

# 1 INTRODUCTION

Please Note:

- › Whilst no regulatory requirements are set within this section, there are references to Jersey legislation which may be accessed through the [JFSC website](#).
- › Where terms appear in the Glossary this is highlighted through the use of italic text. The Glossary is available from the [JFSC website](#).

1. Criminals have responded to the anti-money laundering and countering the *financing of terrorism (AML/CFT)* measures taken by the traditional financial sector over the past decade and have sought other means to convert their proceeds of crime, or to mix them with legitimate income before they enter the banking system, thus making them harder to detect. Professionals such as accountants, lawyers and notaries who interface with the financial sector have frequently been used as a conduit for criminal property to enter the banking and financial systems.
2. In particular, criminals and money launderers will often try to exploit the services offered by accountants, through the business of undertaking financial transactions, setting up corporate and trust structures and when acting as directors or trustees. In addition, client accounts can provide a money launderer with a valuable, anonymous, route into the banking system. The 'tax management' excuse is often used by money launderers as a smokescreen to explain away unusual circumstances and transactions that would appear to be suspicious.
3. The inter-governmental agencies and international standard-setting bodies have recognised the access that professionals provide for their clients to financial services and products, and have extended the scope of the international standards and recommendations to cover lawyers and accountants - often referred to as 'gatekeepers'. As a well-regulated jurisdiction operating in the international financial arena, Jersey must adopt the international standards to guard against *money laundering* and the *financing of terrorism* and integrate the requirements into the legal and regulatory system.
4. Accountants, *auditors*, tax advisers and insolvency practitioners are key professionals in the business and financial world, facilitating vital transactions and activity that underpin Jersey's economy. As such, they have a significant role to play in ensuring that their services are not used to further a criminal purpose. As professionals, accountants must act with integrity and uphold the law, and they must not engage in criminal activity.
5. The continuing ability of Jersey's finance industry to attract legitimate clients with funds and assets that are clean and untainted by criminality depends, in large part, upon the Island's reputation as a sound, well-regulated jurisdiction. Any accountant in Jersey that assists in laundering the proceeds of crime, or *financing of terrorism*, whether:
  - › with knowledge or suspicion of the connection to crime; or
  - › acting without regard to what it may be facilitating through the provision of its serviceswill face the loss of its reputation, and risk regulatory sanctions, damage the integrity of Jersey's professional and finance industry as a whole, and may risk prosecution for criminal offences.
6. Jersey's defences against the laundering of criminal funds and terrorist financing rely heavily on the vigilance and co-operation of the finance sector. Specific financial sector legislation (the Money Laundering (Jersey) Order 2008 (the **Money Laundering Order**)) is therefore also in place covering a person carrying on a *financial services business* in or from within Jersey, and a

Jersey body corporate or other legal person registered in Jersey carrying on a *financial services business* anywhere in the world (a **relevant person**).

7. The primary legislation on *money laundering* and the *financing of terrorism* (the **money laundering legislation**) is:
  - › The Proceeds of Crime (Jersey) Law 1999 (as amended) (the **Proceeds of Crime Law**)
  - › The Terrorism (Jersey) Law 2002 (the **Terrorism Law**)
  - › The Money Laundering and Weapons Development (Directions) (Jersey) Law 2012 (the **Directions Law**)
  - › [The Sanctions and Asset-Freezing \(Jersey\) Law 2019](#)
  - › [Any Regulations or Orders made under the enactment falling within any of the above laws](#)
  - › [The EU Legislation \(Information Accompanying Transfers of Funds\) \(Jersey\) Regulation 2017.](#)
  - › ~~The Sanctions and Asset-Freezing (Jersey) Law 2019, the Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002, EU Legislation (Sanctions – Afghanistan) (Jersey) Order 2014 and EU Legislation (Sanctions – Al Qaida) (Jersey) Order 2014 (**Terrorist Sanctions Measures**).~~
8. A *relevant person* carrying on a business described in paragraph 2 of Part B of Schedule 2 to the *Proceeds of Crime Law* must put in place *systems and controls* to guard against *money laundering* and the *financing of terrorism* in accordance with Jersey requirements and international standards. All '*relevant persons*'<sup>1</sup> fall within the scope of the *Money Laundering Order*.
9. The international standards require that all *relevant persons* must be supervised by an appropriate anti-money laundering supervisory body. Within Jersey, the Jersey Financial Services Commission (the **Commission**) has been designated as the relevant supervisory body under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the **Supervisory Bodies Law**) for all regulated and *specified Schedule 2 businesses* (including *relevant persons* carrying on a business described in paragraph 2 of Part B of Schedule 2 to the *Proceeds of Crime Law*).
10. Every firm offering external accountancy or related services in Jersey must recognise the role that it is required to play in protecting itself, and its employees, from involvement in *money laundering* and the *financing of terrorism*, and also in protecting the Island's reputation of probity. This principle relates not only to business operations within Jersey, but also operations conducted by Jersey businesses outside the Island.
11. For the purpose of this Handbook, within the Overview text, *AML/CFT Codes of Practice* and Guidance Notes (see [Section 1.2](#) of this Handbook) *relevant persons* carrying on Schedule 2 business are referred to as "**accountancy firms**" or "**firms**"<sup>2</sup>. Within the *Money Laundering Order* and references within this Handbook to the Statutory Requirements of the *Money Laundering Order*, all persons and businesses that fall within the scope of the *Money Laundering Order* are referred to as '**relevant persons**'.
12. Throughout this Handbook, references to:

