



Jersey Financial
Services Commission

Guide to Section II of risk based supervision data: Lawyers

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Table of Contents

1	General guidance	3
1.1	Scope	3
1.2	Excel workbook	3
1.3	Clients and matters	3
1.4	Data reporting period.....	4
1.5	Data Submission	4
1.6	Integrity checking your submission.....	5
2	Section AA – Lawyers compliance data.....	6
2.1	Overview	6
2.2	Risk Rating.....	6
2.3	Declined, terminated and withdrawn business.....	7
2.4	Referred business.....	8
2.5	Cash transactions	9
2.6	Transaction monitoring	9
2.7	General Comments	10
3	Section AB – Law firm’s client data	11
3.1	Client data overview	11
3.2	Client analysis.....	11
3.3	Enhanced CDD measures	12
3.4	Other client characteristics	16
3.5	Legal services	16
3.6	Client account	17
4	Section AC – Beneficial ownership.....	18
4.1	General.....	18
4.2	Clients who are individuals and beneficial owners or controllers of clients that are not individuals.....	18
4.3	Client acting on behalf of a third party	20
5	Section AD – Use and application of concessions granted by the Money Laundering Order	21
5.1	General.....	21
5.2	Client identification and verification	22
5.3	Reliance on obliged persons (Article 16 of the MLO).....	22
5.4	Exemption from applying third party identification requirements (Articles 17B-D of the MLO)	23
5.5	Further exemptions from applying identification requirements (Article 18 of the MLO).....	24

1 General guidance

1.1 Scope

- 1.1.1 In 2018 the JFSC collected supervisory risk data for Reporting Entities for the first time. This exercise was repeated in 2019 and, as advised on 30 October 2019ⁱ, the JFSC is collecting the same data in 2020.
- 1.1.2 This guidance document relates to Section II of the 2020 risk based supervision data collection which requires the provision of activity based data from Reporting Entities registered to carry on legal services.
- 1.1.3 Legal services is a financial services business activity as set out in Schedule 2 to the Proceeds of Crime (Jersey) Law 1999, specifically paragraph 1 of Part B of Schedule 2 (see below).

1 Lawyers

- 1. *The business of providing services by independent legal professionals.*
- 2. *In this paragraph “independent legal professionals” means those who by way of business provide legal or notarial services to third parties when participating in financial, or immovable property, transactions concerning any of the following –*
 - a) *the buying and selling of immovable property or business entities;*
 - b) *the buying and selling of shares the ownership of which entitles the owner to occupy immovable property;*
 - c) *the managing of client money, securities or other assets;*
 - d) *the opening or management of bank, savings or securities accounts;*
 - e) *the organization of contributions necessary for the creation, operation or management of companies; or*
 - f) *the creation, operation or management of trusts, companies or similar structures.*

1.2 Excel workbook

- 1.2.1 The Excel workbook for a reporting entity carrying on legal services comprises 5 spreadsheets, as follows:
 - (a) AA - Compliance Data
 - (b) AB - Client Data
 - (c) AC - Beneficial Ownership
 - (d) AD - Use and application of concessions granted by the MLOⁱⁱ
 - (e) AE - Country List
- 1.2.2 Spreadsheet AE is an input sheet for the responses to questions AA8, AC1, AC2, AD4 and AD7.

1.3 Clients and matters

- 1.3.1 The spreadsheets require lawyers to provide data in respect of their clients.
- 1.3.2 A client is a person to whom the lawyer provides one or more of the services in 1.1.3 above.

- 1.3.3 However, it is understood that some law firms may find it difficult to provide the requested information at a client level, as they record “matters” rather than clients (each matter being a piece of business conducted for a client, meaning that a lawyer may conduct several matters for the same client during a period).
- 1.3.4 For example, Mr X approaches a law firm to carry out the following services:
- (a) to act for him in the purchase of a property, and
 - (b) to act for him in respect of the sale of a company which is beneficially owned by him.
- In this case the law firm would have one client and two matters.
- 1.3.5 If a law firm is unable to provide data analysed by client, the JFSC will accept the data analysed by matter. It is understood that this will result in an element of duplication.

1.4 Data reporting period

- 1.4.1 Generally, data should be provided for the period 1/1/2019 to 31/12/2019.
- 1.4.2 There are a few data items where the data should be provided as at the end of the reporting period (31/12/2019 or closest business day).

1.5 Data Submission

- 1.5.1 Whilst the JFSC will be collecting the same data as it did in 2019, law firms are still recommended to consider the data request as soon as possible. It may take some time to gather the data requested and the deadline for submission is **17:00 on 31 March 2020**.
- 1.5.2 Each law firm will be submitting a completed Excel Workbook for Section II through the JFSC Portal, and each law firm has a designated individual who is the JFSC Portal contact, which, in the vast majority of cases, is the money laundering compliance officer.
- 1.5.3 Notwithstanding that the JFSC Portal contact has responsibility for submitting the data, the board, or equivalent, of the law firm should have oversight of the content of the submission made on their behalf.
- 1.5.4 Having completed the data return twice the JFSC expects law firms to be in a better position to report their 2019 data and that only on an exceptional basis will responses be derived by extrapolation or estimates supported by specific criteria
- 1.5.5 The JFSC continues to acknowledge that system changes take time to implement. Where a law firm needs to extrapolate or estimate its data as system changes are still being implemented, the comments section at the bottom of the relevant spreadsheet should highlight which data elements have been extrapolated/estimated and when the relevant system changes will take effect.
- 1.5.6 Where the law firm feels it necessary to provide additional data to enable the JFSC to understand the response, this information should also be included in the comments section at the bottom of each relevant spreadsheet.
- 1.5.7 With the exception of spreadsheet *AE-Lawyers-Country list*, all parts of each question should be answered. Consequently, please insert a “0” where relevant.

