

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)*¹ 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 lawyers, notaries, other independent legal professionals and accountants who interface with the financial sector have frequently been used in some jurisdictions as a conduit for criminal property to enter the financial system. The legal sector in Jersey should be on guard to ensure that it is not used as such a conduit.
2. In particular, criminals and money launderers will often try to exploit the services offered by lawyers, through the business of undertaking property and 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 and anonymous route into the banking system.
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 has adopted the international standards to guard against *money laundering* and the *financing of terrorism* and has integrated the requirements into the legal and regulatory system.
4. Lawyers are key professionals in the business and financial world, facilitating vital transactions 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, lawyers 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 law firm 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 services,will face the loss of its reputation, risk discipline by the Royal Court, damage the integrity of Jersey's professional and finance industry as a whole, and may risk prosecution for criminal offences.

¹ AML/CFT means Anti-Money Laundering/Countering the Financing of Terrorism

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.
8. A *relevant person* carrying on a business described in paragraph 1 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*'² 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 1 of Part B of Schedule 2 to the *Proceeds of Crime Law*).
10. Every law firm in Jersey must recognise the role that it must 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 law firms 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 **law firms** or **firms**³. 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:

² 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*.

³ For the avoidance of doubt "law 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:
 - (a) 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
 - (b) conduct outside Jersey, which, if occurring in Jersey, would be an offence under Articles 15 and 16.
- › **Money laundering** means:
 - (a) 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*;
 - (b) conduct that is an offence under Articles 34A and 34D of the *Proceeds of Crime Law*;
 - (c) 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
 - (d) 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 1 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 above 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 lawyers 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 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 of a law firm to assist in the development of *systems and controls*, and detailed *policies and procedures*. This Handbook is not intended to be used by law firms as an internal procedures manual.
16. Where law 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 Code of Practice*), and presents ways of complying with Statutory Requirements and the *AML/CFT Code of Practice* (Guidance Notes).
18. **Statutory Requirements** describe 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 of 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) principles 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 sanction⁴.
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 *relevant person* 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*. 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*.

⁴ 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.

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, a law firm 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 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, an officer, partner or member of the firm, 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 law and compliance with it is not of itself a defence to offences under the principal laws. However, courts will generally have regard to regulatory guidance when considering the standards of a professional persons conduct and whether they acted reasonably, honestly, and appropriately, and took all reasonable steps and exercised necessary due diligence to avoid committing the offence.

1.3.3 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 law 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 1 of Part B of Schedule 2 to the *Proceeds of Crime Law*.

1.4.2 Application of the Money Laundering Order to Lawyers carrying on Schedule 2 Business 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. However, in practice this may not apply to all law firms carrying on Schedule 2 business on the basis that many law firms currently registered under the *Supervisory Bodies Law* are either sole practitioners or Jersey customary law partnerships.

1.4.3 Application of AML/CFT Codes of Practice to Lawyers carrying on Schedule 2 Business 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 law⁵, 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

⁵ 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.

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. However, in practice, paragraphs 47 and 49 will not apply to all law firms carrying on Schedule 2 business on the basis that many law firms currently registered under the *Supervisory Bodies Law* are either sole practitioners or Jersey customary law partnerships.
50. 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 of Lawyers undertaking Schedule 2 Business

51. Article 36 of the *Proceeds of Crime Law* defines “financial services business” through Schedule 2 to the *Proceeds of Crime Law*.
52. Paragraph 1 of Part B of Schedule 2 to the *Proceeds of Crime Law* defines the relevant transactions and activity of lawyers for the purposes of the complying with anti-money laundering requirements in the *Money Laundering Order* as being:
 - › The business of providing services by independent legal professionals; and
 - › 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 organisation of contributions necessary for the creation, operation or management of companies; or
 - (f) the creation, operation or management of trusts, companies or similar structures.
53. Legal professionals employed by public authorities or undertakings which do not provide services to third parties are excluded from the definition.
54. A person is defined as participating in a transaction by assisting in the planning or execution of the transaction, or otherwise acting for or on behalf of a third party in a transaction.