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<sup>1</sup> The term *relevant person* used within this Handbook refers to a person carrying on financial services business as defined in Schedule 2 of the *Proceeds of Crime Law*.

<sup>2</sup> For the avoidance of doubt "*accountancy firms*" or "*firms*" include sole practitioners and sole traders.

- › **Client** (or customer) includes, where appropriate, a prospective client or customer (an applicant for business). A client is a person with whom a business relationship has been formed or one-off transaction conducted.
- › *Financing of terrorism* means:
  - › conduct that is an offence under any provision of Articles 15 (use and possession etc. of property for purposes of terrorism) and 16 (dealing with terrorist property) of the *Terrorism Law*; or
  - › conduct outside Jersey, which, if occurring in Jersey, would be an offence under Articles 15 and 16.
- › *Money laundering* means:
  - › conduct that is an offence under any provision of Articles 30 (dealing with criminal property) and 31 (concealment etc. of criminal property) of the *Proceeds of Crime Law*;
  - › conduct that is an offence under Articles 34A and 34D of the *Proceeds of Crime Law*;
  - › ~~conduct that is an offence under Article 7 (making funds available to a terrorist), Article 8 (failure to freeze terrorist funds) and Article 10 (failing to make a disclosure to the Chief Minister's Department) of the *Al-Qa'ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 (the UN Order)*;~~
  - › conduct that is an offence under Articles 10 to 14 (failing to freeze terrorist funds and making things available to a terrorist) and 16 (licencing offences) of the *Sanctions and Asset-Freezing (Jersey) Law 2019*; or
  - › conduct outside Jersey, which, if occurring in Jersey, would be an offence under any of the above.
- › **Schedule 2 business** means a business described in paragraph 2 of Part B of Schedule 2 to the *Proceeds of Crime Law*.

## 1.1 Objectives of this Handbook

13. The objectives of this Handbook are as follows:
- › to outline the requirements of the *money laundering* legislation;
  - › to outline the requirements of the *Money Laundering Order* that supplements the *money laundering* legislation by placing more detailed requirements on *relevant persons*;
  - › to outline good practice for implementing the legal requirements;
  - › to assist a firm to comply with the requirements of the legislation described above and the *Commission's* requirements, through practical interpretation;
  - › to outline good practice in developing *systems and controls* to prevent the accountancy profession from being used to facilitate *money laundering* and the *financing of terrorism*;
  - › to provide a base from which a firm 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* (and which may also help to highlight identity fraud);
  - › to ensure that Jersey matches international standards to prevent and detect *money laundering* and combat the *financing of terrorism*;
  - › to provide direction on applying the risk-based approach effectively;

- › to provide more practical guidance on applying *CDD* measures, including finding out identity and obtaining evidence of identity
  - › to promote the use of a proportionate, risk based approach to customer due diligence measures, which directs resources towards higher risk clients;
  - › to emphasise the particular *money laundering* and *financing of terrorism* risks of certain financial services and products; and
  - › to provide an information resource to be used in training and raising awareness of *money laundering* and the *financing of terrorism*.
14. This Handbook will be reviewed on a regular basis and, where necessary following consultation, amended in light of experience, changes in legislation, and the development of international standards.
15. This Handbook is intended for use by senior management and compliance staff within the accountancy sector to assist in the development of *systems and controls* and detailed *policies and procedures*. This Handbook is not intended to be used by firms as an internal procedures manual.
16. Where firms are authorised and regulated by the *Commission* under the Financial Services (Jersey) Law 1998 and subject to one or more of the Investment Business, Trust Company Business and Funds Services Business Codes of Practice, they should refer to the separate *AML/CFT Handbook* when drawing up their *policies and procedures* for the prevention of and detection of *money laundering* and the *financing of terrorism* in respect of those regulated activities.

