the EU Money Laundering Directive to the following persons acting in the exercise of professional activities:

- auditors, external accountants and tax advisors;
- real estate agents;
- notaries and other independent legal professionals, when they participate in prescribed activities;
- dealers in high value goods, whenever payment is made in cash and in an amount of €15,000 or more; and
- casinos.

4.15 The EU Second Money Laundering Directive also altered customer identification requirements, and introduced stricter customer identification requirements where institutions and persons subject to the EU Second Money Laundering Directive established business relations with an applicant for business who was not physically present for identification purposes, and provided for the direct reporting by those subject to the Directive of knowledge and suspicion of money laundering.

4.16 In November 2005, a third Money Laundering Directive <http://europa.eu.int/eur-lex/en/index.html> (the "**EU Third Money Laundering Directive**") was agreed, and Member States now have until November 2007 to implement the Directive into domestic legislation.

4.17 The EU Third Money Laundering Directive implements many of the revised FATF Recommendations, and, in particular, those related to customer due diligence and reporting obligations, e.g.:

- “Beneficial owner” is defined to mean the natural person who ultimately owns or controls the applicant or customer and/or the natural person on whose behalf a transaction or activity is being conducted. Expanded definitions are provided for corporate entities, legal entities, and legal arrangements (the latter including trusts).
- Customer due diligence shall comprise the following activities: identifying the applicant or customer and verifying the applicant or customer’s identity on the basis of documents, data or information obtained from a reliable and independent source; identifying, where applicable, the beneficial owner and taking risk-based and adequate measures to verify the identity of the beneficial owner so that the institution or person covered by the Directive is satisfied that it knows who the beneficial owner is, including, as regards legal persons, trusts, and similar legal arrangements, taking risk-based and adequate measures to understand the ownership and control structure of the applicant or customer; obtaining information on the purpose and intended nature of the business relationship; and conducting ongoing monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution’s or person’s knowledge of the customer, the business and risk profile, including, where necessary, the source of funds, and ensuring that the documents, data or information held are kept up to date.
- The application of customer due diligence measures on a risk-sensitive basis, and a requirement for institutions and persons covered by the EU Third Money Laundering Directive to be able to demonstrate that the extent of the measures is appropriate in view of the risks of money laundering and terrorist financing.
- A requirement for institutions and persons covered by the EU Third Money Laundering Directive to apply customer due diligence procedures not only to all new customers but also at appropriate times to existing customers on a risk-sensitive basis.
- Provision for simplified customer due diligence, and, in particular, a derogation so that there will be no requirement to undertake customer due diligence measures where the applicant or customer is a credit or financial institution covered by the EU Third Money Laundering Directive, or a credit or financial institution situated in a third country which imposes equivalent requirements to those laid down by the EU Third Money Laundering Directive and which is supervised for compliance with those requirements.
- Provision for enhanced customer due diligence where the applicant or customer was not physically present for identification purposes, in the case of cross-frontier correspondent banking relationships, and in respect of transactions or business relationships with politically exposed persons (“PEPs”).

- Provision for reliance to be placed on third parties³ to conduct elements of the customer due diligence process, subject to the ultimate responsibility for performance of the process remaining with the institution or person relying on the third party. Where reliance is placed, customer due diligence information must be provided by the third party up front and identification and verification data, and other relevant documentation on the identity of the applicant or customer or the beneficial owner, shall immediately be forwarded, on request, by the third party to the institution or person covered by the Directive to which the customer is being referred.

4.18 Implementation of the EU Third Money Laundering Directive is likely to have a significant impact on businesses in Jersey that are headquartered in EU Member States. In particular:

- Article 31(1) of the EU Third Money Laundering Directive says that Member States “shall require the credit and financial institutions covered by the Directive to apply, where applicable, in their branches and majority-owned subsidiaries located in third countries measures at least equivalent to those set out in the Directive with regard to customer due diligence and record-keeping”.
- Article 11(1) of the EU Third Money Laundering Directive says that simplified customer due diligence measures may be applied to applicants for business that are from outside the EU (where the applicant is acting on its own behalf or on behalf of one or more third parties, i.e. underlying customers) where the applicant is “situated in a third country which imposes requirements equivalent to those laid down in the Directive, and supervised for compliance with those requirements”. Similar provisions apply under Article 16(1) to customer due diligence that has been “performed by third parties”.

4.19 In order to ensure that Island businesses are not adversely impacted by the introduction of the EU Third Money Laundering Directive, it will be necessary to demonstrate the application in Jersey of measures that are “equivalent” to those in place in the EU.

UNITED KINGDOM (“UK”)

4.20 The Proceeds of Crime Act 2002 has consolidated all money laundering crimes into one piece of legislation. Previously, money laundering offences were contained in a number of different statutes depending on whether the predicate crime was drug trafficking, terrorism, or serious crime.

³ For the purpose of the EU Third Money Laundering Directive, “third party” shall mean institutions and persons who are subject to the Directive, or equivalent institutions and persons situated in a third country, who satisfy the following requirements: the institutions and persons are subject to mandatory professional registration, recognised by law; they apply customer due diligence requirements and record keeping requirements as laid down or equivalent to those laid down in the Directive; and their compliance with the Directive is supervised or they are situated in a third country which imposes equivalent supervision requirements to those laid down in the Directive.

- 4.21 In particular, the Act makes it an offence for a person working in the financial sector (i.e. persons subject to the requirements of the Money Laundering Regulations 2003) to fail to make a disclosure if he knows or suspects or has reasonable grounds to know or suspect (the so-called “objective test”) that another person has been engaged in money laundering. This raises the possibility that an employee of a financial services firm could be convicted of money laundering even if he personally did not have any suspicion at all.
- 4.22 More recently, in February 2006 the Joint Money Laundering Steering Group (the “JMLSG”) (comprising of the leading UK trade associations in the financial services industry) published revised guidance on countering money laundering and terrorist financing, with a view to facilitating more practical implementation of guidance and adopting the risk-based approach put forward in the revised FATF Recommendations. However, it is not intended that this guidance will allow the UK to match the revised FATF Recommendations, and a revision to guidance will be necessary once the UK has implemented the EU Third Money Laundering Directive in domestic legislation.

OTHER DEVELOPMENTS

- 4.23 Aside from the above, regulators in developed economies have become more active in taking enforcement action for systems and controls breaches, even where criminal money laundering has not been proven. A series of high profile cases of corrupt politicians, including Nigeria’s General Abacha and Chile’s General Augusto Pinochet, involving the misappropriation of public funds through international financial centres has led to a greater focus on private banking activities and customer due diligence. Indeed a group of international banks, referred to as the Wolfsberg Group, has been active on its own initiative in setting standards. Add to this the “war on terror”, which has increased focus on customer due diligence measures, and the result is a need for changes to Jersey’s current legal and regulatory environment.
- 4.24 Finally, the IMF has now become more actively involved in anti-money laundering and countering the financing of terrorism issues. Jersey’s legislative and regulatory framework was last assessed by the IMF in 2002, and it will be assessed again in the final quarter of 2007 or first quarter of 2008.

5 - DRAFT MONEY LAUNDERING ORDER

KEY CHANGES

- 5.1 A number of changes are proposed to the Money Laundering (Jersey) Order 1999, in order to accommodate the Handbook.

Designation of police and customs officers

- 5.2 Article 5 of the draft Money Laundering Order allows the Chief Officer of the States of Jersey Police Force, or Agent of the Impôts to designate one or more officers for the purposes of reporting knowledge or suspicion that another person is engaged in money laundering. In practice, this would be officers of the JFCU.

- 5.3 Currently, requirements for internal reporting procedures state only that knowledge or suspicion is to be disclosed to a police officer, defined in the Proceeds of Crime Law as a member of the Honorary Police, a member of the States of Jersey Police Force, the Agent of the Impôts or any other officers of the Impôts.

- 5.3.1 Do you consider that the Proceeds of Crime Law, Drug Trafficking Offences (Jersey) Law 1988 ("Drug Trafficking Law"), and the Terrorism (Jersey) Law 2002 ("Terrorism Law") should similarly provide for the designation of police and customs officers so that disclosures relating to money laundering or terrorist financing are made directly to the JFCU? Please provide some support for your answer.**

Scope of Order

- 5.4 The scope of the Money Laundering Order is currently limited to persons conducting financial services business in Jersey.

- 5.5 In line with revised FATF Recommendation 22, which states that financial institutions should ensure that the principles applicable to financial institutions are also to be applied to branches (and also majority owned subsidiaries), Article 10 extends the scope of the draft Money Laundering Order to apply to:

- any body incorporated in Jersey or limited liability partnership that is registered under the Limited Liability Partnerships (Jersey) Law 1997, that conducts financial services business outside Jersey, whether or not it also does so in Jersey; and
- any subordinate branch outside Jersey of a person conducting financial services business in Jersey (where the subordinate branch is conducting financial services business).

Evidence of identity

- 5.6 Article 3 of the draft Money Laundering Order provides in much clearer terms for evidence of identity to consist of two discrete elements: obtaining information on an applicant for business or customer; and then verifying the information provided.

Systems and training to forestall and prevent money laundering

- 5.7 Article 10 of the draft Money Laundering Order requires a person that is carrying on a financial services business to maintain certain procedures in respect of that business. Unlike Article 2 of the Money Laundering (Jersey) Order 1999, the requirement to maintain these procedures is not linked to the formation of a business relationship or specific one-off transaction.
- 5.8 In line with revised FATF Recommendation 8, Article 12(4) of the draft Money Laundering Order provides that identification procedures and other procedures of control and communication in place to forestall and prevent money laundering must also take into account the greater potential for money laundering which arises when the applicant or customer is not physically present when establishing a relationship or conducting a transaction.
- 5.9 In line with revised FATF Recommendation 5, Article 10(5) of the draft Money Laundering Order provides that systems and training in place to forestall and prevent money laundering must also take into account a financial services business' assessment of risk.
- 5.10 In line with revised FATF Recommendation 15, Article 10(9) of the draft Money Laundering Order provides that procedures must also be put in place to monitor and test the effectiveness of internal controls and procedures, measures taken to make employees aware of money laundering enactments and procedures, and training.

Compliance officer

- 5.11 In line with the Interpretative Note for revised FATF Recommendation 15, Article 6 of the draft Money Laundering Order requires every financial services business to appoint a Money Laundering Compliance Officer (“**MLCO**”), who will be responsible for monitoring whether enactments in Jersey relating to money laundering are complied with. Currently, only investment businesses, trust company businesses, and insurance businesses are subject to a requirement in Codes of Practice to appoint a compliance officer.
- 5.12 The draft Money Laundering Order anticipates that an individual who is appointed as a MLCO may also be appointed as a Money Laundering Reporting Officer (“**MLRO**”). The compliance officer of an investment business, trust company business, or insurance business may also be appointed as MLCO.