1.6 Integrity checking your submission

- 1.6.1 Before submitting your data the JFSC suggests that the integrity checks highlighted in paragraphs 1.6.2 to 1.6.8 should be completed.
- 1.6.2 Sum of AA1(a) to (c) needs to agree to the sum of AB1(i) to (viii).
- 1.6.3 AA1(a) should equal sum of AB3(i) to (viii).
- 1.6.4 No response in AB2 should exceed AB1, in any given column.
- 1.6.5 AB3 to AB11 cannot be individually greater than AB2, in any column.
- 1.6.6 AB11 should not exceed AB9 or AB10 in any given column.
- 1.6.7 AB11 should not exceed AB4.
- 1.6.8 AD10(a) should equal the sum of AD10(b) to (g).

2 Section AA – Lawyers compliance data

2.1 Overview

2.1.1 This section collects data on:

- (a) client risk ratings;
- (b) business which has been declined, terminated or withdrawn due to customer due diligence or other financial crime concerns;
- (c) referred business (the extent to which clients are obtained on the basis of referrals from other businesses) and
- (d) cash transactions (the extent to which cash is used).

2.2 Risk Rating

AA1 Number of clients in each category of risk (as defined by the law firm) during the data reporting period

AA2 Do the law firm's risk ratings include factors other than money laundering and the financing of terrorism? IF Yes, please provide details at AA15(a)

2.2.1 Question **AA1** requests data about the number of clients that have been assessed as presenting (a) higher, (b) standard or (c) lower ML/TF risk (on the basis of factors set out in section 3.3.4 of the Legal Sector AML/CFT Handbook).

2.2.2 Where use is made of a more precise risk scoring scale, it will be necessary to determine which categories in that scale approximate to higherⁱⁱⁱ, standard or lower risk. For example, if a law firm measures risk on a score of 1 to 10, it may consider anything between 1 and 3 to present a lower risk, 4 to 7 to present a standard risk, and 8 to 10 to present a higher risk.

2.2.3 If a law firm includes other factors e.g. commercial risk, in its risk rating of clients and the ML/TF risk element cannot be reported separately, please report the combined risk rating.

2.2.4 If a combined rating is reported please select "yes" when responding to **AA2**.

2.2.5 Please provide an answer for every element of AA1.
For example a law firm with zero higher risk, 4 medium risk and 6 lower risk clients and who only considers money laundering and terrorist financing when risk rating a client, should complete the fields as follows:

AA1(a) - Higher	0
AA1(b) - Medium	4
AA1(c) - Lower	6
AA2	Choose "No" from the dropdown

2.2.6 Please note the sum of AA1(a) to (c) should equal the sum of AB1(i) to (viii).

AA3 If the law firm risk rates the beneficial owners/controllers of clients or other persons, who must be identified under Article 3 of the MLO, the number in each category of risk (as defined by the law firm) during the data reporting period

AA4 Do the law firm's risk ratings as specified above include factors other than money laundering and the financing of terrorism? If Yes, please provide details at AA15(b)

- 2.2.7 It is not a requirement of the MLO or Legal Sector AML/CFT Handbook for a law firm to risk rate the beneficial owners and controllers of their clients. However, the JFSC would like to understand the extent to which this happens in practice.
- 2.2.8 If a law firm does risk rate the beneficial owners and controllers of their clients, question **AA3** should be answered. The guidance in 2.2.2 above should be followed where appropriate.
- 2.2.9 If a law firm does not risk rate the beneficial owners and controllers of their clients, please insert a "0" in cells **AA3(a)-(c)** and select "N/A" from the drop down menu at **AA4**.

2.3 Declined, terminated and withdrawn business

AA5 Number of applications from prospective clients to either (i) establish a client relationship, or (ii) carry out a one-off transaction, declined due to CDD issues or other financial crime concerns, during the data reporting period

AA6 Number of client relationships terminated, due to CDD issues or other financial crime concerns, during the data reporting period

- 2.3.1 In line with Section 2.4.1 of the Legal Sector AML/CFT Handbook (paragraph 97), questions AA5 and AA6 request data about:
- (a) the number of prospective client relationships or one-off transactions that have been declined (AA5); and
 - (b) client relationships that have been terminated due to CDD issues or other financial crime concerns (**AA6**).
This will include cases where:
 - › it has not been possible to complete identification measures (before or during a client relationship) under the Money Laundering Order, including establishing the source of funds;
 - › the ML/TF risk has been assessed as being too high (and so outside the law firm's risk appetite); and
 - › there is suspicion of ML/TF.
- 2.3.2 This question applies also to cases where:
- (a) an application to form a client relationship or carry out a one-off transaction is handled by a third party, e.g. another law firm, and where there is no direct contact with the prospective client; and
 - (b) an application to form a client relationship or carry out a one-off transaction has not yet been formally submitted, e.g. where CDD is applied at the time that business is being solicited (where this data is recorded).
- 2.3.3 Please do not leave fields blank, insert a "0" in AA5 and AA6 if no prospective clients have been declined or clients terminated.
- AA7** Number of applications from prospective clients who have withdrawn due to CDD issues, during the data reporting period (where this data is collected)
- 2.3.4 Question **AA7** collects data on client applications withdrawn solely or partly on the basis of CDD requested.
- 2.3.5 It is recognised that this data may not be recorded by a law firm. If this is the case please respond with "0". Do not leave the field blank.

- 2.3.6 This question also applies to cases where an application to form a business relationship or carry out a one-off transaction is handled by a third party, e.g. another law firm, and where there is no direct contact with the prospective client.