## 1.2 Structure of this Handbook

17. This Handbook describes Statutory Requirements, sets out principles and detailed requirements (*AML/CFT Codes of Practice*), and presents ways of complying with Statutory Requirements and the *AML/CFT Codes of Practice* (Guidance Notes).
18. **Statutory Requirements** describes the statutory provisions that must be adhered to by a *relevant person* (natural or legal) when carrying on a *financial services business*, in particular requirements set out in the *Money Laundering Order*. Failure to follow a Statutory Requirement is a criminal offence and may also attract regulatory sanction.
19. The **AML/CFT Code of Practice** sets out principles and detailed requirements for compliance with Statutory Requirements. In particular, the *AML/CFT Code of Practice* comprises a number of individual *AML/CFT Codes of Practice*: (i) to be followed in the area of corporate governance, which it is considered must be in place in order for a *relevant person* to comply with Statutory Requirements; and (ii) that explain in more detail how a Statutory Requirement is to be complied with. Failure to follow any *AML/CFT Codes of Practice* may attract regulatory sanction<sup>3</sup>.
20. **Guidance Notes** present ways of complying with the Statutory Requirements and *AML/CFT Codes of Practice* and must always be read in conjunction with these. A firm may adopt other appropriate measures to those set out in the Guidance Notes, including *policies and procedures* established by a group that it is part of, so long as it can demonstrate that such measures also achieve compliance with the Statutory Requirements and *AML/CFT Codes of Practice*.

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<sup>3</sup> AML/CFT Codes of Practice and the Guidance Notes shall also be relevant in determining whether or not requirements contained in the Money Laundering Order or in Article 21 of the *Terrorism (Jersey) Law 2002* have been complied with.

*Practice*. This allows a firm discretion as to how to apply requirements in the particular circumstances of its business, products, services, transactions and clients. The soundly reasoned application of the provisions contained within the Guidance Notes will provide a good indication that a firm is in compliance with the Statutory Requirements and *AML/CFT Codes of Practice*.

21. The provisions of the Statutory Requirements and of the *AML/CFT Codes of Practice* are described using the term **must**, indicating that they are mandatory. However, in exceptional circumstances, where strict adherence to any of the *AML/CFT Codes of Practice* would produce an anomalous result, a *relevant person* may apply in advance in writing to the *Commission* for a variance from the requirement. For further information refer to Part 3, Section 1.3 of the *AML/CFT Handbook*.
22. In contrast, the Guidance Notes use the term **may**, indicating ways in which the requirements may be satisfied, but allowing for alternative means of meeting the Statutory Requirements or *AML/CFT Codes of Practice*. References to must and may elsewhere in this Handbook should be similarly construed.
23. This Handbook also contains **Overview** text which provides some background information relevant to particular sections or sub-sections of this Handbook.
24. This Handbook is not intended to provide an exhaustive list of *systems and controls* to counter *money laundering* and the *financing of terrorism*. In complying with the Statutory Requirements and *AML/CFT Codes of Practice*, and in applying the Guidance Notes, firms should (where permitted) adopt an appropriate and intelligent risk-based approach and should always consider what additional measures might be necessary to prevent its exploitation, and that of its products and services, by persons seeking either to launder money or to finance terrorism.
25. The Statutory Requirements text necessarily paraphrase provisions contained in the *money laundering* legislation and the *Money Laundering Order* and should always be read and understood in conjunction with the full text of each law. Statutory Requirements are presented “boxed” and in italics, to distinguish them from other text.
26. Part 2 of the *AML/CFT Handbook* contains an information resource to be used in training and raising awareness of *money laundering* and the *financing of terrorism*.
27. Part 3 of the *AML/CFT Handbook* sets out the *Commission’s* policy for the supervision of compliance by a *relevant person* carrying on Schedule 2 business with the Statutory Requirements and *AML/CFT Codes of Practice*.
28. All references within this Handbook to any Parts or Appendices of the *AML/CFT Handbook* are adopted as if a Part or Appendix to this Handbook.