- 5.13 The draft Money Laundering Order will also require the MLCO to be notified to the Commission within 21 days of appointment (except where otherwise provided for by the Commission). An identical requirement will apply to the MLRO.
- 5.14 The Commission is likely to provide for an exemption from the requirement to notify appointment of a MLCO and MLRO for persons carrying on financial services business which is incidental to some other business - for example, a hotel that offers limited bureau de change facilities to guests.
- 5.14.1 Do you agree that there should be a legal requirement to notify the Commission of the name of the MLCO and MLRO? Please provide some support for your answer.**
- 5.14.2 Do you agree that persons carrying on financial services business which is incidental to some other business should be exempted from the requirement to notify the Commission of the name of the MLCO and MLRO? If not, please explain why.**

Identification procedures

- 5.15 In line with revised FATF Recommendation 5, Article 12 of the draft Money Laundering Order will not permit transactions or business arrangements to be undertaken for anonymous customers, or for those acting under fictitious names.
- 5.16 Also in line with revised FATF Recommendation 5, identification procedures are extended in Articles 15 and 20 of the draft Money Laundering Order to require:
- satisfactory identification information on the individuals who ultimately own or control the applicant or customer to be obtained, and for reasonable measures to be taken to obtain satisfactory evidence of the identity of those individuals who ultimately own or control the applicant or customer; and
 - satisfactory identification information on persons purporting to act on behalf of the applicant or customer to be obtained, and reasonable measures to be taken to obtain satisfactory evidence of the identity of such persons.
- 5.17 The Handbook sets out what satisfactory identification information is, and who is to be considered as ultimately owning or controlling an applicant or customer where the applicant or customer is a legal body.
- 5.18 In line with revised FATF Recommendation 5, the obligation to undertake identification procedures applies at the start of a relationship or when a one-off transaction is commenced, and where there is any subsequent change in the individuals who ultimately own or control the customer (Article 15 of the draft Money Laundering Order) or authorised agents (Article 20 of the draft Money Laundering Order).

- 5.19 In line with revised FATF Recommendation 5, Article 22 of the draft Money Laundering Order also provides that, where a financial services business has doubts about the veracity or adequacy of evidence of identity that is already held, or suspects or knows that a customer is engaged in money laundering, steps must be taken to confirm that the evidence held is satisfactory or to obtain satisfactory evidence.
- 5.20 The draft Money Laundering Order also makes it clear that exemptions that are available for the identification and verification of identity of applicants or customers do not apply in circumstances where there is knowledge or suspicion that the applicant or customer is engaged in money laundering or that the transaction is carried out on behalf of any other person engaged in money laundering.

Transactions on behalf of others

- 5.21 Identification and verification procedures are extended in Article 16 of the draft Money Laundering Order to include those who ultimately own or control any third parties on whose behalf the applicant or customer is acting.
- 5.22 The draft Money Laundering Order requires satisfactory identification information to be obtained for the third party on whose behalf the applicant or customer is acting and for the individuals who ultimately own or control the third party and that reasonable measures be taken for the purpose of verifying the identity of that third party and the individuals who ultimately own or control the third party.
- 5.23 In line with revised FATF Recommendation 5, the obligation to undertake identification procedures applies at the start of a relationship or when a one-off transaction is commenced, and where there is any subsequent change in the persons on whose behalf a customer acts.
- 5.24 Articles 17 and 18 provide for reduced or simplified customer due diligence measures to be conducted under certain circumstances where the applicant or customer is acting for one or more third parties. These circumstances are also addressed in the Handbook, and Section 6 of this consultation paper examines a number of issues arising from the application of reduced or simplified customer due diligence measures.
- 5.25 In line with revised FATF Recommendation 5, identification exemptions currently set out at Articles 6(1)(a) and (b) of the Money Laundering Order (Jersey) 1999 are continued in a more limited form in the draft Money Laundering Order, where they apply only where the applicant in question is a financial services business supervised by the Commission or is an equivalent overseas business (i.e. an overseas financial services business that is subject to equivalent anti-money laundering requirements, is overseen for compliance with those requirements and is subject to registration requirements established by law).
- 5.26 The Handbook also sets out what satisfactory identification information is and who is to be considered as ultimately “owning or controlling” an applicant or customer which is an express trust (where a financial services business establishes a relationship with a trustee). Section 6 of this consultation paper explores a number of issues that may be faced where an applicant for business or customer is a trustee.

Reliance on introducers to obtain identification information and evidence of identity

- 5.27 In line with revised FATF Recommendation 9, Article 19 of the draft Money Laundering Order provides a statutory basis for relying upon a third party to have identified and verified the identity of an applicant or customer.
- 5.28 The circumstances in which reliance may be placed are also covered in the Handbook and are considered in Section 6 of this consultation paper.

Exceptions from identification procedures

- 5.29 Article 21 of the draft Money Laundering Order introduces two new exceptions where the risk of abuse for money laundering or terrorist financing are considered to be very low: where an applicant for business or customer is a Jersey public authority; and where the applicant or customer is a pension scheme, superannuation, or similar scheme.
- 5.30 The basis for the exemption for pension, superannuation and similar schemes in Article 21(3) of the draft Money Laundering Order is based on Article 11(5)(c) of the Third EU Money Laundering Directive.

5.30.1 What similar scenarios to pension, superannuation and similar schemes could also be considered to generically present low risk? Please explain the features of any such scenarios which lead you to consider them low risk.

- 5.31 Article 6(1)(d) of the Money Laundering (Jersey) Order 1999 provides that, in the case of a one-off transaction, e.g. investment in a collective investment scheme, there is no requirement for identification procedures where the proceeds of the transaction are immediately reinvested (e.g. other units are purchased – perhaps in a different scheme), delaying the identification requirements until such time as the investor requests proceeds to be returned to him, rather than reinvested. The draft Money Laundering Order includes no similar exception.

5.31.1 Do you rely on the exception from identification procedures set out in Article 6(1)(d) of the Money Laundering (Jersey) Order 1999? If so, please set out the circumstances in which the exception is used.

Record-keeping procedures

- 5.32 Article 23 of the draft Money Laundering Order sets out the minimum information to be recorded in respect of each transaction carried out by a financial services business. This is: the name and address of the customer; the kind of currency and amount involved (if it is a monetary transaction); the number, name, or other means of identifying an account (if the transaction involves an account); and the date of the transaction.

5.32.1 Do you consider that the draft Money Laundering Order should prescribe these more detailed record-keeping requirements in this way, or should these requirements be set at regulatory level in the Handbook?

- 5.33 Article 8(5) of the Money Laundering (Jersey) Order 1999 states that where a financial services business is appointed as a representative of a principal, the principal shall ensure that record-keeping procedures in accordance with the Money Laundering (Jersey) Order 1999 are maintained in respect of all financial services business carried out by the appointed representative that is investment business for which the principal has accepted responsibility in writing.
- 5.34 This article, based on a similar requirement in place in the UK at the time that the Money Laundering (Jersey) Order 1999 was introduced, reflects a requirement pursuant to section 39(1) of the UK's Financial Services and Markets Act 2000, which is not a feature of the Financial Services (Jersey) Law 1998. Accordingly, this Article has been deleted from the draft Money Laundering Order.

Requirements for internal reporting procedures

- 5.35 Article 25 of the draft Money Laundering Order requires:
- special attention to be paid to business that is turned away because the proposal for business is unusual, and has no apparent economic purpose or visibly lawful purpose; and
 - a report to be made to the MLRO (or designated person) of any information or other matter that comes to the attention of any person handling financial services in the business and, in the opinion of the person handling those services, gives rise to knowledge or reasonable grounds for suspicion that another person is engaged in money laundering.

The latter provision introduces the concept of the so-called “objective test” into the reporting provisions of Jersey’s money laundering legislation; currently the objective test is a feature only of the Terrorism Law, while it has been a feature of the UK’s anti-money laundering and anti-terrorist legislation since 2002. Such a requirement is consistent with revised FATF Recommendation 13, which states that, if a financial institution or designated non-financial business or profession suspects *or has reasonable grounds to suspect* that funds are the proceeds of a criminal activity, or are related to terrorist financing, *it should be required, directly by law or regulation, to report promptly its suspicions.*

5.35.1 Do you anticipate any difficulty in applying the “objective test” through internal reporting procedures? If so, what difficulties are anticipated?

- 5.36 The Handbook, rather than the draft Money Laundering Order, provides for procedures for paying special attention to: complex transactions, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful

purpose; and relationships and transactions connected with jurisdictions which do not, or insufficiently, apply the revised FATF Recommendations. This differs to the approach followed in the EU, where these measures have been incorporated into legislation rather into regulatory requirements.

- 5.37 As noted above, Article 25 of the draft Money Laundering Order permits an internal report to be made in the first instance to a person (a designated person) other than the MLRO. This differs from the Money Laundering (Jersey) Order 1999 - which requires all reports to be made to an “appropriate person”, the MLRO - though a person other than that person (a designated person) might then consider the report and secure that it is disclosed to the JFCU).
- 5.38 The intention here is to provide greater flexibility in internal reporting procedures, particularly in larger businesses - where it may not be possible for one individual to initially handle all reports. To address any additional risks that this change might present, the Handbook requires that the MLRO must routinely monitor the performance of any designated persons and ensure that all reports are considered and determined in an “appropriate and consistent manner”.

5.38.1 Do you agree that it should be possible to make an internal report to a person other than the MLRO? If not, please explain why.

Duty not to proceed if evidence of identity is not satisfactory

- 5.39 In line with the approach adopted in revised FATF Recommendation 5, Article 27 of the draft Money Laundering Order introduces a duty not to proceed any further with a business relationship or one-off transaction, if satisfactory evidence of identity is not obtained as soon as is reasonably practicable (whether at the start of a relationship or one-off transaction, or where required to do so by Article 22). It will be an offence to proceed with the relationship or one-off transaction in such circumstances.
- 5.40 This is in addition to the requirement under Article 12 of the draft Money Laundering Order to have procedures in place that require satisfactory evidence of identity to be obtained as soon as reasonably practicable after the requirement to obtain it arises and to proceed no further with a relationship or one-off transaction where such evidence is not obtained within that time.
- 5.40.1 In light of the judgement in a recent case, which establishes that the maintenance of procedures is an absolute duty and that one breach of such procedures is sufficient to constitute an offence, do you consider it helpful to make the common law position clearer by providing for a duty in Article 27 of the draft Money Laundering Order? If not, please explain why.**

Concession for Payment by post or electronic means (“postal concession”)

- 5.41 In line with changes to legislation in the UK, the statutory basis for the postal concession from verification of identity (Article 4 of the Money Laundering (Jersey) Order 1999) is not retained within the draft Money Laundering Order and is provided for instead under circumstances where reduced and simplified customer due diligence might be appropriate (Section 4.11 of the Handbook). The approach taken by the Handbook would not permit a concession to be available where the customer presented increased risk.
- 5.42 The UK has removed this provision from its legislation and replaced it with a guidance note concession, since the EU Money Laundering Directive did not provide a basis for the concession.
- 5.43 The concession currently applies to all products opened by post, telephone, or electronic transfer which do not offer third party transmission facilities (and which cannot be transferred to an account offering such transmission facilities), where funds originate from a specified institution.
- 5.43.1 Do you agree that the statutory basis for the concession should be replaced by a concession in the Handbook in line with changes to legislation in the UK? If not, please explain why you consider that a statutory concession is useful and should be retained.**