2.4 Referred business

- 2.4.1 Questions AA8, AA9 and AA10 request data about those persons who referred clients to a law firm on a regular basis during the data reporting period.
- 2.4.2 Where business is referred to a law firm but neither a one-off transaction nor client relationship result this is not considered referred business for the purpose of responding to AA8, AA9 and AA10.
- 2.4.3 Persons who refer clients to a law firm may be third parties such as other lawyers, accountants and trust company businesses.
- 2.4.4 Additionally, if a law firm is part of a group, any referrals from group companies or other branches of the same company should be included here.
For example, if a Jersey law firm is part of a group/company that has a Guernsey company/branch then referrals from the Guernsey operation should be reported.
- 2.4.5 The following should not be reported as persons who refer clients:
- (a) a third party or group entity that acts as an obliged person under Articles 16 or 16A of the Money Laundering Order (data on these persons is collected through spreadsheet AD (Use of MLO concessions)); or
 - (b) a client acting on behalf of one or more third parties (data on these persons is collected through spreadsheet AC (3rd party and beneficial ownership)); or
 - (c) a person who refers clients on a basis that cannot be considered regular. The meaning of regular will vary by law firm and will depend on a number of factors such as the size of their current client base and the amount of referred business.
- 2.4.6 Note: A person may be classified as having referred business even if a law firm does not pay that person a fee for the referrals.

AA8 Number of persons who referred clients to the law firm during the data reporting period, analysed by country

- 2.4.7 Question **AA8** requires the number of persons who referred clients to be analysed by country, using spreadsheet AE.
- 2.4.8 Please note:
- (a) the countries are listed on spreadsheet AE alphabetically; and
 - (b) only positive responses are required i.e. there is no need to insert "0" against every country.

AA9 Number of persons who referred clients to the law firm during the data reporting period, which carry on the following activities

- 2.4.9 Question **AA9** requires analysis of the number recorded at AA8 between those that are:
- (a) Lawyers;
 - (b) Accountants; and
 - (c) Other, which includes any referrals from another group company or a trust company business.

- 2.4.10 Where a law firm responds that the majority of the persons that are referring clients fall in "Other" (AA9(c)) please provide further details at AA15 (General comments on section AA). This may include referrals from existing clients.
- 2.4.11 If a law firm considers that it does not have any persons that refer business then please insert "0" into each of AA9(a), AA9(b) and AA9(c).

AA10 Number of relationships with persons who referred clients to the law firm during the data reporting period that were terminated due to CDD issues, or other financial crime concerns

- 2.4.12 Question **AA10** requires a law firm to record the number of times, during the data reporting period, that a relationship between them and a person who referred clients has been terminated, by either party, because of a CDD issue or other financial crime concern.
For example, in a case where the person referring clients considers that CDD measures applied by the law firm are impractical or excessive.
- 2.4.13 If no terminations have occurred, please insert a "0" in response to AA10.

2.5 Cash transactions

AA11 Number and value of cash transactions (i.e. notes and coins) for clients during the data reporting period (receipt or payment) in any jurisdiction

- 2.5.1 Question **AA11** requests data about the number (AA11(a)) and value (AA11(b)) of cash transactions (using **notes and coins**) conducted for clients.
- 2.5.2 This question is intended to determine the extent to which physical cash is still used in the legal sector. **For the avoidance of doubt, this does not include bank transfers, cheques or any form of virtual currency transactions.**
- 2.5.3 Whilst we recognise that the use of cash is minimal in the Jersey-based legal sector, it is important that this assumption is validated as cash transactions are a key risk indicator for money laundering and the financing of terrorism.
- 2.5.4 If no cash transactions occurred during the data reporting period, please insert "0" at both AA11(a) and AA11(b).

2.6 Transaction monitoring

- 2.6.1 Whilst it is understood that many transactions with a law firm will be "one-off" it is also understood that some clients may have an ongoing relationship with a law firm.
- 2.6.2 Where an ongoing relationship is established transaction monitoring must be undertaken (Article 13 of the MLO).

AA12 What is the timing of the ongoing monitoring of transactions during a client relationship? (Real-time ; Post-event ; Both ; N/A)

AA13 Are monitoring procedures automatic or manual? (Automated ; Manual ; Both ; N/A)

AA14 What rules are applied to the transaction monitoring procedures? (Generic ; Tailored ; Both ; N/A)

- 2.6.3 Questions **AA12**, **AA13** and **AA14** need only be answered in respect of clients with an ongoing relationship.
- 2.6.4 Where a law firm has no ongoing client relationships please respond to each of AA12, AA13 and AA14 with "N/A".

2.7 General Comments

AA15 Please provide any explanations or context comments below

- 2.7.1 A freetext box is provided at **AA15(c)** to provide general comments, explanations or context comments in relation to the other responses in section AA-Lawyers compliance data.
- 2.7.2 Where a law firm responds that the majority of the persons that are referring clients fall in "Other" (AA9(c)) please provide here further details in respect of those persons reported as "Other". This may include referrals from existing clients.

3 Section AB – Law firm’s client data

3.1 Client data overview

- 3.1.1 This section collects data about:
- (a) a law firm’s clients which exhibit higher ML/TF risk characteristics; and
 - (b) the law firm’s activities.
- 3.1.2 Section AB collects data by type of client in order to establish whether any particular client type exhibits higher risk factors than others. Responses need to be provided in the following client types:
- (a) Individuals that are Jersey resident;
 - (b) Individuals that are not Jersey residents;
 - (c) Trusts with a Jersey trustee;
 - (d) Trusts with a non-Jersey trustee;
 - (e) Jersey companies;
 - (f) Non-Jersey companies;
 - (g) Other – Jersey; and
 - (h) Other – non-Jersey.
- 3.1.3 “Other” includes a client that is any of the following:
- (a) Foundations
 - (b) Limited Partnerships
 - (c) Limited Liability Partnerships
 - (d) Separate Limited Partnerships
 - (e) Incorporated Limited Partnerships

3.2 Client analysis

AB1 Number of clients that are:

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Trusts with Jersey trustee; (iv) Trusts with non-Jersey trustee; (v) Jersey companies; (vi) Non-Jersey companies; (vii) Other – Jersey; and (viii) Other – non-Jersey

- 3.2.1 Question **AB1** requests the total number of clients for 2019 analysed by client type as listed in 3.1.2 and further explained in 3.1.3.
- 3.2.2 Please note that the response provided to question AB1 provides the base for responding to all other Section AB questions.
- 3.2.3 For example, given a response to question AB1 as set out in the table below then the number of clients is the maximum number that can appear in the relevant column for all other Section AB questions:

Client type	Number of clients
Individuals – Jersey resident	10
Individuals - non-Jersey resident	2

Client type	Number of clients
Trusts with Jersey trustee	1
Trusts with non-Jersey trustee	0
Jersey Companies	1
Non-Jersey Companies	0
Other – Jersey	0
Other – non-Jersey	1

3.2.4 Where a law firm has no clients of a particular type please insert “0”.

3.2.5 Please note the sum of AB1(i) to (viii) should equal the sum of AA1(a) to (c).

3.3 Enhanced CDD measures

3.3.1 Information regarding enhanced CDD measures can be found in Section 7 of the Legal Sector AML/CFT Handbook.

3.3.2 In addition to a law firm deciding that a client presents a higher risk of money laundering or financing terrorism, there are some circumstances where enhanced CDD measures are required by Articles 15,15A and 15B of the Money Laundering Order:

- (a) the client, or some other prescribed person, is a politically exposed person (PEP) (section 7.6)
- (b) the client has a “relevant connection” to an “enhanced risk state” (section 7.5)
- (c) the client is a company with nominee shareholders or issues bearer shares (section 7.10)
- (d) the client is a personal asset holding vehicle (section 7.9)
- (e) the client, or some other person, is not physically present for identification purpose (section 7.4)
- (f) the client is non-resident (not a Jersey resident) (section 7.7)

AB2 Number where enhanced CDD measures have been applied:

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Trusts with Jersey trustee; (iv) Trusts with non-Jersey trustee; (v) Jersey companies; (vi) Non-Jersey companies; (vii) Other – Jersey; and (viii) Other – non-Jersey

3.3.3 Using the response to question AB1 as the base for responding, question **AB2** requires data about the number of clients to which enhanced customer due diligence (CDD) measures have been applied.

3.3.4 For example, using the example laid out in 3.2.3, if 3 of the 10 clients that are reported as “individuals – Jersey” have been subject to enhanced CDD measures then respond “3”.

3.3.5 If a law firm has no clients which have been subject to enhanced CDD measures then insert “0” in each orange box.

AB3 Number that present higher risk of ML/TF:

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Trusts with Jersey trustee; (iv) Trusts with non-Jersey trustee; (v) Jersey companies; (vi) Non-Jersey companies; (vii) Other – Jersey; and (viii) Other – non-Jersey

3.3.6 Where a law firm has determined that a client presents a higher risk of money laundering or financing terrorism, enhanced CDD measures must be applied, therefore the response to question AB3 cannot be greater than the response to question AB2.

3.3.7 There are circumstances where enhanced CDD measures must be applied but the law firm may not consider the client presents a higher risk, therefore the response to AB3 may be lower than the response to AB2. For example, a Jersey resident purchasing a property through an asset holding vehicle.

3.3.8 If a law firm has no clients which present a higher risk please do not leave a cell blank, please insert "0" in each orange box.

3.3.9 The total of this row should be the same as the answer to question AA1(a).

AB4 Number that are, or who are connected with, a PEP:

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Trusts with Jersey trustee; (iv) Trusts with non-Jersey trustee; (v) Jersey companies; (vi) Non-Jersey companies; (vii) Other – Jersey; and (viii) Other – non-Jersey

3.3.10 Using the response to question AB2 as the base for responding, question **AB4** requires the number of clients to which enhanced CDD measures have been applied due to a PEP connection.

3.3.11 On 12 June 2019 the definition of Money Laundering Order was amended (see Article 15A(3) of the Money Laundering Order and Section 7.6.1 of the AML/CFT Handbook). From this date enhanced CDD measures became mandatory for the following:

- (a) a domestic politically exposed person only where a high-risk business relationships or high-risk one-off transactions is involved (**domestic PEP**);
- (b) a foreign politically exposed person (**foreign PEP**);
- (c) a prominent person;
- (d) individuals falling within (a), (b) or (c) that are:
 - › beneficial owners or controllers of a client;
 - › a third party for whom the client acts AND the third parties beneficial owners or controllers ;
 - › purporting to act on behalf of the client.

3.3.12 When considering whether a client is connected with a domestic PEP or foreign PEP it must be remembered that the definition of a PEP includes close associates and immediate family members of any individual who is, or has been, entrusted with a prominent public function. Close associate and immediate family member are both defined Article 15A(3) of the Money Laundering Order.

3.3.13 The information to be considered when deciding if a person is a close associate of a domestic PEP or foreign PEP is limited to information in the possession of the law firm or information that is publicly known (Article 15A(4) of the Money Laundering Order).

- 3.3.14 If a law firm has no clients who are a PEP, or who are connected with a PEP, please do not leave a cell blank, please insert "0" in each orange box.

AB5 Number that have a relevant connection to an enhanced risk state:

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Trusts with Jersey trustee; (iv) Trusts with non-Jersey trustee; (v) Jersey companies; (vi) Non-Jersey companies; (vii) Other – Jersey; and (viii) Other – non-Jersey

- 3.3.15 Using the response to question AB2 as the base for responding, question **AB5** requires the number of clients to which enhanced CDD measures have been applied because the client has a connection to an enhanced risk state.

- 3.3.16 Appendix D1 of the Legal Sector AML/CFT Handbook provides a list of the countries and territories that are considered an enhanced risk state. As at 20 December 2019 the following were listed:

- (a) Iran and
- (b) The Democratic People's Republic of Korea (North Korea)

- 3.3.17 Section 7.5 of the Legal Sector AML/CFT Handbook provides further guidance, including an example of what may constitute a relevant connection.

- 3.3.18 For example: a client's source of funds is, or derives from:

- (a) assets held in either Iran or North Korea by the client or any person on behalf of a client; or
- (b) income arising in Iran or North Korea.

In either scenario the law firm should take reasonable measures to find out the source of wealth of the client.

- 3.3.19 If a law firm has no clients with a relevant connection to an enhanced risk state, please do not leave a cell blank, please insert "0" in each orange box.