## 1.3 Legal status of this Handbook and Sanctions for Non-Compliance

### 1.3.1 This Handbook

29. This Handbook is issued by the *Commission*:
  - › pursuant to its powers under Article 22 of the *Supervisory Bodies Law* (which provides for an *AML/CFT Code of Practice* to be prepared and issued for the purpose of setting out principles and detailed requirements), and
  - › in the light of Article 37 of the *Proceeds of Crime Law* (which provides for the *Money Laundering Order* to prescribe measures to be taken).

30. The *AML/CFT Codes of Practice* in this Handbook cover *relevant persons* carrying on Schedule 2 business.

### 1.3.2 Money Laundering Order

31. The *Money Laundering Order* is made by the Chief Minister under Article 37 of the *Proceeds of Crime Law*. The *Money Laundering Order* prescribes measures to be taken (including measures not to be taken) by persons who carry on *financial services business* (a term that is defined in Article 36 of the *Proceeds of Crime Law*), for the purposes of preventing and detecting *money laundering* and the *financing of terrorism*.
32. Failure to comply with the *Money Laundering Order* is a criminal offence under Article 37(4) of the *Proceeds of Crime Law*. In determining whether a firm has complied with any of the requirements of the *Money Laundering Order*, the Royal Court is, pursuant to Article 37(8) of the *Proceeds of Crime Law*, required to take account of any guidance provided (for this purpose guidance will include the *AML/CFT Code of Practice* read in conjunction with Overview text and the Guidance Notes), as amended from time to time.
33. The sanction for failing to comply with the *Money Laundering Order* may be an unlimited fine or up to two years imprisonment, or both. Where a breach of the *Money Laundering Order* by a firm is proved to have been committed with the consent of, or to be attributable to any neglect on the part of, a partner, member, director, manager or other similar officer, that individual, as well as the firm shall be guilty of the offence and subject to criminal sanctions.
34. Similarly, in determining whether a person has committed an offence under Article 21 of the *Terrorism Law* (the offence of failing to report), the Royal Court is required to take account of the contents of this Handbook. The sanction for failing to comply with Article 21 of the *Terrorism Law* may be an unlimited fine or up to five years imprisonment, or both.
35. Nevertheless, this Handbook is not a substitute for the *money laundering* legislation and compliance with it is not of itself a defence to offences under the principal legislation. However, courts will generally have regard to regulatory guidance when considering the standards of a professional person's conduct and whether they acted reasonably, honestly, and appropriately, and took all reasonable steps and exercised all due diligence to avoid committing the offence.

### AML/CFT Code of Practice

36. A Code of Practice is prepared and issued by the *Commission* under Article 22 of the *Supervisory Bodies Law*. The Code of Practice sets out the principles and detailed requirements that must be complied with in order to meet certain requirements of the *Supervisory Bodies Law*, the *Money Laundering Order* and the *money laundering* legislation by persons in relation to whom the *Commission* has supervisory functions. The *AML/CFT Code of Practice* comprises a number of individual *AML/CFT Codes of Practice*.
37. Article 5 of the *Supervisory Bodies Law* states that the *Commission* shall be the supervisory body to exercise supervisory functions in respect of a "*regulated person*" (a term that is defined in Article 1 of the *Supervisory Bodies Law*). The *Commission* is also designated under Article 6 of the *Supervisory Bodies Law* to exercise supervisory functions in respect of any other person carrying on a "*specified Schedule 2 business*" (a term that is defined in Article 1 of the *Supervisory Bodies Law*). The effect of these provisions is to give the *Commission* supervisory functions in respect of every *relevant person*.
38. Compliance with the *AML/CFT Code of Practice* will be considered by the *Commission* in the conduct of its supervisory programme, including on-site examinations.
39. The consequences of non-compliance with any *AML/CFT Codes of Practice* could include an investigation by or on behalf of the *Commission*, the imposition of regulatory sanctions, and

criminal prosecution of the *relevant person* and its employees. Regulatory sanctions available under the *Supervisory Bodies Law* include:

- › issuing a public statement;
- › imposing a registration condition;
- › imposing a direction and making this public, including preventing an individual from working in a *relevant person*; and
- › revocation of a registration.