6 - HANDBOOK

INTRODUCTION TO THE HANDBOOK

- 6.1 The Handbook is intended to replace the Guidance Notes, which came into effect on 1 July 1999.
- 6.2 The Handbook is intended to provide a base from which individual financial services businesses can design and implement systems and controls and tailor their own policies and procedures for the prevention and detection of money laundering and the financing of terrorism.
- 6.3 In many respects the approach adopted in writing the Handbook has taken account of some of the difficulties experienced in following and applying the Guidance Notes, e.g.:
- uncertainty in the status of guidance presented, where legal requirements have been presented alongside general guidance and best practice;
 - provision of sometimes repetitive (but not always consistent) guidance for different industry sectors; and
 - mixture of useful background information on money laundering alongside practical instruction.
- 6.4 Equally, the Handbook has taken into account the “risk-based” approach to customer due diligence adopted by the FATF, and favoured by financial services regulators (which has already been adopted by the JMLSG in the UK).
- 6.5 In drafting the Handbook, care has been taken to ensure that the balance between flexibility on the one hand and prescription on the other is a reasonable one. So, for example, whilst the Handbook provides much guidance on how a financial services business might meet the statutory and regulatory requirements to which it is subject, other appropriate measures might also be adopted. Such an approach also has the benefit of providing for a more “level playing field” for financial services businesses in Jersey, something which is difficult to achieve in a risk-based environment, where financial services businesses have the ability to act on the basis of judgement rather than fixed rules.
- 6.6 It is intended that the Handbook will also be used by financial services businesses that are not supervised by the Commission.
- 6.6.1 Does the Handbook strike the right balance between the need to prescribe and the need for flexibility? If not, please explain why you consider the balance to be wrong, supporting your comments with examples.**

- 6.6.2** Should financial services businesses that are not supervised by the Commission be expected to follow applicable parts of the Handbook, in line with Article 37(8) of the Proceeds of Crime Law, or should summarised guidance be prepared for such businesses?
- 6.6.3** If you think that summarised guidance should be prepared for financial services businesses that are not supervised by the Commission, should the Commission prepare this guidance or should guidance be issued by bodies that are representative of financial services business carried on in Jersey?
- 6.7 The rest of this part of the consultation paper guides readers through each section of Part I of the Handbook.

SECTION 1: INTRODUCTION

Overview of section

- 6.8 This section outlines the objectives of the Handbook (some of which are not currently objectives of the Guidance Notes), the structure of the Handbook, the legal status of the Handbook, the scope of the Handbook, and the definition of financial services business.

Structure of the Handbook (Section 1.2)

- 6.9 The Handbook has been split into two parts. The first - Part I covers statutory and regulatory requirements; and the second - Part II provides an informational resource to be used in training and raising awareness generally on: money laundering and terrorist financing; the interaction of legislation to prevent and detect money laundering and terrorist financing with other laws in force in Jersey; practical elements of reporting; and on prudential oversight.
- 6.9.1** Are there any other areas that might usefully be covered in the informational resource established in Part II? If so, please list.
- 6.10 Part I describes and summarises the statutory requirements in place in Jersey (statutory requirements) and sets out how regulated financial services businesses must meet those statutory requirements (regulatory requirements). The summary of statutory requirements necessarily paraphrases provisions contained in legislation, and is intended to be read and understood in conjunction with the full text of each law.
- 6.11 Part I also includes guidance which accompanies the statutory and regulatory requirements and which presents non-exhaustive ways of complying with these requirements. Such guidance is not to be confused with “best practice”, which benchmarks some of the most effective ways in which policies and procedures can be implemented.
- 6.11.1** Do you think that it is useful for the Handbook to summarise the statutory requirements to which financial services businesses are subject, or do you

consider that there is too great a risk that paraphrasing may in fact present a misleading explanation of underlying legislation?

6.11.2 Would you prefer guidance notes to be presented in a separate part of the Handbook instead of directly following the statutory and regulatory requirements to which they relate? If so, please explain why.

6.11.3 Would it be helpful to number each paragraph in the Handbook?

Legal status of the Handbook (Section 1.3)

- 6.12 As discussed above, regulatory requirements set out how regulated financial services businesses must meet statutory requirements, and it is at this regulatory level that a number of the requirements of the revised FATF Recommendations have been set, rather than at statutory level, e.g. customer due diligence measures and enhanced customer due diligence measures (for example, provisions dealing with PEPs). This means that it is much more likely that failure to follow some of the more detailed FATF customer due diligence and record-keeping requirements will be subject to regulatory sanction rather than criminal prosecution (which is considered to be a more proportionate implementation of the revised FATF Recommendations).
- 6.13 Such an approach is in line with the revised FATF Recommendations. Revised FATF Recommendations 5 to 16, 21 and 22 state that financial institutions or designated non-financial businesses and professions should take certain actions. These references require countries to take measures that will oblige financial institutions or designated non-financial businesses and professions to comply with each revised FATF Recommendation, but only the basic obligations under revised FATF Recommendations 5, 10, and 13 must be set out in law or regulation. Other more detailed elements in revised FATF Recommendations 5, 10, and 13, as well as obligations under revised FATF Recommendations 6 to 9, 11, 12, 14 to 16, 21, and 22 could be required either by law or regulation or by other enforceable means issued by a competent authority.
- 6.14 Other enforceable means refers to guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non-compliance, and which are issued by a competent authority (e.g. a financial supervisory authority). Since the ability of a regulated financial services business to demonstrate compliance with regulatory requirements established in the Handbook will be directly relevant to its regulated status and any assessment of the fitness and propriety of its principals, and because non-compliance with the Handbook will be regarded by the Commission as an indication of a lack of fitness and propriety (or equivalent) under regulatory legislation⁴, the Commission considers that the regulatory requirements established in the Handbook are “other enforceable means”.

⁴ The Collective Investment Funds (Jersey Law) 1988, the Banking Business (Jersey) Law 1991, the Insurance Business (Jersey) Law 1996, and the Financial Services (Jersey) Law 1998.

6.15 However, this approach differs to the EU Third Money Laundering Directive, which requires Member States to implement most of revised FATF Recommendations 5 to 16, 21 and 22 through legislation. The adoption of such an approach in Jersey would have the benefit of applying the revised FATF Recommendations to all financial services businesses, rather than only those that are supervised by the Commission, but would provide a less flexible basis for implementation. The advantage of establishing detailed requirements in the Handbook is that the application of Jersey's anti-money laundering framework can be more flexibly applied in overseas branches and offices of Jersey entities. The Handbook permits overseas regulatory requirements and guidance to be followed, rather than the Handbook, so long as the branch or office outside Jersey is located in a jurisdiction in which there are requirements to combat money laundering and terrorist financing that are consistent with the FATF Recommendations.

6.16 Aspects of the following areas are currently addressed through regulatory requirements, although these could be covered in the draft Money Laundering Order following the approach taken by the EU Third Money Laundering Directive:

- definitions of "beneficial ownership" and PEPs;
- reduced or simplified customer due diligence procedures;
- enhanced customer due diligence procedures;
- timing of verification of identity;
- holding records for "business relationships and transactions";
- termination of relationships; and
- procedures for paying special attention to: complex transactions, unusual large transactions, all unusual patterns of transactions, which have no apparent economic or visible lawful purpose; and relationships and transactions connected with jurisdictions which do not, or insufficiently, apply the revised FATF Recommendations.

6.16.1 Do you agree that the regulatory requirements established in the Handbook are enforceable requirements? If not, please explain why you do not consider regulatory requirements to be enforceable.

6.16.2 Do you consider that revised FATF Recommendations 5 to 16, 21 and 22 should be implemented through the draft Money Laundering Order rather than as regulatory requirements? If so, please explain why.

Definition of financial services business (Section 1.5)

6.17 The Handbook lists activities proposed to be covered by a revised definition of financial services business in the Second Schedule to the Proceeds of Crime Law ("Second

Schedule") (i.e. persons who conduct these activities by way of business must comply with the requirements of the draft Money Laundering Order). The list is based on the current Second Schedule, with an additional reference to "trust company business", and reflects all activities covered by the EU Third Money Laundering Directive.

6.18 In particular, the definition of financial services business is extended to include: auditors, external accountants and tax advisors; the provision of legal services under some circumstances; real estate agents; and dealers in goods, whenever a transaction involves accepting a total cash payment of £10,000 or more (or equivalent).

6.19 The proposed scope - although in line with that of the EU Third Money Laundering Directive - is more onerous than that established in revised FATF Recommendations 12 and 16, where accountants and lawyers are subject to customer due diligence requirements when they prepare for or carry out transactions for a client concerning prescribed activities⁵, and to reporting requirements when, on behalf of, or for a client, they engage in a financial transaction in relation to these prescribed activities.

6.19.1 Do you agree that the definition of financial services business should be based on the EU Third Money Laundering Directive or should Jersey adopt the scope provided for in revised FATF Recommendations 12 and 16? If so, please explain why.

6.20 The revised FATF Recommendations say that countries should consider applying the Recommendations to other businesses and professions that pose a money laundering or terrorist financing risk. Conversely, in strictly limited and justified circumstances, and based on a proven low risk of money laundering, a country may decide not to apply some or all of the revised FATF Recommendations to some of the activities listed in the revised FATF Recommendations.

6.20.1 Do you consider that there are other businesses and professions not included in the revised definition of financial services business, that pose a money laundering or terrorist financing risk, e.g. internet service providers that host websites that may be used for illicit activities? If so, please list and explain why.

6.20.2 Do you consider that there is a proven low risk of money laundering in any of the activities included within the revised definition of financial services business, e.g. Jersey real estate transactions that are subject to housing consent? If so, please list and explain why.

6.21 The scope of two activities is also to be reviewed. The definition of insurance business in the Second Schedule (which covers both general and long term business) is wider than in the revised FATF Recommendations, which extends only to life insurance and other investment

⁵ These are the buying and selling of real estate; managing of client money, securities or other assets; management of bank, savings or securities accounts; organisation of contributions for the creation, operation or management of companies; and the creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

related insurance. Also, trading for one's own account in money market instruments, foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities is included in the definition of financial services business but is not covered in the revised FATF Recommendations.

6.21.1 Do you consider that the definition of insurance business in the Second Schedule should be limited to life insurance and other investment related insurance? If so, please explain why.

6.21.2 In line with the revised FATF Recommendations, do you consider that the definition of financial services business should extend only to trading in money market instruments, foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities on behalf of customers? If so, please explain why.

6.22 In addition, recent changes to the UK Money Laundering Regulations 2003 have brought new activities into the scope of UK anti-money laundering legislation, additional to those set out in the Handbook, and which are also more onerous than those established in the revised FATF Recommendations. These are the business of:

- Arranging deals in investments.
- Sending dematerialised instructions.
- Providing liquidation services in relation to a creditors' winding up.
- Providing legal services in relation to participation in a financial transaction, whether by assisting in the planning or execution of any such transaction or otherwise acting for, or on behalf of, a customer in any such transaction.

6.22.1 Should the definition of financial services business be amended to cover recent changes to the UK Money Laundering Regulations 2003?

6.23 At the time of publication of this paper, the EU was still considering technical criteria for assessing whether it is justified not to apply the Third Money Laundering Directive to persons carrying on financial services business on an occasional or very limited basis. The Commission will continue to monitor developments in this area.

Equivalence of requirements to combat money laundering and terrorist financing in other jurisdictions (Section 1.7)

6.24 Article 5 of the Money Laundering (Jersey) Order 1999, and the Guidance Notes, permit certain concessions from identification procedures where a financial services business connected with a relationship is regulated and is subject to equivalent requirements to combat money laundering, i.e. is subject to the anti-money laundering requirements of an

equivalent jurisdiction. These concessions are continued by the draft Money Laundering Order and Handbook, although with some modifications.