AB6 Number that have one or more nominee shareholders:

(v) Jersey Companies; and (vi) Non-Jersey Companies

AB7 Number of non-Jersey companies that have issued bearer shares or warrants:

(vi) Non-Jersey Companies

- 3.3.20 Using the response to question AB2 as the base for responding, questions AB6 and AB7 require information on:

- (a) the number of clients which are companies (Jersey or non-Jersey) which have one or more nominee shareholders (**AB6**); and
- (b) the number of clients which are non-Jersey companies that have issued bearer shares or warrants (**AB7**).

- 3.3.21 Section 7.10 of the Legal Sector AML/CFT Handbook explains that, where one or more of the following circumstances apply, the company should not be considered to have issued bearer shares:

- (a) the bearer shares are issued by a company in a country or territory that has fully enacted appropriate legislation to require bearer shares to be registered in a public registry and the bearer shares are so registered; or
- (b) the bearer shares are traded on an approved stock exchange; or
- (c) all issued bearer shares are held in the custody of the client or trusted external party along with an undertaking from that trusted external party or client to inform the law firm of any transfer or change in ownership.

- 3.3.22 If a law firm has no clients which are companies (Jersey or non-Jersey) that have one or more nominee shareholders, please do not leave either cell blank, please insert "0" in each orange box.
- 3.3.23 If a law firm has no clients which are non-Jersey companies that have issued bearer shares or warrants, please do not leave the cell blank, please insert "0" in the orange box.

AB8 Number that are personal asset holding vehicles:

(iii) Trusts with Jersey trustee; (iv) trusts with non-Jersey trustee; (v) Jersey Companies; (vi) Non-Jersey Companies; (vii) Other – Jersey; and (viii) Other – non-Jersey

- 3.3.24 Using the response to question AB2 as the base for responding, question **AB8** requests data regarding personal asset holding vehicles which are described at paragraph 64 of section 7.9 of the Legal Sector AML/CFT Handbook as being a legal person or legal arrangement established by individuals for the specific purpose of holding assets for investment.
- 3.3.25 The personal asset holding vehicle:
- (a) may be the client of the law firm (for example a company which holds property as an investment) OR
 - (b) may be the third party for whom a client is acting. For example, the client may be a trustee acting for a trust which is a personal asset holding vehicle.
- 3.3.26 If a law firm has no clients which are either personal asset holding vehicles or who act on behalf of a personal asset holding vehicle, please do not leave the cells blank, please insert "0" in the orange boxes.

AB9 Number of individuals who have not been met:

(i) Individuals – Jersey resident; and (ii) Individuals - non-Jersey resident

AB10 Number where one or more beneficial owners/controllers of clients, or other persons who must be identified under Article 3 of the Money Laundering Order, were not physically present for identification purposes

AB11 In relation to AB9 and AB10, number of clients who are, or who are connected to, a PEP

- 3.3.27 Using the response to question AB2 as the base for responding, questions **AB9** to **AB11** request data about whether a client, and the beneficial owners and controllers of clients, have been physically present for identification purposes.
- 3.3.28 An individual may be considered to have been physically present for the purpose of questions AB9 and AB10 where they have been met and seen:
- (a) by the law firm (physically or through video conferencing facilities);
 - (b) by a suitable certifier in line with section 4.3.3 of the Legal Sector AML/CFT Handbook; or
 - (c) by a company in the same group as the law firm where that company is regulated and supervised for AML/CFT purposes (the meeting can be physical or through video conferencing facilities).
- 3.3.29 Where either the client or the beneficial owner/controller of the client has not been physically present **and** they are a PEP then question **AB11** needs to record the number of such persons.
- 3.3.30 If, having taken account of paragraph 3.3.2, a law firm considers that all clients and beneficial owners/controllers were physically present for identification purposes please do not leave the cells blank, please insert "0" in each orange box.

3.4 Other client characteristics

AB12 Number that are regulated/supervised for AML/CFT purposes

(i) Individuals – Jersey resident; (ii) Individuals - non-Jersey resident; (iii) Trusts with Jersey trustee; (iv) Trusts with non-Jersey trustee; (v) Jersey companies; (vi) Non-Jersey companies; (vii) Other – Jersey; and (v) Other – non-Jersey

- 3.4.1 Using the response to question AB1 as the base for responding, question **AB12** collects data on clients that are Regulated and Supervised for AML/CFT purposes.
- 3.4.2 “Regulated and Supervised for AML/CFT purposes” specifically means:
- (a) subject to AML/CFT requirements; **and**
 - (b) supervised for compliance with those requirements by the JFSC or an overseas regulatory authority discharging a similar function in respect of AML/CFT.
- 3.4.3 For example:
- (a) If the client of a law firm is a bank then they should be reported here. However, if the client is a subsidiary company of the bank which is not conducting a regulated and supervised activity, this should not be reported.
 - (b) If the client of a law firm is a sole trader, who is Regulated and Supervised for AML/CFT purposes by the JFSC, then they should be reported here.
 - (c) If the client of a law firm is a company acting as a trustee and is Regulated and Supervised for AML/CFT purposes, then they should be reported here.
- 3.4.4 If a law firm does not have any clients which are Regulated and Supervised for AML/CFT purposes please do not leave the cells blank, please insert “0” in each orange box.

AB13 Number that are non-profit organizations

(iii) Trusts with Jersey trustee; (iv) Trusts with non-Jersey trustee; (v) Jersey companies; (vi) Non-Jersey companies; (vii) Other – Jersey; and (viii) Other – non-Jersey

- 3.4.5 Using the response to question AB1 as the base for responding, question **AB13** requests data about clients of a law firm that are a non-profit organization (**NPO**). In Jersey an NPO is defined in Article 1 of the Non-Profit Organizations (Jersey) Law 2008 as being an organisation that:
- (a) Is established solely or primarily for charitable, religious, cultural, educational, social, or fraternal purposes with the intention of benefiting the public or a section of the public; **and**
 - (b) raises or disburses funds in pursuance of those purposes.
- 3.4.6 Please note: in Jersey an NPO and a charity are not the same. The definition of a charity is set out in the Charities (Jersey) Law 2014 and not all NPOs are charities.
- 3.4.7 If a law firm does not have any clients that are an NPO please do not leave the cells blank, please insert a “0” in the orange boxes.