## 1.4 Jurisdictional Scope of the Money Laundering Order and AML/CFT Codes of Practice

### 1.4.1 Application of the Money Laundering Order and AML/CFT Codes of Practice to Schedule 2 business carried on in Jersey

40. By virtue of the definition of *relevant person* in Article 1(1), the *Money Laundering Order* applies to any person who is carrying on a *financial services business* (including Schedule 2 business) in, or from within, Jersey. This will include Jersey-based offices of firms incorporated outside Jersey conducting Schedule 2 business in Jersey.
41. By virtue of Articles 5, 6 and 22 of the *Supervisory Bodies Law*, *AML/CFT Codes of Practice* apply to any person who is carrying on *financial services business* in or from within Jersey.
42. The *AML/CFT Codes of Practice* in this Handbook cover *relevant persons* carrying on a business described in paragraph 2 of Part B of Schedule 2 to the *Proceeds of Crime Law*.

### 1.4.2 Application of the Money Laundering Order to Schedule 2 Business Carried on Outside Jersey (overseas)

43. Article 10A of the *Money Laundering Order* explains and regulates the application of the *Money Laundering Order* to *financial services business* carried on outside Jersey.
44. However, Article 10A(9) of the *Money Laundering Order* explains that a *relevant person* need not comply with paragraphs (2), (3) and (4) in a country or territory outside Jersey in respect of any Schedule 2 business.
45. Notwithstanding the above, all of the provisions of the *Money Laundering Order* apply to a *relevant person* that is a legal person carrying out *financial services business* anywhere in the world.

### 1.4.3 Application of AML/CFT Codes of Practice to Schedule 2 Business Carried on Outside Jersey (overseas)

46. By virtue of Articles 5, 6 and 22 of the *Supervisory Bodies Law*, a company incorporated in Jersey that carries on a *financial services business* through an overseas branch must comply with the *AML/CFT Code of Practice* in respect of that business, irrespective of whether it also carries on *financial services business* in or from within Jersey.
47. By concession, measures that are at least equivalent to *AML/CFT Codes of Practice* may be applied as an alternative to complying with the *AML/CFT Codes of Practice*.

48. By virtue of the *AML/CFT Codes of Practice* set in Section 2.7, a person who (i) is a legal person registered, incorporated or otherwise established under Jersey law<sup>4</sup>, but who is not a Jersey incorporated company; and (ii) carries on a *financial services business* in or from within Jersey, must apply measures that are at least equivalent to *AML/CFT Codes of Practice* in respect of any *financial services business* carried on by that person through an overseas branch. This requirement will apply to a foundation or partnership established under Jersey law.
49. Where overseas provisions prohibit compliance with one or more of the *AML/CFT Codes of Practice* (or measures that are at least equivalent), then by virtue of the *AML/CFT Codes of Practice* set in section 2.7, requirements do not apply and the *Commission* must be informed that this is the case. In such circumstances, the *AML/CFT Codes of Practice* require a person to take other reasonable steps to effectively deal with the risk of *money laundering* and the *financing of terrorism*.

## 1.5 Definition and overview of Accountants undertaking Schedule 2 Business

50. Article 36 of the *Proceeds of Crime Law* defines “*financial services business*” through Schedule 2 to the *Proceeds of Crime Law*.
51. Paragraph 2 of Part B of Schedule 2 to the *Proceeds of Crime Law* defines the relevant transactions and activity of accountants for the purposes of complying with anti-money laundering requirements in the *Money Laundering Order* as:
- › The business of providing any of the following:
    - › *external accountancy services*;
    - › advice about the tax affairs of another person;
    - › *audit services*; and
    - › *insolvency services*.
  - › ‘**External accountancy services**’ means *accountancy services* provided to third parties and excludes services provided by accountants employed by public authorities or by undertakings which do not by way of business provide *accountancy services* to third parties.
  - › ‘**Audit services**’ are *audit services* provided by way of business pursuant to any function under any enactment.
  - › ‘**Insolvency services**’ are services provided by a person if, by way of business, that person accepts appointment as:
    - › a liquidator under Chapter 4 of Part 21 of the Companies (Jersey) Law 1991;
    - › an insolvency manager appointed under Part 5 of the Limited Liability Partnership (Jersey) Law 1997 as that Law has effect in its application to insolvent limited liability partnerships pursuant to the Limited Liability Partnerships (Insolvency Partnerships) (Jersey) Regulations 1998; or
    - › as agent of an official functionary appointed in the case of a remise de biens, cession, or désastre.