- 6.25 The draft Money Laundering Order and Handbook refer to concessions for “equivalent businesses”, for example, where an intermediary or introducer (including another group entity) meets certain criteria, one of which is for the business to be situated in an “equivalent jurisdiction”.
- 6.26 Section 1.7 of the Handbook sets out the basis for determining whether or not a jurisdiction may be considered to be “equivalent”.
- 6.27 Currently, when wishing to establish whether a jurisdiction is “equivalent”, a financial services business need only determine that it is listed in Appendix D to the Guidance Notes. Alternatively, a financial services business may conduct an assessment of the anti-money laundering framework in an overseas jurisdiction, in order to determine for itself whether it is equivalent. However, such an assessment is likely to be time consuming and costly and does not provide the financial services business with a “safe harbour”.
- 6.28 The proposals contained within the draft Money Laundering Order and Handbook will continue to permit this flexible approach in the short term and Section 1.7 of the Handbook now sets out the requirements to be followed where a financial services business wishes to determine for itself whether a jurisdiction has an equivalent anti-money laundering framework.
- 6.29 However, the revised FATF Recommendations and the EU Third Money Laundering Directive both indicate that it should not be left to financial services businesses to make such determinations of equivalence, and that countries should draw-up a definitive list of jurisdictions with equivalent anti-money laundering requirements in place. Implementation of the more restrictive approach indicated by the FATF and the EU will be considered at the time that other jurisdictions draw-up their own definitive lists of equivalent jurisdictions. Note that both Guernsey and the Isle of Man presently already restrict their financial services businesses to prescribed jurisdictions.
- 6.30 The Commission’s policy with respect to the current composition of Appendix D is for a jurisdiction to first be a member of the FATF, a Member State of the EU (including Gibraltar), a member of the European Economic Area (the “EEA”), or another Crown Dependency (the Bailiwick of Guernsey and the Isle of Man). As considered to be appropriate, the Commission then assesses whether the jurisdiction has legislation in place that is consistent with Jersey’s (or particular elements of Jersey’s framework). Assessment and recognition of other jurisdictions occurs only in limited circumstances, e.g. where the Commission negotiates a memorandum of understanding with a regulator in a particular jurisdiction.
- 6.31 In the short term, the Commission intends to continue with this approach. This is because:
(i) many jurisdictions have yet to implement all of the revised FATF Recommendations, and
(ii) the FATF, IMF and World Bank have only recently started their assessments of jurisdictions against these new requirements. In the longer term, Appendix D will more

comprehensively list those jurisdictions with requirements in place to combat money laundering and terrorist financing that are consistent with the revised FATF Recommendations.

- 6.31.1 Do you consider that, in the short term, the Commission should continue to permit financial services businesses to determine whether jurisdictions have equivalent anti-money laundering frameworks, or should a more restrictive approach to determining equivalence be implemented to provide certainty as to the status of overseas jurisdictions?**
- 6.31.2 Are there any jurisdictions that are currently not listed in Appendix D to the Guidance Notes that you consider to have legislation in place that is consistent with the revised FATF Recommendations, or customer due diligence and record-keeping requirements of the revised FATF Recommendations? If so, please list in order of business importance and attach supporting evidence for your assessment.**

SECTION 2: CORPORATE GOVERNANCE

Overview of section

- 6.32 This section sets out the responsibilities of the board of a financial services business (or equivalent where a financial services business is not a company) in preventing and detecting money laundering and terrorist financing, whereas, traditionally, compliance issues may not have been seen as a high priority for many at senior management level.
- 6.33 In particular, the section establishes the need for a business risk assessment that considers the business' exposure to money laundering and terrorist financing, the need for an effective compliance culture within a financial services business, and highlights the responsibility of the board of a financial services business to oversee compliance with the draft Money Laundering Order and Handbook.
- 6.34 This section also summarises the role and responsibilities of the MLCO and MLRO. In particular, there is a requirement that both officers have "sufficient experience and qualification" (though the latter requirement is included in bracketed text in the Handbook).
- 6.34.1 Do you agree that the MLCO and MLRO should be sufficiently qualified, and, if so, how should this qualification manifest itself?**
- 6.34.2 If you consider that qualification should manifest itself through an examination, do you think that the Commission should list "approved" qualifications (providing discretion to financial services businesses to recognise other qualifications that are equal to or higher than those listed)?**
- 6.34.3 If you consider that qualification should manifest itself through an examination, what qualifications should be "approved"?**

SECTION 3: CUSTOMER DUE DILIGENCE REQUIREMENTS

Overview of section

6.35 This section establishes the mechanics for the operation of a risk-based approach, and must be read in conjunction with Sections 4 and 5 of the Handbook, which also address customer due diligence procedures.

6.36 The requirement to “know your customer” underpins global efforts to counter money laundering.

Risk-based approach (Section 3.3)

6.37 Adoption of a risk-based approach is a fundamental element of the revised FATF Recommendations, which provide that financial institutions and designated non-financial businesses and professions should apply customer due diligence measures on a risk-sensitive basis, depending on the type of customer, business relationship or transaction.

6.38 The Handbook proposes a five-staged approach, each stage of which must be considered on a risk-sensitive basis. It says that a financial services business must:

- collect relevant customer due diligence information, enabling a profile on an applicant or customer to be prepared;
- evaluate information collected with reference to “factors to consider” and external data sources;
- record an initial risk assessment on the basis of the above;
- verify the identity of the applicant or customer (and take reasonable measures to verify the identity of the beneficial owners and controllers); and
- periodically update relevant customer due diligence information and its risk assessment.

6.39 Notwithstanding the above, the Handbook anticipates that, where it is appropriate to do so, risk may be assessed generically for applicants and customers falling into similar categories.

6.40 The sophistication with which a financial services business will record its risk assessment for a relationship (or group of relationships) will depend on many factors. The Handbook, however, adopts a simple approach: that applicants and customers will present a “standard” risk, “lower” risk, or “higher” risk. This risk assessment is important as it will be used to determine whether additional identification and relationship information is required, how the identity of an applicant and customer should be verified, and the extent to which a relationship will be monitored on an ongoing basis. In particular, Section 4 of the Handbook illustrates how the application of customer due diligence measures might vary - dependent upon the assessment of risk for a particular relationship (or group of relationships).

6.41 An alternative might be to set an approach to be followed in conducting customer due diligence measures for “lower” risk relationships and to suggest that additional measures might be necessary in “higher” risk circumstances, but not to specify the extent of what those measures might be – rather to give examples of additional measures that might be taken (but which are not obligatory). This is the approach adopted in the UK, where guidance is based on an assumption that most relationships established by financial services businesses will be “lower” risk. The Commission does not consider that such an approach would be appropriate in Jersey, given the “offshore” nature of much of the Island’s business, and that it could lead to wide inconsistencies in the approach adopted by financial services businesses.

6.41.1 Do you consider the five-staged risk-based approach to be a useful tool in determining and recording risk, and applying a risk-based approach? If not, please suggest alternatives.

6.41.2 Do you consider that the provision of guidance on three levels of risk: “standard”, “lower” and “higher”, to be useful? If not, please suggest alternatives and list the advantages in following the alternatives suggested.

Enhanced customer due diligence information (Section 3.4)

6.42 The Handbook establishes circumstances where enhanced due diligence measures must be applied. These are where a relationship or transaction is assessed as presenting “higher” risk, or where a relationship involves a PEP.

6.42.1 Do you agree with the definition of a PEP, immediate family member, and close associate? If not, please explain why.

6.42.2 The European Commission is currently consulting on a number of issues related to PEPs. Should the Handbook be based on the approach taken under the EU Third Money Laundering Directive (including the EU’s definition of a PEP)?

SECTION 4: IDENTIFICATION AND VERIFICATION OF IDENTITY

Overview of section

6.43 This section sets out the components of identity for an individual, express trust, and legal body (the latter two also addressing beneficial ownership and control) and how identity might be verified. It also provides guidance on the identification and verification of applicants and customers acting for third parties. This section must be read in conjunction with Sections 3 and 5.

6.44 It also summarises the customer identification exceptions that are set out in the Order, and fleshes out the basis for the application of reduced or simplified customer due diligence measures and the circumstances in which reliance may be placed on third parties (referred to in the Handbook as “introducers”) to verify the identity of: applicants and customers;

third parties on whose behalf the applicant or customer may be acting; and beneficial owners and controllers of applicants or customers.

Identification and verification of individuals (Section 4.3)

- 6.45 Currently, financial services businesses are expected to verify the name and address of applicants that are individuals. The extent to which components of the identity of an individual must be established and verified under the Handbook will depend upon a financial services business' assessment of risk.
- 6.46 In the case of a "lower" risk relationship with an individual, and where government issued documentation (including photographic evidence) is to be used to verify identity, the Handbook provides that whilst the name, residential address and date of birth of an individual will be collected, just name and either (i) residential address or (ii) date of birth need be verified. This means that where a relationship with an individual is assessed as presenting "lower" risk and is established face-to-face, the Handbook anticipates that it will be possible to verify identity on the basis of one document presented by the applicant or customer (a passport, identity card, or driving licence), and there will be no requirement to verify address.
- 6.47 In the case of Jersey residents seeking to establish or operating retail relationships, and in the absence of any information to indicate otherwise, such applicants or customers may be considered to present a "lower" risk.
- 6.48 In the case of "standard" and "higher" risk relationships, the Handbook proposes extending the type of identification information to be requested to also include date and place of birth, nationality, sex, and some official personal identification number, but limiting additional verification to residential address, nationality, date and place of birth (unless risk is assessed as "higher").
- 6.48.1 Do you agree that there should be no need to verify an individual's address where the risk presented in a relationship is considered to be "lower"? Alternatively, do you consider that address should be verified only in "higher" risk relationships? Please provide some support for your answer.**
- 6.49 In the case of "standard" and "higher" risk relationships, where an address changes, the Handbook requires "reasonable measures" to be taken to verify the new address.
- 6.49.1 What do you consider are reasonable measures to verify a change of an individual's address?**
- 6.49.2 Do you consider that a change in address should be verified only in "higher" risk relationships? Please provide some support for your answer.**

Independent data sources (Section 4.3.3)

- 6.50 Historically, verification of identity has relied on the applicant for business presenting documents, and this documentary approach will continue for many applicants. However, the Handbook anticipates the greater use in future of independent data sources, particularly for UK residents, following the emergence of commercially available sources such as electronic databases and research firms. In determining whether or not a data source provides confidence in verifying identity or address, the Handbook requires the depth, breadth and quality of independent data to be assessed.
- 6.51 Electronic delivery does not in itself make verification more robust. But electronic verification can have some advantages, not least that it can be a straightforward way of accessing several corroborative sources, and verification can be undertaken “behind the scenes”, without requiring the applicant or customer to produce documentary evidence of identity.
- 6.51.1 Have you any experience of using independent data sources to verify the identity of Jersey residents, UK residents, and overseas residents? If so, please provide details of your experience of such resources.**
- 6.51.2 Do you have any concerns about verifying identity other than with photographic identification, particularly given the increasing incidence of identity fraud?**