3.5 Legal services

AB14 Number of matters opened in the data reporting period

Number of matters that relate to providing legal or notarial services to third parties when participating in financial, or immovable property, transactions

- 3.5.1 Question **AB14** requests data about the services provided by a law firm to its clients.

- 3.5.2 Please note that this question requests the number of matters opened during the data reporting period and not the number of clients. However an analysis of matters by client type is required.
- 3.5.3 The objective is to analyse the response provided at AB14 into the number of matters relating to each of the following services:
- (a) the buying and selling of immovable property or business entities (question **AB14(a)**);
 - (b) the buying and selling of shares the ownership of which entitles the owner to occupy immovable property (question **AB14(b)**);
 - (c) the managing of client money, securities or other assets (question **AB14(c)**);
 - (d) the opening or management of bank, savings or securities accounts (question **AB14(d)**);
 - (e) the organization of contributions necessary for the creation, operation or management of companies (question **AB14(e)**); and
 - (f) the creation, operation or management of trusts, companies or similar structures (question **AB14(f)**).
- 3.5.4 It is recognised that different risks are associated with different services and different clients therefore this section gathers data to enable the JFSC gain a better understanding of a law firm's risk profile.
- 3.5.5 Further information regarding activities covered by the Money Laundering Order can be found at paragraph 56 of section 1.5.1 of the AML/CFT Handbook for the Legal Sector.
- 3.5.6 Please do not leave a cell blank, please insert a "0" into all relevant orange boxes.

3.6 Client account

AB15 Total value of transactions through client account during the data reporting period Value of transactions that relate to providing legal or notarial services to third parties

- 3.6.1 This question is intended to determine the extent to which client accounts are used in the legal sector.
- 3.6.2 It is important that the JFSC collects information on the value and type of transactions passing through client accounts, given that client accounts can be vulnerable to use by criminals. The JFSC understands that the use of law firms' client accounts is most likely to relate to property transactions.
- 3.6.3 Where a transaction took place in a currency other than GBP (e.g. Euros) please convert the transaction value to GBP using the most appropriate exchange rate.
- 3.6.4 If no transactions passed through a client account during the data reporting period, please insert "0" at AB15 through to AB15(c).

4 Section AC – Beneficial ownership

4.1 General

- 4.1.1 Where CDD exemptions from applying identification measures under Article 18 of the Money Laundering Order has been utilised and no data is held, a law firm is not expected to gather information for the purpose of completing questions AC1 and AC2.
- 4.1.2 Data in respect of using Article 18 is to be reported in response to question AD10 (Further exemptions from applying identification requirements (Article 18 of the MLO)).

4.2 Clients who are individuals and beneficial owners or controllers of clients that are not individuals

AC1 Number and principal country of residence of: (i) individuals who are clients; and (ii) individuals who are the beneficial owner or controller of a client that is not an individual

- 4.2.1 The principal country of residence of an individual who is a client, or the beneficial owners and controllers of clients who are not individuals, is recognised as a key factor in determining the riskiness of a client – section 3 of the Legal Sector AML/CFT Handbook provides further guidance.
- 4.2.2 The term “beneficial ownership and control” is defined in Article 2 of the Money Laundering Order. It refers to the individuals who ultimately own or control a client that is a legal person^{iv}. In line with guidance provided in the Legal Sector AML/CFT Handbook, the following will be considered to be the beneficial owner or controller of a company.
 - (a) Each individual with a material controlling ownership interest in the capital of the company (through direct or indirect holdings of interests (shares) or voting rights) or who exerts control through other ownership means.
 - (b) To the extent that there is doubt as to whether the individuals exercising control through ownership are beneficial owners, or where no individual exerts control through ownership, any other individual exercising control of the company through other means.
 - (c) Where no individual is otherwise identified, individuals who exercise control of the company through positions held (who have and exercise strategic decision-taking powers or have and exercise executive control through senior management positions - directors).
- 4.2.3 Question **AC1** requests a law firm provide by country (using spreadsheet *AE-Lawyers-Country list*) the total number of clients who are individuals and beneficial owners or controllers of clients that are not individuals.
- 4.2.4 Unlike other questions, there is no need to insert a response in each cell of spreadsheet *AE-Lawyers-Country list*.
- 4.2.5 For example, using the data at 3.2.3, a law firm may look as follows:

Client type	Number of clients	Principal country of residence

Client type	Number of clients	Principal country of residence
Individuals – Jersey resident	10	Jersey
Individuals - non-Jersey resident	2	UK Guernsey
Trusts with Jersey trustee	1	UK
Trusts with non-Jersey trustee	0	
Jersey Companies (4 shareholders each with 25% share capital)	1	Jersey (2) UK Germany
Non-Jersey Companies	0	
Other - Jersey	0	
Other – non-Jersey	1	Switzerland

Spreadsheet *AE-Lawyers-Country list* would therefore have the following entries in the column for question AC1:

ISO Code	Country	Number and principal country of residence of: (i) individuals who are clients; and (ii) individuals who are the beneficial owners or controllers of a client that is not an individual
		AC1
276	Germany	1
831	Guernsey	1
832	Jersey	12
756	Switzerland	1
826	UK	3

4.2.6

Please Note:

Each individual should only be reported once.