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<sup>4</sup> Note that the term “registered, incorporated or otherwise established” is intended to be understood only to refer to the creation of a legal person or legal arrangement. In particular, it is not intended that “registered” be understood in the more general sense of registering under commercial or other legislation, or that “established” be understood in the more general sense of establishing a branch or representative office.

### 1.5.1 Accountancy Services

52. For the purpose of this Handbook, '*accountancy services*' includes any service provided under a contract for services (i.e. not a contract of employment) which pertains to the recording, review, analysis, calculation or reporting of financial information.
53. Businesses that are not providing Schedule 2 business are outside the scope of this Handbook. However Schedule 2 business provided in the course of business will be covered by this Handbook, even if provided to a client on a pro-bono or unremunerated basis.
54. Accountants providing services privately on an unremunerated voluntary basis are not covered by this Handbook as they are not providing services 'by way of business'. However, all persons and businesses within Jersey are covered by the primary legislation covering *money laundering* and the *financing of terrorism*.
55. Accountants involved in the provision of management consultancy or interim management should be alert to the possibility that they could fall within the scope of the *Money Laundering Order* and by extension this Handbook to the extent that they supply any Schedule 2 business when acting under a contract for services in the course of business.

### 1.5.2 Tax Advisers

56. For the purpose of this Handbook, those in business offering tax services are referred to as 'tax advisers'.
57. The meaning of 'advice' can be widely interpreted and the *Commission* believes it would be prudent to take the view that the provision of tax compliance services come within its definition.
58. A tax adviser should be aware of the *Commission's* responsibility to regulate trust and company business, which may impinge upon the work they undertake for their clients.
59. Whilst tax advisers are more likely to identify offences relating to the avoidance or detection of tax offences, they need to be aware of the potential requirement to report knowledge or suspicion of proceeds derived from any serious crime<sup>5</sup> which is encountered in the course of business as a tax adviser.

### 1.5.3 Audit Services

60. The use of the term '*auditor*' in this Handbook means anyone who is part of the *engagement team* (not necessarily only those employed by an audit firm). The *engagement team* comprises all persons who are directly involved in the acceptance and performance of a particular audit. This includes the audit team, professional personnel from other disciplines involved in the audit engagement and those who provide quality control or direct oversight of the audit engagement. However, it does not include experts contracted by the firm.
61. The extent to which *money laundering* legislation affects the *auditor's* work differs between two broad categories of audit:
  - › **Audits of relevant persons.** Regulated *financial services businesses* and those undertaking Schedule 2 business are required to comply with the requirements of the *Money Laundering Order* which place additional obligations on them to combat *money laundering* and the *financing of terrorism*. All such businesses are required to comply with the

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<sup>5</sup> Serious crime is defined by the *Proceeds of Crime Law* as any criminal offence which is subject on conviction to a term of imprisonment of one year or more.

*AML/CFT Codes of Practice* and best practice guidance issued by the *Commission* (see Section 2.5.3 of this Handbook).

62. In addition to reporting on their financial statements, *auditors* of such businesses are required to report to the *Commission* on matters of significance that come to their attention in the course of their work. This includes non-compliance with legislation, departures from its requirements and suspicions that the directors and management of such entities are implicated in *money laundering* (see Section 8.8 of this Handbook). Therefore, *auditors* of such businesses should not only be aware of the key provisions contained in the *Money Laundering Order* as they affect *auditors* themselves, but also the requirements of the relevant *AML/CFT Handbook*, issued by the *Commission*, covering the business that they are auditing.
- › **Audits of other types of entity.** In general, *auditors* of other types of entity not covered by the *Money Laundering Order* are required only to take appropriate steps in response to factors encountered in the course of their work which lead them to suspect that *money laundering* or the *financing of terrorism* is taking place.
63. Whilst *auditors* have no statutory responsibility to undertake work solely for the purpose of detecting *money laundering* and the *financing of terrorism*, they nevertheless need to take the possibility of *money laundering* and the *financing of terrorism* into account in the course of carrying out procedures relating to fraud and compliance with the *money laundering* legislation. An *auditor's* wide access to documents and systems, and the need to understand the business, can make him ideally suited to spot such issues as they arise.
64. However, *auditors* cannot be held responsible for the prevention of, and failure to detect, *money laundering* and *financing of terrorism* activities in the entities they audit. External *auditors* performing financial statement audits within a short timescale are less likely than other professional accountants (such as forensic accountants and accountants in management positions) to encounter signs of possible *money laundering* and the *financing of terrorism*. Neither is it the *auditors'* responsibility to detect suspicious activity in connection with a compliance or operational audit of an *AML/CFT* programme or testing a suspicious activity reporting process.