Guarding against the financial exclusion of Jersey residents (Section 4.3.4) and verification of residential address of overseas residents (Section 4.3.5)

- 6.52 Given that it will not be a requirement to verify address in “lower” risk relationships, and given the greater anticipated use of independent data sources, it should be less common in future for individuals to be excluded from accessing financial services and products on the basis that they have been unable to provide more usual forms of evidence of address, e.g. where they do not have a permanent residential address in Jersey.
- 6.53 Nevertheless, in many situations it will still be necessary to verify address, and independent data sources may not be available, and the Handbook anticipates a number of circumstances where an individual may not be able to provide more usual documentation.
- 6.54 Similar issues exist for individuals residing in countries without postal deliveries to residential addresses and few street addresses.
- 6.54.1 Do you consider that satisfactory evidence of identity might be established in any ways additional to those set out in the Handbook? If so, please list each additional way and explain why you consider it to be satisfactory.**

Identification and verification where the applicant for business is a trustee (Section 4.4 and Section 4.10)

- 6.55 The Methodology for revised FATF Recommendation 5 says that for applicants and customers that are legal persons or legal arrangements, a financial institution or designated non-financial business or profession should be required to take reasonable measures to understand the ownership and control structure of the applicant or customer; and determine who are the natural persons that ultimately own or control the applicant or customer. For trusts, this would normally involve a financial services business identifying the trustee and other persons exercising effective control over the trust, and the beneficiaries. Revised Recommendation 5 also requires reasonable measures to be taken to verify the identity of those identified. FATF Recommendation 5 also says that such measures may be determined on a risk sensitive basis.
- 6.56 The Handbook adopts a risk sensitive approach. This approach must be read and understood within the context of concessions that are available where the applicant for business or customer is a trust company business (see Section 4.10 of the Handbook). In each case the financial services business must obtain relationship information from the trustee.
- In the case of an applicant for business or customer that is a trustee and which is considered to present a “lower” risk, the Handbook requires a financial services business (with which the trustee is seeking to establish a relationship) to: (i) request the trustee to disclose identification information on the settlor(s) and the protector(s); and (ii) to take reasonable measures to verify the information provided by the trustee.
 - In the case of an applicant for business or customer that is a trustee and which is considered to present a “standard” risk, the Handbook requires a financial services business (with which the trustee is seeking to establish a relationship) to: (i) request the trustee to disclose identification information on the settlor(s), the protector(s), and beneficiaries with a vested right⁶; and (ii) to take reasonable measures to verify the information provided by the trustee.
 - In the case of an applicant for business or customer that is a trustee and which is considered to present a “higher” risk, the Handbook requires a financial services business (with which the trustee is seeking to establish a relationship) to: (i) request the trustee to disclose identification information on the settlor(s), the protector(s), beneficiaries with a vested right, and any other beneficiaries and persons who are the object of a power⁷ and whom the trustee has identified as presenting “higher” risk; and (ii) to take reasonable measures to verify the information provided by the trustee.

⁶ These are persons named in a trust instrument, ascertainable by reference to a class named in a trust instrument, or ascertainable from the trust instrument by reference to a relationship to some other person, to whom a legal right to trust property or income has been transferred. It covers those currently benefiting or due to benefit from a trust.

⁷ These are persons who are individually referred to by name (or otherwise individually referred to) in an expression of wishes in whose favour discretion to make a distribution from a trust is likely to be exercised,

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6.57 This risk-based approach to the identification of beneficiaries acknowledges the greater burden that would otherwise be placed on trustees. What it means, in practice, is that, where risk is assessed as “standard” (which is expected to cover more usual relationships), the trustee will be requested to disclose the identity of those benefiting or due to benefit from the trust, at the time that the benefit is established. In particular such an approach also reduces the need to disclose information on persons that may never benefit from the settlement, but which are named in a trust instrument. Such an approach appears to be in line with the EU Third Money Laundering Directive, which states that “beneficial owner” shall at least include, where the future beneficiaries have already “been determined”, the natural person(s) who is the beneficiary of 25% or more of the property of the trust.

6.57.1 Do you agree that, where risk is assessed as “standard”, a financial services business (with which the trustee is seeking to establish a relationship) should be required to request the trustee to disclose identification information only on those beneficiaries with a vested right? If not, please explain why.

6.57.2 Do you consider that, in line with the EU Third Money Laundering Directive, a financial services business (with which the trustee is seeking to establish a relationship) should be required to request the trustee to disclose identification information only on those beneficiaries with a vested interest of 25% or more of trust property or income? If so, please explain why.

6.58 The approach to “higher” risk relationships recognises that there will be individuals that are likely to benefit from a trust but would not otherwise be disclosed by the trustee to a financial services business until such time as property or income is vested, perhaps some considerable period after a relationship has been established by the trustee. However, this information will be directly relevant to the financial services business’ assessment of risk of the relationship.

6.58.1 Do you agree that, where risk is assessed as “higher”, a financial services business (with which the trustee is seeking to establish a relationship) should also be required to request the trustee to disclose identification information on “higher” risk beneficiaries and objects of power of express trusts at the start of a relationship (and subsequently when it is necessary to update the information)? If not, what alternative methods should be considered to ensure that financial services businesses hold sufficient information to properly assess the risk involved in particular trustee relationships?

6.59 Notwithstanding the above, the Handbook is clear that the financial services business with which the trustee is seeking to establish a relationship is not expected to establish the detailed terms of the trust, nor rights of beneficiaries or objects to property or income. The Handbook is also clear that, notwithstanding requirements to monitor transactions and

and persons (not individually referred to in an expression of wishes) in whose favour, to the best of the trustee’s knowledge and belief (having taken account of any expression of wishes of the settlor and confirmation otherwise in the possession of the trustee), discretion to make a distribution from a trust is likely to be exercised.

activity (set out at Section 5), the financial services business with which the trustee is seeking to establish a relationship is not expected to ensure that any payment or transfer of property or income made at the request of the trustee is to a person entitled to receive it - merely that it has verified the identity of that person.

6.59.1 Do you consider that this guidance sufficiently mitigates against the risk that a financial services business may be held by a court to be liable for breach of trust where it pays funds to a person that is not entitled to benefit from property or income held in trust? If not, what additional guidance or provisions are required?

Non-face to face identification and verification (Section 4.8)

6.60 Revised FATF Recommendation 8 states that financial institutions and designated non-financial businesses and professions should have policies and procedures in place to address any specific risks associated with non-face to face business. This is particularly important to international financial centres such as Jersey, where a large majority of applicants for business will establish relationships remotely.

6.61 To address these risks, the Handbook requires identification documentation obtained remotely to be certified by a “suitable certifier”, except in the case of “lower” risk relationships (where alternative measures may be applied), so that a person independent of the applicant for business will have seen the customer and evidence of identity held by that applicant.

6.61.1 Do you consider that the use of suitable certifiers properly addresses the specific risks associated with non-face to face business? For example, does certification of documentation address these risks if the credentials of the certifier are not checked by a financial services business?

6.61.2 Do you consider that certification should be offered as just one option, along with others, to address the greater risk of money laundering in relationships that are established remotely and where evidence of identity is verified through identification documentation?

Exceptions from identification procedures (Section 4.9) and identification and verification of identity in intermediary relationships (Section 4.10)

6.62 The interpretative note to revised FATF Recommendation 5 emphasises the general rule that applicants or customers must be subject to a full range of customer due diligence measures, including the requirement to identify beneficial ownership and control. Nevertheless, there are circumstances where the risk of money laundering or terrorist financing is “lower”, where information on the identity of the applicant or customer and the beneficial owner of an applicant or customer is publicly available, or where adequate checks and controls exist elsewhere in national systems. In such circumstances the interpretative note says that it could be reasonable for a country to allow its financial institutions and designated non-financial business and professions to apply simplified or reduced customer due diligence

measures when identifying and verifying the identity of the applicant or customer and the beneficial owner of the applicant or customer.

6.63 Examples of applicants or customers where simplified or reduced measures could apply are given in the interpretative note. These are:

- Where the applicant or customer is a financial institution which is: subject to requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations; and supervised for compliance with those controls.
- Where the applicant or customer is a public company that is subject to regulatory disclosure requirements.
- Where the applicant or customer is a government administration or enterprise.
- Where the applicant or customer is a designated non-financial business or profession operating a pooled account which is: subject to requirements to combat money laundering and terrorist financing consistent with the revised FATF Recommendations; and subject to effective systems for monitoring and ensuring compliance with those requirements (by a designated competent authority or self regulatory organisation responsible for monitoring and ensuring compliance).

6.64 Examples of products or services where simplified or reduced measures could apply are also given in the interpretative note. These are:

- Life insurance policies where the annual premium is not more than €1,000 or a single premium if not more than €2,500.
- Insurance policies for pensions schemes if there is no surrender clause and the policy cannot be used as collateral.
- A personal superannuation or similar scheme that provides retirement benefits to employees, where contributions are made by way of deduction from wages and the scheme rules do not permit the assignment of a member's interest under the scheme.

6.65 In addition to these products and services, Section 4.11 of the Handbook provides a limited verification concession where a product or service is provided to a customer that offers no third party funding or payment facilities, and where the relationship is established on the basis of funds drawn on an account of an institution in a jurisdiction where there are customer due diligence and record keeping requirements in place to combat money laundering and terrorist financing that are consistent with the revised FATF Recommendations.

6.65.1 Do you consider the risk of money laundering to be “lower” for each of the customers, and the products and services, listed in the interpretative note to revised FATF Recommendation 5? If not, please explain why.

6.65.2 Do you consider that other types of customers, or products and services, not covered in the draft Money Laundering Order or Handbook present a “lower” risk of money laundering? If so, please list and set out why you consider the risks presented to be “lower”.

Pooled and designated relationships with intermediaries that are financial institutions (Section 4.10.1)

6.66 Article 18 of the draft Money Laundering Order defines a financial institution as a person conducting investment, deposit-taking, or insurance business, or acting as a functionary to a collective investment fund in or outside Jersey. The requirements for trust company businesses are in Article 17.

6.67 Where an applicant for business or customer is a financial institution that is acting as an intermediary, then so long as the financial institution is:

- subject to requirements to combat money laundering that are consistent with the revised FATF Recommendations;
- supervised for compliance with those requirements; and
- required to register for the conduct of its business under its national legislation,

then the Handbook does not require a financial services business to identify and verify the identity of the third party or third parties on whose behalf the intermediary is acting, i.e. the beneficial owners and controllers, where it has considered the stature and regulatory track record of the intermediary and the nature of business conducted by the intermediary to be satisfactory. Nor does it require the financial services business to have access to the underlying evidence of identity held by the intermediary.

6.68 Such an approach is in line with the EU Third Money Laundering Directive, which provides for an exemption from identification procedures (and which requires such relationships to be monitored for complex, unusually large, and all unusual patterns of transactions).

6.68.1 Do you consider that there should be a mechanism in place to enable the accepting business to obtain information on any “higher” risk beneficial owners and controllers behind intermediary relationships operated on an undisclosed basis, e.g. PEPs on whose behalf an intermediary may be acting, and to enable the accepting business to access the underlying evidence of identity of all third parties? If so, how?