The following are examples where an individual may have more than one relationship with a law firm but should only be reported once:

- (a) they are the beneficial owner or controller of more than one company; or
- (b) they are the beneficial owner or controller of a company and are also a client in their own right

4.3 Client acting on behalf of a third party

AC2 Number and principal country of residence of third parties on whose behalf a client is acting

- 4.3.1 Question **AC2** collects data on the principal country of residence of third parties on whose behalf a client acts.
- 4.3.2 For example, a legal arrangement cannot form a business relationship or carry out a one-off transaction itself. It is the trustee(s) of the trust or general partner(s) of the limited partnership who will enter into a business relationship or carry out the one-off transaction with a law firm on behalf of the legal arrangement and who will be considered to be the client(s). In line with Article 3 of the Money Laundering Order, the trust or limited partnership will be considered to be the third party on whose behalf the trustee(s) or general partner(s) act(s).
- 4.3.3 In these cases the law firm should have identified the persons for whom the client is acting in line with Article 3(2) of the Money Laundering Order and the guidance provided in section 4 of the Legal Sector AML/CFT Handbook. For ease guidance has been provided below:
- (a) In a case where the third party is a legal person (e.g. a company), data should be provided on the individuals who are beneficial owner or controller of that legal person (Article 3(2)(b)(ii) of the Money Laundering Order).
 - (b) In a case where a third party is a trust (other than a collective investment fund), data should be provided on:
 - › the settlor^v;
 - › the protector;
 - › beneficiaries with a vested right;
 - › other beneficiaries and persons who are the object of a power that have been identified as presenting a higher risk; and
 - › any other person who exercises ultimate effective control over the trust (Article 3(7) of the Money Laundering Order).
 - (c) In a case where a third party is a limited partnership (other than a collective investment fund), data should be provided on the limited partners (Article 3(7) of the Money Laundering Order).
 - (d) In a case where a third party is a collective investment fund, data should be provided on any beneficial owners and controllers, i.e. individuals exercising control of the collective investment fund through ownership means, other means or through the position that they hold (see section 14.3.2 of the Regulated Financial Services Business AML/CFT Handbook (Funds and Fund Services Business)).

5 Section AD – Use and application of concessions granted by the Money Laundering Order

5.1 General

- 5.1.1 This section collects data about the application of concessions set out in the Money Laundering Order that can be used in the circumstances prescribed in **Articles 13** (client identification and verification), **16** (reliance on obliged persons) and **Part 3A** (CDD exemptions).
- 5.1.2 On 12 June 2019, Articles 17 and 18 of the Money Laundering Order were replaced however, the policy behind the Articles was substantially unchanged. Therefore, whilst the text in this guidance document reflects Articles 17, 17B, 17C, 17D and 18 as at 20 December 2019, questions should be answered for the whole of 2019.
- 5.1.3 The following table provides guidance on the period to be covered by each question:

Question	Data period	Date(s)
Client identification and verification		
AD1	At end of reporting period	31/12/2019 or closest business day
AD2	During the reporting period	1/1/2019 – 31/12/2019
Reliance on obliged persons (Article 16 of the MLO)		
AD3	During the reporting period	1/1/2019 – 31/12/2019
AD4	At end of reporting period	31/12/2019 or closest business day
AD5	At end of reporting period	31/12/2019 or closest business day
AD6	During the reporting period	1/1/2019 – 31/12/2019
Exemptions from applying third party identification requirements (Articles 17B-D of the MLO)		
AD7	At end of reporting period	31/12/2019 or closest business day
AD8	During the reporting period	1/1/2019 – 31/12/2019
AD9	At end of reporting period	31/12/2019 or closest business day
Further exemptions from applying identification requirements (Article 18 of the MLO)		
AD10	During the reporting period	1/1/2019 – 31/12/2019

5.2 Client identification and verification

AD1 Number of clients, as at the end of the data reporting period, where identity has not yet been verified as the relationship started before February 2008 and Article 13(2) of the MLO is being relied upon

- 5.2.1 Article 13(2) of the Money Laundering Order provides for the timing of identification measures for the existing clients of a law firm at the time the Money Laundering Order came into force – 4 February 2008.
- 5.2.2 Article 13(2) sets out very particular circumstances which enabled a law firm to delay verification of a client's identity – section 4.7 of the Legal Sector AML/CFT Handbook provides further guidance.
- 5.2.3 A law firm should have finalised the position of its existing clients by 31 December 2014, unless a later date has been agreed by the JFSC (paragraphs 208 and 209 of section 4.7.2 of the Legal Sector AML/CFT Handbook). Consequently, it is expected that most law firms will report "0" in respect of **AD1**.

AD2 Number of clients where delayed verification in line with Article 13(4) of the MLO was applied during the data reporting period

- 5.2.4 In accordance with Article 13(4) of the Money Laundering Order a law firm is permitted to delay verifying the identity of client where (finding out the identity of the client must not be delayed):
 - (a) it is necessary not to interrupt the normal course of business;
 - (b) there is little risk of money laundering or financing of terrorism occurring as a result of obtaining evidence of identity after establishing the relationship; and
 - (c) evidence of identity is obtained as soon as reasonably practicable.
- 5.2.5 Question **AD2** collects data about the number of clients where delayed verification in line with Article 13(4) of the Money Laundering Order has been applied.
- 5.2.6 If a law firm has not delayed the verification of any clients identity during the data reporting period, please respond with "0".

5.3 Reliance on obliged persons (Article 16 of the MLO)

- 5.3.1 In line with Article 16 of the Money Laundering Order, reliance may be placed on an obliged person only where the six conditions, explained in section 5.1 of the Legal Sector AML/CFT Handbook, are met. In practice, this has the effect of:
 - (a) limiting the number of obliged persons that can be relied upon; and
 - (b) requiring the basis for placing reliance to be recorded in writing.

AD3 Number of clients where reliance has been placed on obliged persons during the data reporting period

AD4 Number of obliged persons on which reliance was placed, by country, as at the end of the data reporting period

AD5 Number of obliged person(s) carrying on financial services business or equivalent business, relied upon as at the end of the data reporting period

- 5.3.2 It is important to understand the extent to which a law firm makes use of these concessions and information regarding the obliged person, consequently:

- (a) Question **AD3** requests the number of clients where reliance has been placed on obliged persons during the data reporting period (please insert “0” if no reliance has been placed);
- (b) Question **AD4** requests the country of the obliged person on whom reliance is being placed (responses should be provided on spreadsheet *AE-Lawyers-Country list*, nil responses are not required); and
- (c) Question **AD5** requests the number of obliged persons split by the type of business that is carried on, at the end of the reporting period (please insert “0” if no obliged persons are used).