#### **1.5.4 Insolvency Practitioners**

65. For the purpose of this Handbook, those in the business of undertaking *insolvency services* are referred to as '*insolvency practitioners*'.

#### **1.5.5 Accountants undertaking Regulated Business**

66. Accountants may also provide other services that could bring them within the scope of mainstream financial services. These include:
- › undertaking investment related activity, including acting as a financial intermediary;
  - › advising on the setting up of trusts, companies or other bodies;
  - › acting as trustee, nominee or company director;
  - › giving advice on capital structures, acquisitions and securities issues;
  - › providing safe custody services; and
  - › arranging loans.
67. Consequently, some accountancy firms are authorised and regulated by the *Commission* under the Financial Services (Jersey) Law 1998 and subject to one or more of the Investment Business, Trust Company Business and Funds Services Business Codes of Practice. Firms who are so regulated should refer to the separate *AML/CFT Handbook* when drawing up their

*policies and procedures* for the prevention of and detection of *money laundering* and the *financing of terrorism* in respect of those regulated activities.

## 1.6 Risk Based Approach

### Overview

68. The possibility of being used to assist with *money laundering* and the *financing of terrorism* poses many risks for the accountancy sector including:
  - › criminal and disciplinary sanctions for firms and for individuals;
  - › civil action against the firm as a whole and against individual members of senior management; and
  - › damage to reputation leading to loss of business.
69. These risks must be identified, assessed and mitigated in the same way as for all business risks faced by a firm.
70. To assist the overall objective to prevent *money laundering* and terrorist financing, the *Money Laundering Order* and this Handbook adopt a risk-based approach. Such an approach:
  - › recognises that the *money laundering* and the *financing of terrorism* threats to a firm vary across clients, countries and territories, services and delivery channels;
  - › allows a firm to differentiate between clients in a way that matches risk in a particular firm;
  - › while establishing minimum standards, allows a firm to apply its own approach to *systems and controls* and other arrangements in particular circumstances; and
  - › helps to produce a more cost effective system.
71. Nevertheless, it must be accepted that applying the risk-based approach will vary between firms and may not provide a level playing field.
72. System and controls will not detect and prevent all *money laundering* or *financing of terrorism*. A risk-based approach will, however, serve to balance the cost burden placed on a firm and on its clients with a realistic assessment of the threat of a firm being used in connection with *money laundering* or the *financing of terrorism* by focusing effort where it is needed and has most impact.
73. Inter alia, Part 3 of the *AML/CFT Handbook* sets out in further detail the *Commission's* expectations of a soundly reasoned risk based approach.
74. An effective and documented risk-based approach will enable a firm to justify its position on managing *money laundering* and terrorist risks to law enforcement, the courts, regulators and supervisory bodies.

### Statutory Requirements

75. *Article 11(2) of the Money Laundering Order requires that policies and procedures established and maintained under Article 11(1) are appropriate and consistent having regard to the degree of risk of money laundering and the financing of terrorism, taking into account: (i) the level of risk identified in a national or sector-specific risk assessment in relation to money laundering carried out in respect of Jersey; and (ii) the type of customers, business relationships, products and transactions with which the relevant person's business is concerned.*

## 1.7 Equivalence of Requirements in Other Countries and Territories

### 1.7.1 Equivalent business

76. Article 16 and Part 3A of the *Money Laundering Order* respectively permit reliance to be placed on an *obliged person* (a term that is defined in Article 1(1)) and exemptions from customer due diligence requirements to be applied to a client carrying on a *financial services business* that is overseen for AML/CFT<sup>6</sup> compliance in Jersey or carrying on business that is “**equivalent business**”. Sections dealing with the acquisition of a business or block of clients and verification of identity concession also provide concessions from AML/CFT *Codes of Practice* on a similar basis.
77. Article 5 of the *Money Laundering Order* defines *equivalent business* as being overseas business that:
- › if carried on in Jersey would be *financial services business*;
  - › may only be carried on in the country or territory by a person registered or otherwise authorised under the law of that country or territory to carry on that business;
  - › is subject to requirements to forestall and prevent *money laundering* and the *financing of terrorism* consistent with those in the FATF Recommendations in respect of that business; and
  - › is supervised for compliance with those requirements by an overseas regulatory authority.
78. The condition requiring that the overseas business must be subject to requirements to combat *money laundering* and the *financing of terrorism* consistent with those in the FATF Recommendations will be satisfied, inter alia, where a person is located in an equivalent country or territory (see Section 1.7.2).