6.68.2 Do you consider that there should be a requirement for a financial services business to request a general written assurance from the intermediary to confirm that the intermediary will have identified and verified the identity of its underlying customers, and that it will have recorded evidence of their identity? If so, would you support a requirement for such an assurance if there was no similar requirement in other jurisdictions (including EU Member States)?

6.68.3 Do you have any customers that are financial institutions and which are (i) not subject to due diligence and record keeping requirements that are consistent with the revised FATF Recommendations or (ii) are subject to requirements but are not supervised, or (iii) are neither subject to such requirements or prudentially supervised? If so, please list the types of institution and the countries involved, e.g. United States hedge funds.

6.69 As noted above, the concession available for pooled and designated intermediary relationships with intermediaries that are trust company businesses is set out in Article 17 of the draft Money Laundering Order. Notwithstanding that trust company businesses in Jersey are subject to requirements to combat money laundering and terrorist financing, and overseen for compliance with such requirements, the concession proposed in Article 18 for certain financial services businesses does not apply to trust company businesses. This is because:

- There is a lack of an internationally agreed framework of principles to be followed by trust company businesses in the conduct of their professional work (though the existing OGBS Statement of Best Practice could form the basis for such a framework). In particular, few jurisdictions currently apply requirements to combat money laundering and terrorist financing to trust company businesses or oversee for compliance with these requirements. Consequently, the application of any concession to such businesses (including that proposed in Article 17) is likely to attract international attention because it will be uncommon, and will be subject to heightened scrutiny and analysis by the IMF in the forthcoming assessment of Jersey's framework to counter money laundering and the financing of terrorism (particularly if Guernsey and the Isle of Man were to adopt an approach more in line with their existing requirements – which require a financial services business establishing a relationship with a regulated trustee to identify and verify the identity of those individuals who are concerned with the trust).
- There is concern, internationally, that companies and trusts are more vulnerable to misuse for illicit purposes by criminals attracted to the reduced transparency provided by such entities to beneficial owners and controllers. Such vulnerability has been identified in reports such as the OECD Report on *Using Corporate Vehicles for Illicit Purposes*, and the FATF itself has a typology project underway which is considering the misuse of corporate vehicles, including the role of trust and company service providers.
- Whilst many trust companies businesses now maintain effective policies and procedures to counter money laundering and the financing of terrorism, such policies and procedures are not yet consistently applied by all businesses across the sector. In order to establish that it is appropriate that the trust company business sector benefit from a more extensive concession, it will be necessary to demonstrate that the sector is low risk and that anti-money laundering policies and procedures are consistently and effectively applied throughout the sector.

6.70 Consequently, it may be difficult to demonstrate that the risk of money laundering or terrorist financing is sufficiently low for pooled and designated intermediary relationships operated with trust company businesses to be covered by Article 18.

6.71 The concessions that are proposed for trust company businesses are detailed below.

6.71.1 Notwithstanding the above, if you consider that trust company businesses should be included within the definition of financial institution please explain why you consider that relationships with such businesses could be considered to present a “lower” risk of money laundering or terrorist financing.

Pooled relationships with intermediaries other than financial institutions (Section 4.10.2.1)

6.72 Where an applicant for business or customer is a financial services business (other than a financial institution) that is acting as an intermediary and operating a pooled account, then so long as:

- the intermediary is subject to requirements to counter money laundering that are consistent with the revised FATF Recommendations;
- is registered;
- is supervised for compliance with those requirements; and
- confirmation on certain matters is obtained,

then the Handbook does not require a financial services business to identify and verify the identity of the third parties on whose behalf the intermediary is acting, so long as certain conditions are met; this concession will be of particular relevance to trust company businesses. These conditions are based on text that is currently the subject of discussion between the Jersey Bankers Association and Jersey Association of Trust Companies, which it is intended will reflect current best practice in this area. Text used in the Handbook will be reviewed following the conclusion of this discussion and in light of responses to the consultation paper.

The conditions are that a financial services business must:

- obtain sufficient information about the nature of the intermediary’s customer pool and the intermediary’s risk assessment of its customer pool, and must be satisfied that the intermediary will notify it of material changes (a template certificate will be provided in the Handbook);
- establish a letter of engagement with the intermediary;
- review the operation of the pooled relationship against the terms of the letter of engagement with the intermediary on an annual basis;
- conduct (or commission from an external expert) a periodic review of the adequacy of the intermediary’s account opening procedures, to involve sample testing; and

- require the intermediary to produce, on an annual basis, a certificate of compliance from an external expert that confirms that the intermediary's systems and controls (including policies and procedures) comply with the requirements of the Handbook (or with requirements that are consistent with the FATF Recommendations), and that those systems and controls were in place and operating effectively throughout the year.

6.72.1 Do you consider that any of these conditions are too onerous? If so, please explain why.

6.72.2 What would be the approximate cost of a certificate of compliance commissioned from an external expert?

6.73 Whilst the Handbook includes legal, accounting, and auditing activities within the definition of financial services business (this would first involve a change to the Second Schedule of the Proceeds of Crime Law), such professions are not all registered or supervised for compliance with requirements to prevent and detect money laundering and terrorist financing. Accordingly, pooled accounts operated by such professions will be unable to benefit from this proposed concession - until such time as these professions are required to be registered and/ or are supervised for compliance with the Handbook.

6.73.1 Will the absence of this concession lead to any difficulties for lawyers, accountants, and auditors? Please set out the nature of these difficulties.

6.73.2 Do you consider that this concession should be offered to lawyers, accountants and auditors pending the introduction of any oversight arrangements? If so, please set out why you consider such relationships would present a "lower" risk.

Designated relationships with intermediaries other than financial institutions (Section 4.10.2.2)

6.74 Where an applicant for business or customer is a financial services business (other than a financial institution) that is acting as an intermediary and operating a **designated** account, then so long as:

- the intermediary is subject to requirements to counter money laundering that are consistent with the revised FATF Recommendations;
- is registered;
- is supervised for compliance with those requirements; and
- confirmation on certain matters is obtained,

then the Handbook permits a financial services business to rely upon the intermediary to have identified and verified the identity of the third parties on whose behalf the intermediary is acting, so long as certain conditions are met; this concession will be of particular relevance to trust company businesses. These conditions are based on text that is

currently the subject of discussion between the Jersey Bankers Association and Jersey Association of Trust Companies, which it is intended will reflect current best practice in this area. Text used in the Handbook will be reviewed following the conclusion of this discussion and in light of responses to the consultation paper.

6.75 The conditions are that a financial services business must:

- obtain sufficient customer due diligence information from the intermediary on each of the intermediary's underlying customers - in line with guidance for individuals, trustees, and legal bodies (a template certificate is provided in the Handbook);
- establish a letter of engagement with the intermediary;
- review the operation of the designated relationship against the terms of the letter of engagement with the intermediary on an annual basis;
- conduct (or commission from an external expert) a periodic review of the adequacy of the intermediary's account opening procedures, to involve sample testing; and
- be satisfied that the intermediary will notify the financial services business of material changes to customer due diligence provided.

6.75.1 Do you consider that any of these conditions are too onerous? If so, please explain why.

6.75.2 In line with the provisions for the operation of pooled accounts, are there any circumstances in which you consider that designated accounts might also be operated on an undisclosed basis? If so, set out why you consider that the risk of money laundering or terrorist financing in these circumstances is "lower".

6.76 In line with the concession for pooled accounts, this concession will be unavailable to the legal, accounting, and auditing professions except where these professions are registered and supervised for compliance with requirements to prevent and detect money laundering and terrorist financing. Presently, this is not the case for Jersey based professions.

Use of introducers to obtain identification information and evidence of identity (Section 4.12)

6.77 Article 19 of the draft Money Laundering Order provides a statutory basis for using a third party (an introducer) to identify and verify the identity of an applicant for business or a customer (a template certificate will be provided in the Handbook).

6.78 The draft Money Laundering Order provides that a financial services business may use an introducer to have identified and verified the identity of an applicant or customer and those who ultimately own or control that applicant or customer so long as: the introducer is supervised by the Commission; or is subject to requirements that are consistent with the

revised FATF Recommendations and supervised for compliance with those requirements; and certain conditions are met.

6.79 One of those conditions is that an introducer provides adequate assurance to a financial services business that information and underlying records of evidence of the applicant or customer (and of any beneficial owners and controllers of the applicant or customer) will be provided without delay. In contrast, Article 18 of the EU Third Money Laundering Directive places a direct obligation on the introducer (rather than on the financial services business establishing the relationship). It requires introducers to make relevant copies of identification and verification data and other relevant documentation of the identity of the customer or the beneficial owner available on request.

6.79.1 Do you consider that, in line with Article 18 of the EU Third Money Laundering Directive, legislation should be amended to place an obligation on introducers that are subject to Jersey law to make relevant copies of identification and verification data and other relevant documentation of the identity of the customer or the beneficial owner available on request?

Reliance on “chains” of certificates

6.80 Articles 17, 18, and 19 of the draft Money Laundering Order anticipate that customer due diligence procedures will be conducted by another financial services business. However, there is no explicit requirement to consider whether or not that other financial services business may itself have relied up another party to have identified and verified the identity of: (i) a person on whose behalf it is acting (as an intermediary); or (ii) the customer that it is introducing (as an introducer).

6.81 Accordingly, it may be appropriate for a financial services business to routinely consider whether or not an intermediary or introducer has itself placed reliance on a party that would not be an equivalent business under Article 4 of the draft Money Laundering Order (see Section 1.7 of the Handbook).

6.81.1 Do you agree that financial services businesses should routinely consider whether or not intermediaries or introducers have placed reliance on parties that would not be an equivalent business under Article 4 of the draft Money Laundering Order?

6.81.2 Do you consider that more onerous restrictions should be placed on the use of “chains” of certificates, as is the case in Guernsey?

SECTION 5: MONITORING ACTIVITY AND TRANSACTIONS AND RECOGNISING MONEY LAUNDERING AND TERRORIST FINANCING ACTIVITY AND TRANSACTIONS

Overview of section

- 6.82 This section establishes that relationships are to be monitored on an ongoing basis, and, as an important element of the customer due diligence process, must be read in conjunction with Sections 3 and 4 of the Handbook.
- 6.83 In line with revised FATF Recommendations 11 and 21, the Handbook requires special attention to be paid to:
- all complex transactions, all unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purposes; and
 - relationships and transactions connected with jurisdictions which do not, or insufficiently apply the revised FATF Recommendations or which are the subject of international countermeasures.

Computerised monitoring methods (Section 5.2.2)

- 6.84 The Handbook says that scrutiny of relationships to ensure that the activity or transactions being conducted are consistent with customer due diligence information held may involve computerised monitoring methods.
- 6.85 In contrast, Switzerland has introduced legislation that requires banks to introduce automated transaction monitoring systems (or, where a bank has a limited number of customers or transactions, to commission an annual independent assessment of the monitoring procedures in place). This is on the basis that it is difficult to see how banks that conduct large volumes of relatively low value transactions can scrutinise effectively without the use of automated solutions, particularly as activity has become more sophisticated.