1.5.1 Activities covered by the Money Laundering Order

55. The *Money Laundering Order* only applies to certain legal activities as defined in paragraph 1 of Part B of Schedule 2 to the *Proceeds of Crime Law*. In terms of activities covered it should be noted that:
 - › managing client money is narrower than handling it; and
 - › operating or managing a bank account is wider than simply opening a client account. It would be likely to cover lawyers acting as a trustee, attorney or receiver.

56. The Attorney General has confirmed that the following would not generally be regarded as participating in Schedule 2 business:

- › Payment on account of costs to a legal professional or payment of a lawyer's bill.

In respect of payments on account of costs, law firms should ensure that the payment is proportionate to the issue in respect of which the firm is asked to advise.

In respect of payment of a lawyer's bill, if payment is made out of criminal property, this would constitute an offence under Article 30 of the *Proceeds of Crime Law*.

- › Provision of legal advice

In relation to the provision of legal advice, a lawyer needs to consider whether they are providing legal advice or whether they are a lawyer participating in a transaction by assisting in its planning or its execution. Ultimately, each case will have to be decided on its own facts and it is a matter for each firm to form a view.

However, generally, the giving of generic advice, or advice specific to a transaction in terms of whether such a transaction is possible under Jersey Law or what factors are taken into account in making such a transaction possible, will only constitute the giving of legal advice where the decision has not already been taken to proceed with the transaction.

Where a decision has already been taken to proceed with a transaction, drafting documentation to enable that transaction to proceed, or seeking information to advise further on the planning or execution of the transaction will fall within the scope of the *Money Laundering Order*.

- › Participation in litigation or a form of alternative dispute resolution.

However, the following guidance should be taken into account:

in relation to litigation involving trusts where the proposed resolution includes a change in trusteeship or the application related to asking the Court to approve a future transaction, then the requirements of the *Money Laundering Order* may apply;

in respect of advising *insolvency practitioners* relating to individuals or entities, the requirements of the *Money Laundering Order* are likely to apply; and

corporate transactions requiring Court approval, such as schemes of arrangement, are likely to be covered by the requirements of the *Money Laundering Order*.

- › Will writing, although firms should consider whether any accompanying taxation advice is covered.

In relation to Will writing, any steps taken during the lifetime of the deponent of the Will to enable their wishes to be given effect to as recorded in the Will, may well fall within definition of Schedule 2 business in which case the requirements of the *Money Laundering Order* will apply.

- › Publicly funded work.

Publicly funded work extends to individuals under the legal aid scheme, even if an individual may be required to make a contribution to the fees of the law firm.

1.6 Definition of Business Relationship and One-off Transaction

1.6.1 Business Relationship

Overview

- 57. The *Money Laundering Order* refers to the term “business relationship”.
- 58. In practice the legal profession uses the term “matter” to describe a business relationship that is established within the context of a relationship with a client.

1.6.2 One-off Transaction (Articles 4 and 13)

Overview

- 59. Article 13 of the *Money Laundering Order* requires that *identification measures* must be undertaken before establishing a business relationship or carrying out a one-off transaction.
- 60. A business relationship is one that is expected to have “an element of duration”. An instruction to a law firm to perform a single task within a limited timeframe (such as drafting a single deed of appointment) does not have “an element of duration”, although it would of course constitute a transaction.
- 61. A one-off transaction is a transaction (carried out other than as part of a business relationship) amounting to 15,000 euros or more, whether the transaction is carried out in a single operation or several operations which appear to be linked.
- 62. For the purposes of determining whether a transaction (other than as part of a business relationship) is a one-off transaction under the *Money Laundering Order*, the value of a transaction between a client and a law firm is the value of the underlying asset(s) to which the instruction relates.
- 63. Where a value to the underlying assets cannot be determined or no value for the underlying assets is readily available or ascertainable, the law firm should assume the value of the transaction to be 15,000 euro or more.
- 64. Where a transaction is likely to become a one-off transaction or develop into a business relationship, the firm should consider undertaking *identification measures* at the outset.