### 1.7.2 Equivalent Countries and Territories

- ~~79.~~ With effect from 31 May 2021 the Commission no longer maintains a list of Equivalent Countries and Territories in Appendix B. Guidance to assist relevant persons to determine equivalence is set out in Section 1.7.3, provides a list of countries and territories that are considered by the Commission to have set requirements for measures to be taken by their domestic financial institutions and designated non-financial businesses and professions to prevent and detect *money laundering* and the *financing of terrorism* that are consistent with those in the FATF Recommendations.
- ~~80-79.~~ Appendix B is not intended to provide an exhaustive list of such countries and territories, and no conclusions should be drawn from the omission of a particular country or territory from the list.

### 1.7.3 Determining Equivalence

- ~~81-80.~~ Requirements for measures to be taken by an *obliged person* or client will be considered to be consistent with the FATF Recommendations only where those requirements are established by law, regulation, or other enforceable means.
- ~~82-81.~~ In determining whether or not the requirements for measures to be taken in a country or territory are consistent with the FATF Recommendations, a relevant person should the Commission will have regard for the following:

<sup>6</sup> AML/CFT means Anti-money Laundering / Countering the Financing of Terrorism

- › Generally - whether or not the country or territory is a member of the *FATF*, a member of a *FATF* Style Regional Body (*FSRB*) or subject to its assessment and follow up process, a Member State of the *EU* (including Gibraltar) or a member of the European Economic Area (*EEA*).
- › Specifically - whether a country or territory is compliant or largely compliant with those *FATF* Recommendations that are directly relevant to the application of available concessions. These are Recommendations 10-13, 15-21 and 26. Where a person with a specific connection to a customer is a designated non-financial business or profession (a term that is defined by the *FATF*), then Recommendations 22, 23 and 28 will be relevant. The following sources may be used to determine whether a country or territory is compliant or largely compliant:
  - a) the laws and instruments that set requirements in place in that country or territory;
  - b) recent independent assessments of that country's or territory's framework to combat *money laundering* and the *financing of terrorism*, such as those conducted by the *FATF*, *FATF* Style Regional Bodies, the International Monetary Fund (the *IMF*) and the World Bank (and published remediation plans); and
  - c) other publicly available information concerning the effectiveness of a country's or territory's framework.

82. Where a firm ~~seeks itself to assess~~ whether a country or territory not listed by the *Commission* is an equivalent country or territory, it must conduct an assessment process comparable to that described above, and must be able to demonstrate on request the process undertaken and the basis for its conclusion.

83. Hyperlinks to where additional information may be located are included below. These are not intended to be exhaustive, nor are they placed in any order of priority. Independent research and judgement will be expected in order to cater for the requirements in the individual case.

- › Financial Action Task Force – High jurisdictions and other monitored jurisdictions: [http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc(fatf_releasedate))
- › Financial Action Task Force - Mutual Evaluation Reports: [http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate))
- › Financial Action Task Force–style summary evaluations are published in FATF Annual Reports: [www.fatf-gafi.org](http://www.fatf-gafi.org)
- › International Monetary Fund: [www.imf.org](http://www.imf.org)
- › The World Bank: [www.worldbank.org](http://www.worldbank.org)
- › MONEYVAL: [www.coe.int/Moneyval](http://www.coe.int/Moneyval)
- › The Offshore Group of Banking Supervisors (OGBS): [www.ogbs.net](http://www.ogbs.net)
- › The Caribbean Financial Action Task force (CFATF): [www.cfatf.org](http://www.cfatf.org)
- › The Asia/Pacific Group on Money laundering (APG): [www.apgml.org](http://www.apgml.org)
- › The Intergovernmental Action Group against Money-Laundering in Africa (GIABA): [www.giabasn.org](http://www.giabasn.org)
- › The Middle East and North Africa Financial Action Task Force (MENAFATF): [www.menafatf.org](http://www.menafatf.org)
- › The Financial Action Task Force in South America: [www.gafisud.org](http://www.gafisud.org)
- › The Eastern and Southern Africa Anti-Money Laundering Group (EASSMLG): [www.esaamlg.org](http://www.esaamlg.org)
- › The Eurasian Group (EAG): [www.euroasiangroup.org](http://www.euroasiangroup.org)