6.85.1 Do you consider that the more prescriptive Swiss approach to computerised monitoring should be followed?

Current money laundering practices and typologies

- 6.86 Revised FATF Recommendation 25 states that competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting transactions.
- 6.86.1 What additional information flows from the Commission and the JFCU would help to support financial services businesses in their efforts to keep up to date with current money laundering practices and typologies (internationally and domestically)?**

SECTION 6: REPORTING MONEY LAUNDERING AND TERRORIST FINANCING ACTIVITY AND TRANSACTIONS

Overview of section

- 6.87 This section outlines the statutory provisions concerning disclosure of information where a financial services business has knowledge or reasonable grounds for suspicion that it, or another person, is involved in money laundering or the financing of terrorism.
- 6.88 In particular, the Handbook requires internal reporting procedures that encompass the reporting of attempted transactions and business that has been turned away, and for there to be arrangements in place for the disciplining of staff who fail to make reports in accordance with their employer's procedures.

SECTION 7: VETTING, AWARENESS AND TRAINING OF EMPLOYEES

Overview of section

- 6.89 This section highlights the vital importance of awareness raising and training, and making sure that it is relevant to the business areas in which staff members are working. It stresses the need for training to be tailored to the particular needs of the business and reflect the specific risks run, particularly for staff working closely with customers or in the best position to identify money laundering.

Vetting of relevant employees (Sections 7.3)

- 6.90 Revised FATF Recommendation 15 requires jurisdictions to ensure that financial institutions develop programmes against money laundering and terrorist financing, including adequate screening procedures to ensure high standards when hiring employees. Such screening may help to prevent members of criminal groups from obtaining employment in financial services businesses with a view to carrying out fraudulent activities such as identity fraud, something becoming more prevalent according to a recent survey by the Financial Services Authority in the UK.
- 6.91 The Handbook includes a regulatory requirement to ensure that relevant employees⁸ are adequately vetted.
- 6.92 Guidance suggests that a business may demonstrate that it has effective vetting procedures in place where these include obtaining and confirming references, employment history and

⁸ Relevant employees will include those employees with customer facing relationships, those who handle or have responsibility for the handling of business relationships or transactions, and those supporting employees that carry out these activities. The MLRO, MLCO and members of senior management are also included (Section 7.2 of the Handbook).

qualifications, and requesting information on any regulatory action and criminal convictions.

6.92.1 Do you agree that employment checks should apply to relevant employees in the way described above? If not, please outline what checks should apply and explain why.

6.92.2 Do you consider that other employees, e.g. information technology staff or other support staff should be considered to be “relevant employees”?

SECTION 8: RECORD KEEPING

Overview of section

6.93 This section outlines the record-keeping obligations established in the draft Money Laundering Order and importance in law enforcement having ready access to records.

Access to and retrieval of records (Section 8.5)

6.94 The Handbook requires key records retained by financial services businesses to be accessible within five working days (or such longer period as agreed with the Commission) and in a format that can be made readily available.

6.94.1 Do you consider five working days to be a reasonable period in which to access records? If not, what period do you suggest?

7 – COST BENEFIT ANALYSIS

COSTS TO THE COMMISSION

- 7.1 Implementation of the draft Money Laundering Order and Handbook will necessitate:
- additional internal training, particularly with respect to the adoption of the risk-based approach by financial services businesses; and
 - revisions to the “route planners” used by the Commission during on-site examinations to assess compliance by prudentially supervised financial services businesses with existing anti-money laundering requirements.
- 7.2 In the longer term, the production of a more comprehensive list of jurisdictions that have legislation in place that is consistent with the revised FATF Recommendations is likely to involve time and resources.

COSTS TO INDUSTRY

- 7.3 Industry has expressed strong concerns about increasing costs of preventing and detecting money laundering. In 2003, a survey by the British Bankers’ Association identified preventing and detecting money laundering as one of the biggest drivers of increased compliance costs, and UK firms questioned whether this was leading to a competitive disadvantage for UK firms and a cost that bore little relation to the benefits achieved. However, the reputational and regulatory risk faced by financial services businesses for non-compliance with requirements has also substantially increased in recent years. It is therefore not surprising that the cost of compliance has risen significantly.
- 7.4 The challenge is therefore to spend wisely. The main objective should be to ensure that the business is adequately managing money laundering risk and meets statutory and regulatory requirements.
- 7.5 It is very difficult to quantify the additional costs involved in implementing the draft Money Laundering Order and regulatory requirements set out in the Handbook, since many financial services businesses will already have systems and training in place that exceed current requirements, and will be subject to Codes of Practice that already provide for corporate governance and more general risk management systems. For example, Codes of Practice for Trust Company Business provide that a registered person must organise and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems, which includes vetting and monitoring the competence and probity of employees.

7.6 Wherever possible, the proposals in the Handbook have sought to codify current practices and to follow an approach consistent with that of the Codes of Practice, minimising the impact on businesses already meeting these standards.

7.7 In addition, whilst some new requirements of the draft Money Laundering Order and Handbook will involve additional costs, e.g. the application of more extensive customer due diligence measures, these are likely to be mitigated by the application of a risk-based approach, and more flexible approach to verification of applicant or customer identity.

7.8 Additional costs may arise from:

- Capturing more identification and relationship information as part of customer due diligence measures for standard and higher risk relationships.
- The collection of information on, and verification of identity of, beneficial owners and controllers of applicants or customers, and more extensive information on underlying customers.
- The application of additional measures for relationships established remotely.
- The assessment of customer due diligence measures in place at third parties, where reliance is placed on that third party to have performed customer due diligence measures.
- A requirement to take reasonable measures to verify subsequent changes to a customer's address, except in the case of "lower" risk relationships.
- A requirement to pay special attention to all complex transactions, all unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose when monitoring relationships and transactions.
- A requirement for more tailored and focused training to be provided to employees of financial services businesses.
- A requirement to appoint a MLCO, and to test the effectiveness of systems in place to prevent and detect money laundering and terrorist financing (already a requirement of the Commission's regulatory regime).

7.9 On the other hand, savings are likely to follow from:

- The application of a risk-based approach to customer due diligence, including provision for simplified customer due diligence, e.g. where the applicant or customer is another financial services business.
- Scope for greater reliance on a single document to verify identity in "lower" risk circumstances.

- Scope for greater use of independent data sources to verify identity.
- Reliance on third parties to have identified and verified the identity of applicants or customers.
- Improved risk management, reducing the likelihood of criminal or regulatory investigation and associated costs.

7.10 Moreover, as Member States begin to implement the EU Third Money Laundering Directive, the credit and financial institutions covered by the EU Third Money Laundering Directive will be required to apply measures at least equivalent to those set out in the EU Third Money Laundering Directive with regard to customer due diligence and record-keeping in their Jersey branches and majority owned subsidiaries. Therefore, even in the event that Jersey was not to update its framework for countering money laundering and terrorist financing, in many cases additional costs would be incurred through EU parents implementing EU compliant group requirements in Jersey branches and subsidiaries.

7.11 The wider definition of financial services business will, however, undoubtedly involve additional costs to businesses and professions that are currently not subject to requirements to have systems in place to prevent and detect money laundering, e.g. estate agents and dealers in high value goods, as will the application of the draft Money Laundering Order to branches of financial services businesses and Jersey companies outside Jersey.

7.11.1 Where you have concerns as to the additional compliance costs to your business in implementing the draft Money Laundering Order and Handbook, please estimate these costs, highlighting any particular requirements that you consider will be most costly.

COSTS TO USERS OF FINANCIAL SERVICES AND PRODUCTS

7.12 Implementation of the draft Money Laundering Order and Handbook will involve no direct costs to users of financial services and products, except to the extent that applicants for business opening relationships remotely are required to have underlying evidence of identity certified by a suitable certifier, who may charge for certification.

7.13 However, use of suitable certifiers is already common practice in industry, and proposals to permit alternative measures to be adopted to address risks associated with non-face to face business in the case of “lower” risk relationships may, in fact, avoid charges where they might currently be suffered.

JERSEY’S REPUTATION

7.14 As noted, the Policy and Resources Committee (through the OGBS) has already committed Jersey to implementing the revised FATF Recommendations. Failure to translate this commitment into updated legislation and other requirements is likely to lead to adverse assessments of Jersey’s compliance with international standards by the IMF.

- 7.15 Failure to implement legislation and other requirements that are equivalent to those set out in the EU Third Money Laundering Directive would preclude the extension of simplified customer due diligence measures to Jersey financial services businesses, and limit the extent to which third parties in Jersey could be relied upon to have conducted elements of the customer due diligence process.
- 7.16 In summary, the more that Jersey's framework to combat money laundering and terrorist financing diverges from the FATF Recommendations, or the EU Third Money Laundering Directive, the greater the risk becomes that the international community will cease to consider Jersey as being an equivalent jurisdiction. Such a finding may materially impact on the ability of Jersey's financial services businesses to conduct business on an equal basis with businesses based in larger jurisdictions.
- 7.17 In addition, ineffective implementation of money laundering and terrorist financing risk management measures increases the risk that Jersey's businesses will be vulnerable to misuse by money launderers or those funding terrorism, increasing the risk to Jersey's reputation.

JERSEY'S COMPETITIVE POSITION

7.18 In preparing this consultation paper, regard has been had to the implementation in the EU of the revised FATF Recommendations, changes in the UK to the Joint Money Laundering Steering Group's guidance, and expected changes to guidance and legislation in Guernsey and the Isle of Man. It is therefore not expected that the Commission's proposals will have any significant impact on Jersey's competitive position. However, implementation of the revised FATF Recommendations in these and other jurisdictions will be kept under review to ensure that this position does not change.

7.18.1 Are there any proposals that you believe will impact on Jersey's competitive position because other jurisdictions have implemented the revised FATF Recommendations in a different way, or are you aware of other jurisdictions proposals to delay implementation of the revised FATF Recommendations?

COMPETITION AND AVAILABILITY OF SERVICES IN DOMESTIC MARKET

- 7.19 Implementation of the draft Money Laundering Order and requirements contained in the Handbook are unlikely to impact on competition and availability of services in the domestic market.
- 7.20 However, additional guidance in the Handbook should act to guard against the exclusion of Jersey residents from financial services and products on the basis that they are unable to produce more usual documentation to verify an address.

8 - SUMMARY OF QUESTIONS

REFERENCE	QUESTION
5.3.1	Do you consider that the Proceeds of Crime Law, the Drug Trafficking Law, and the Terrorism Law should similarly provide for the designation of police and customs officers so that disclosures relating to money laundering or terrorist financing are made directly to the JFCU? Please provide some support for your answer.
5.14.1	Do you agree that there should be a legal requirement to notify the Commission of the name of the MLCO and MLRO? Please provide some support for your answer.
5.14.2	Do you agree that persons carrying on financial services business which is incidental to some other business should be exempted from the requirement to notify the Commission of the name of the MLCO and MLRO? If not, please explain why.
5.30.1	What similar scenarios to pension, superannuation and similar schemes could also be considered to generically present low risk? Please explain the features of any such scenarios which lead you to consider them low risk.
5.31.1	Do you rely on the exemption from identification procedures set out in Article 6(1)(d) of the Money Laundering (Jersey) Order 1999? If so, please set out the circumstances in which the exemption is used.
5.32.1	Do you consider that the draft Money Laundering Order should prescribe detailed record-keeping requirements, or should these requirements be set at regulatory level in the Handbook?
5.35.1	Do you anticipate any difficulty in applying the “objective test” through internal reporting procedures? If so, what difficulties are anticipated?
5.38.1	Do you agree that it should be possible to make an internal report to a person other than the MLRO? If not, please explain why.
5.40.1	In light of the judgement in a recent case, which establishes that the maintenance of procedures is an absolute duty and that one breach of such procedures is sufficient to constitute an offence, do you consider it helpful to make the common law position clearer by providing for a duty in Article 27 of the draft Money Laundering Order? If not, please explain why.
5.43.1	Do you agree that the statutory basis for the concession should be replaced by

a concession in the Handbook in line with changes to legislation in the UK? If not, please explain why you consider that a statutory concession is useful and should be retained.