Statutory Requirements

- 65. *Where a relationship between a firm and a client has no “element of duration” and is not a one-off transaction within the meaning of Article 4 of the Money Laundering Order, identification measures within the meaning of Article 13 of the Money Laundering Order are not required unless:*
 - › *the firm suspects money laundering or financing of terrorism; or*
 - › *the firm has doubts about the veracity or adequacy of any documents, data or information previously obtained under the CDD measures.*

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- 66. However, in the above circumstances, the identity of the person undertaking the transaction must be found out and recorded.
- 67. A firm must record the basis that it has applied for determining the value of a transaction for the purposes of establishing whether it is a one-off transaction under Article 4 of the *Money Laundering Order*, and why that basis is appropriate.

68. A firm must have in place measures to identify when linked transactions are being undertaken which would, in total, amount to 15,000 euro or more, and therefore be a one-off transaction within the meaning of Article 4 of the *Money Laundering Order*. Firms must also consider when the frequency of regular one-off transactions by the same client would constitute a business relationship.
69. A firm must consider the nature of those transactions which are determined not to be a one-off transaction as a result of which *identification measures* are not required. Where these transactions are considered to present a higher risk of money laundering or *financing of terrorism*, consideration must be given to applying full *CDD* measures.
70. Firms must be able to demonstrate that its decision not to apply *identification measures* in respect of such transactions was reasonable taking into account its business risk profile.

Guidance Notes

71. A firm may demonstrate that the basis upon which it has determined the value of a transaction for the purposes of Article 4 of the *Money Laundering Order* is appropriate where, in respect of a conveyancing transaction, it applies the value of the property that is the subject of the transaction, or, with regard to services provided in respect of a trust, it applies the value of the trust assets.

1.7 Risk-based Approach

Overview

72. The possibility of being used to assist with money laundering and the *financing of terrorism* poses many risks for law firms including:
 - › criminal and disciplinary sanctions for firms and for individual lawyers;
 - › civil action against the firm as a whole and against individual partners; and
 - › damage to reputation leading to loss of business.
73. These risks must be identified, assessed and mitigated in the same way as for all business risks faced by a firm.
74. To assist the overall objective to prevent money laundering and the *financing of terrorism*, 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.
75. Nevertheless, it must be accepted that applying the risk-based approach will vary between firms and may not provide a level playing field.
76. System and controls will not detect and prevent all money laundering or the *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.
77. 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.

78. An effective and documented risk-based approach will enable a firm to justify its position on managing money laundering and *financing of terrorism* risks to law enforcement, the courts, regulators and supervisory bodies.

Statutory Requirements

79. 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.

1.8 Equivalence of Requirements in Other Countries and Territories

1.8.1 Equivalent Business

80. Articles 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 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.
81. 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.
82. 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.

1.8.2 Equivalent Countries and Territories

83. 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 1.8.3.
84. A country or territory may be considered to be equivalent where:
- (a) financial institutions and designated non-financial businesses and professions are required to take measures to forestall and prevent money laundering and the financing of terrorism that are consistent with those in the *FATF Recommendations*.
 - (b) financial institutions and designated non-financial businesses and professions are supervised for compliance with those requirements by a regulatory or supervisory authority.

1.8.3 Determining Equivalence

85. 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.
86. 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 have regard for the following:
- › 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.
 - › Specifically – the extent to which a country or territory is achieving the Immediate Outcomes that are directly relevant to the application of available concessions, namely whether Immediate Outcomes 3 and 4 are assessed at a high or substantial level of effectiveness.
 - › The following sources may be used to determine whether a country or territory is compliant or largely compliant or achieving the Immediate Outcomes:
 - (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.
87. Where a firm assesses 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.
88. 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 ratings table: <http://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf>
 - › 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

- › International Monetary Fund: www.imf.org
- › The World Bank: www.worldbank.org
- › MONEYVAL: www.coe.int/Moneyval
- › The Offshore Group of Banking Supervisors (OGBS): www.ogbs.net
- › The Caribbean Financial Action Task force (CFATF): www.cfatf.org
- › The Asia/Pacific Group on Money laundering (APG): www.apgml.org
- › The Intergovernmental Action Group against Money-Laundering in Africa (GIABA):
www.giabasn.org
- › The Middle East and North Africa Financial Action Task Force (MENAFATF):
www.menafatf.org
- › The Financial Action Task Force in South America: www.gafisud.org
- › The Eastern and Southern Africa Anti-Money Laundering Group (EASSMLG):
www.esaamlg.org
- › The Eurasian Group (EAG): www.euroasiangroup.org