AD6 Number of obliged persons relied upon, who failed to provide information and evidence on demand and without delay, during the data reporting period

- 5.3.3 Where a law firm relies on an obliged person, the Money Laundering Order (Article 16(5)) requires that a law firm test, in such manner and at such intervals as they consider appropriate:
 - (a) whether or not the obliged person has appropriate policies and procedures in place to apply the identification measures;
 - (b) keeps the evidence of identity; and
 - (c) will provide that evidence without delay if requested to do so.
- 5.3.4 In light of 5.3.3(c), question **AD6** requires a law firm to report the number of obliged persons that failed to provide information and evidence on demand and without delay.
- 5.3.5 Please do not leave a cell blank, insert “0” if no obliged persons are used or obliged persons did provide information and evidence when requested.

5.4 Exemption from applying third party identification requirements (Articles 17B-D of the MLO)

- 5.4.1 In line with Articles 17B-D of the Money Laundering Order, a law firm may be an exempt from applying identification measures in relation to a third party when its client is:
 - (a) regulated and supervised by the JFSC for AML/CFT purposes;
 - (b) a person who carries on equivalent business (refer to Section 1.7 of the Legal Sector AML/CFT Handbook); or
 - (c) a person who is wholly-owned by a person listed above and meets certain conditions.
- 5.4.2 The application of exemptions from identification measures is also always subject to one or more conditions (depending on the particular case). In practice, these provisions have the effect of:
 - (a) limiting the number of clients to which exemptions from identification measures can be applied; and
 - (b) requiring the basis for applying exemptions from identification measures to be recorded in writing.

AD7 Number of clients, by country, where exemptions from identification measures have been applied to third parties for whom those clients act as at the end of the data reporting period

- 5.4.3 Question **AD7** requests data on the number of clients where exemptions from identification measures have been applied at the end of the reporting period, analysed by the country in which the client is regulated and supervised for AML/CFT purposes. Responses should be provided on spreadsheet *AE-Lawyers-Country list*, nil responses are not required.

AD8 Number of clients who failed to provide information and evidence on demand and without delay during the data reporting period, where exemptions from identification measures have been applied in accordance with Articles 17B-D of the MLO

- 5.4.4 Where a law firm applies exemptions from identification measures, the Money Laundering Order (Article 17D(3)) requires a law firm to establish, as often as it considers appropriate, whether the relevant client -
- (a) has appropriate policies and procedures in place to apply the identification measures;
 - (b) obtains information in relation to the third party;
 - (c) keeps the information or evidence of identity in relation to the third party; and
 - (d) provides that information or evidence without delay if requested to do so.
- 5.4.5 In light of 5.4.4(d), question **AD8** requires a law firm to report the number of clients that failed to provide information and evidence on demand and without delay.
- 5.4.6 Please do not leave the cell blank, insert "0" if no exemptions from identification measures are applied or clients did provide information and evidence when requested.

AD9 Number of clients, where Articles 17B-D have been applied, who are carrying on financial services business, equivalent business or owned by a person carrying on financial services business or equivalent business as at the end of the data reporting period
(a) deposit taker; (b) investment business; (c) fund services business; (d) trust company business; (e) permit or certificate holder under the CIF Law; (f) unregulated fund or non-public fund; (g) permit holder under the Insurance Law

- 5.4.7 Question **AD9** requests data on the type of business that is carried on by clients where exemptions from identification measures have been applied. Please insert "0" in the orange boxes if no exemptions from identification measures are applied.

5.5 Further exemptions from applying identification requirements (Article 18 of the MLO)

- AD10 (a) Number of clients to whom exemptions from CDD measures have been applied during the data reporting period**
Of the above, number of clients to whom the exemptions have been applied:
- (b) Article 18(2) – pension, superannuation, employee benefit, share option or similar scheme**
 - (c) Article 18(1) – insurance policies**
 - (d) Article 18(4) – public authorities, companies listed on an IOSCO-compliant market or regulated market**
 - (e) Article 18(3) – regulated businesses or equivalent**
 - (f) Article 18(5) – employees of regulated businesses or equivalent**
 - (g) Article 18(6) - Control of Housing and Work (Jersey) Law 2012**

- 5.5.1 Article 18 of the Money Laundering Order sets out a number of very specific circumstances where a law firm may be able to apply exemptions from CDD identification measures. See sections 7.12 and 7.15 of the Legal Sector AML/CFT Handbook for further guidance.
- 5.5.2 If a law firm has applied exemptions from CDD identification measures to any clients during the data reporting period the number of clients should be reported in response to **AD10(a)**.
- 5.5.3 If exemptions from CDD identification measures have not been applied please do not leave the cells blank, insert a "0" in response to **AD10 (a)-(g)**.
- 5.5.4 If exemptions from CDD identification measures have been applied, AD10(b) to (g) provide the six circumstances which are relevant for a law firm. The total of AD10(b) to (g) should equal the number in cell AD10(a).
- 5.5.5 Please do not leave any cells blank, insert a "0" where applicable.

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- i Industry update: [2019 and 2020 Supervisory Risk Data Collection Exercise](#)
 - ii The Money Laundering (Jersey) Order 2008 is referred to as both the Money Laundering Order and the MLO in the supervisory risk data collection exercise.
 - iii Section 2.4.1 of the Legal Sector AML/CFT Handbook (paragraph 97) explains that a law firm may demonstrate that it checks that systems and controls are operating effectively where senior management periodically considers the effect of those systems and controls in light of the number and percentage of clients that have been assessed as presenting a higher risk.
 - iv No individual is to be treated as a beneficial owner of a body corporate the securities of which are listed on a regulated market. For the purpose of this section it is assumed that a law firm is most likely to deal with legal persons that are companies therefore the text has been amended accordingly.
 - v Excluding a settlor of a trust who is deceased in line with paragraph 72 of section 4.4 of the Legal Sector AML/CFT Handbook.