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- 6.6.1** Does the Handbook strike the right balance between the need to prescribe and the need for flexibility? If not, please explain why you consider the balance to be wrong, supporting your comments with examples.
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- 6.6.2** Should financial services businesses that are not supervised by the Commission be expected to follow applicable parts of the Handbook, in line with Article 37(8) of the Proceeds of Crime Law, or should summarised guidance be prepared for such businesses?
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- 6.6.3** If you think that summarised guidance should be prepared for financial services businesses that are not supervised by the Commission, should the Commission prepare this guidance or should guidance be issued by bodies that are representative of financial services business carried on in Jersey?
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- 6.9.1** Are there any other areas that might usefully be covered in the informational resource established in Part II? If so, please list.
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- 6.11.1** Do you think that it is useful for the Handbook to summarise the statutory requirements to which financial services businesses are subject, or do you consider that there is too great a risk that paraphrasing may in fact present a misleading explanation of underlying legislation?
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- 6.11.2** Would you prefer guidance notes to be presented in a separate part of the Handbook instead of directly following the statutory and regulatory requirements to which they relate? If so, please explain why.
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- 6.11.3** Would it be helpful to number each paragraph in the Handbook?
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- 6.16.1** Do you agree that the regulatory requirements established in the Handbook are enforceable requirements? If not, please explain why you do not consider regulatory requirements to be enforceable.
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- 6.16.2** Do you consider that revised FATF Recommendations 5 to 16, 21 and 22 should be implemented through the draft Money Laundering Order rather than as regulatory requirements? If so, please explain why.
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- 6.19.1** Do you agree that the definition of financial services business should be based on the EU Third Money Laundering Directive or should Jersey adopt the scope provided for in revised FATF Recommendations 12 and 16? If so, please explain why.
-
- 6.20.1** Do you consider that there are other businesses and professions not included in the revised definition of financial services business, that pose a money

laundering or terrorist financing risk, e.g. internet service providers that host websites that may be used for illicit activities? If so, please list and explain why.

- 6.20.2** Do you consider that there is a proven low risk of money laundering in any of the activities included within the revised definition of financial services business, e.g. Jersey real estate transactions that are subject to housing consent? If so, please list and explain why.
- 6.21.1** Do you consider that the definition of insurance business in the Second Schedule should be limited to life insurance and other investment related insurance? If so, please explain why.
- 6.21.2** In line with the revised FATF Recommendations, do you consider that the definition of financial services business should extend only to trading in money market instruments, foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities on behalf of customers? If so, please explain why.
- 6.22.1** Should the definition of financial services business be amended to cover recent changes to the UK Money Laundering Regulations 2003?
- 6.31.1** Do you consider that, in the short term, the Commission should continue to permit financial services businesses to determine whether jurisdictions have equivalent anti-money laundering frameworks, or should a more restrictive approach to determining equivalence be implemented to provide certainty as to the status of overseas jurisdictions?
- 6.31.2** Are there any jurisdictions that are currently not listed in Appendix D to the Guidance Notes that you consider to have legislation in place that is consistent with the revised FATF Recommendations, or customer due diligence and record-keeping requirements of the revised FATF Recommendations? If so, please list in order of business importance and attach supporting evidence for your assessment.
- 6.34.1** Do you agree that the MLCO and MLRO should be sufficiently qualified, and, if so, how should this qualification manifest itself?
- 6.34.2** If you consider that qualification should manifest itself through an examination, do you think that the Commission should list “approved” qualifications (providing discretion to financial services businesses to recognise other qualifications that are equal to or higher than those listed)?
- 6.34.3** If you consider that qualification should manifest itself through an examination, what qualifications should be “approved”?
- 6.41.1** Do you consider the five-staged risk-based approach to be a useful tool in determining and recording risk, and applying a risk-based approach? If not,

please suggest alternatives.

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- 6.41.2** Do you consider that the provision of guidance on three levels of risk: “standard”, “lower” and “higher”, to be useful? If not, please suggest alternatives and list the advantages in following the alternatives suggested.
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- 6.42.1** Do you agree with the definition of a PEP, immediate family member, and close associate? If not, please explain why.
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- 6.42.2** The European Commission is currently consulting on a number of issues related to PEPs. Should the Handbook be based on the approach taken under the EU Third Money Laundering Directive (including the EU’s definition of a PEP)?
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- 6.48.1** Do you agree that there should be no need to verify an individual’s address where the risk presented in a relationship is considered to be “lower”? Alternatively, do you consider that address should be verified only in “higher” risk relationships? Please provide some support for your answer.
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- 6.49.1** What do you consider are reasonable measures to verify a change of an individual’s address?
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- 6.49.2** Do you consider that a change in address should be verified only in “higher” risk relationships? Please provide some support for your answer.
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- 6.51.1** Have you any experience of using independent data sources to verify the identity of Jersey residents, UK residents, and overseas residents? If so, please provide details of your experience of such resources.
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- 6.51.2** Do you have any concerns about verifying identity other than with photographic identification, particularly given the increasing incidence of identity fraud?
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- 6.54.1** Do you consider that satisfactory evidence of identity might be established in any ways additional to those set out in the Handbook? If so, please list each additional way and explain why you consider it to be satisfactory.
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- 6.57.1** Do you agree that, where risk is assessed as “standard”, a financial services business (with which the trustee is seeking to establish a relationship) should be required to request the trustee to disclose identification information only on those beneficiaries with a vested right? If not, please explain why.
-
- 6.57.2** Do you consider that, in line with the EU Third Money Laundering Directive, a financial services business (with which the trustee is seeking to establish a relationship) should be required to request the trustee to disclose identification information only on those beneficiaries with a vested interest of 25% or more of trust property or income? If so, please explain why.
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- 6.58.1** Do you agree that, where risk is assessed as “higher”, a financial services business (with which the trustee is seeking to establish a relationship) should also be required to request the trustee to disclose identification information on “higher” risk beneficiaries and objects of power of express trusts at the start of a relationship (and subsequently when it is necessary to update the information)? If not, what alternative methods should be considered to ensure that financial services businesses hold sufficient information to properly assess the risk involved in particular trustee relationships?
-
- 6.59.1** Do you consider that this guidance sufficiently mitigates against the risk that a financial services business may be held by a court to be liable for breach of trust where it pays funds to a person that is not entitled to benefit from property or income held in trust? If not, what additional guidance or provisions are required?
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- 6.61.1** Do you consider that the use of suitable certifiers properly addresses the specific risks associated with non-face-to-face business? For example, does certification of documentation address these risks if the credentials of the certifier are not checked by a financial services business?
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- 6.61.2** Do you consider that certification should be offered as just one option, along with others, to address the greater risk of money laundering in relationships that are established remotely and where evidence of identity is verified through identification documentation?
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- 6.65.1** Do you consider the risk of money laundering to be “lower” for each of the customers, and the products and services, listed in the interpretative note to revised FATF Recommendation 5? If not, please explain why.
-
- 6.65.2** Do you consider that other types of customers, or products and services, not covered in the draft Money Laundering Order or Handbook present a “lower” risk of money laundering? If so, please list and set out why you consider the risks presented to be “lower”.
-
- 6.68.1** Do you consider that there should be a mechanism in place to enable the accepting business to obtain information on any “higher” risk beneficial owners and controllers behind intermediary relationships operated on an undisclosed basis, e.g. PEPs on whose behalf an intermediary may be acting, and to enable the accepting business to access the underlying evidence of identity of all third parties? If so, how?
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- 6.68.2** Do you consider that there should be a requirement for a financial services business to request a general written assurance from the intermediary to confirm that the intermediary will have identified and verified the identity of its underlying customers, and that it will have recorded evidence of their identity? If so, would you support a requirement for such an assurance if there was no similar requirement in other jurisdictions (including EU Member States)?

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- 6.68.3** Do you have any customers that are financial institutions and which are (i) not subject to due diligence and record keeping requirements that are consistent with the revised FATF Recommendations or (ii) are subject to requirements but are not supervised, or (iii) are neither subject to such requirements or prudentially supervised? If so, please list the types of institution and the countries involved, e.g. United States hedge funds.
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- 6.71.1** Notwithstanding the above, if you consider that trust company businesses should be included within the definition of financial institution please explain why you consider that relationships with such businesses could be considered to present a “lower” risk of money laundering or terrorist financing.
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- 6.72.1** Do you consider that any of these conditions are too onerous? If so, please explain why.
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- 6.72.2** What would be the approximate cost of a certificate of compliance commissioned from an external expert?
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- 6.73.1** Will the absence of this concession lead to any difficulties for lawyers, accountants, and auditors? Please set out the nature of these difficulties.
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- 6.73.2** Do you consider that this concession should be offered to lawyers, accountants and auditors pending the introduction of any oversight arrangements? If so, please set out why you consider such relationships would present a “lower” risk.
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- 6.75.1** Do you consider that any of these conditions are too onerous? If so, please explain why.
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- 6.75.2** In line with the provisions for the operation of pooled accounts, are there any circumstances in which you consider that designated accounts might also be operated on an undisclosed basis? If so, set out why you consider that the risk of money laundering or terrorist financing is “lower”.
-
- 6.79.1** Do you consider that, in line with Article 18 of the EU Third Money Laundering Directive, legislation should be amended to place an obligation on introducers that are subject to Jersey law to make relevant copies of identification and verification data and other relevant documentation of the identity of the customer or the beneficial owner available on request?
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- 6.81.1** Do you agree that financial services businesses should routinely consider whether or not intermediaries or introducers have placed reliance on parties that would not be an equivalent business under Article 4 of the draft Money Laundering Order?
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- 6.81.2** Do you consider that more onerous restrictions should be placed on the use of “chains” of certificates, as is the case in Guernsey?

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- 6.85.1** Do you consider that the more prescriptive Swiss approach to computerised monitoring should be followed?
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- 6.86.1** What additional information flows from the Commission and the JFCU would help to support financial services businesses in their efforts to keep up to date with current money laundering practices and typologies (internationally and domestically).
-
- 6.92.1** Do you agree that employment checks should apply to relevant employees in the way described above? If not, please outline to whom such checks should apply and explain why.
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- 6.92.2** Do you consider that other employees, e.g. information technology staff or other support staff should be considered to be “relevant employees”?
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- 6.94.1** Do you consider five working days to be a reasonable period in which to access records? If not, what period do you suggest?
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- 7.11.1** Where you have concerns as to the additional compliance costs to your business in implementing the draft Money Laundering Order and Handbook, please estimate these costs, highlighting any particular requirements that you consider will be most costly.
-
- 7.18.1** Are there any proposals that you believe will impact on Jersey’s competitive position because other jurisdictions have implemented the revised FATF Recommendations in a different way, or are you aware of other jurisdictions proposals to delay implementation of the revised FATF Recommendations?
-