Jersey Financial Services Commission

Part I: GENERAL GUIDANCE

1 INTRODUCTION

1. The continuing ability of Jersey's finance industry to attract legitimate *customers* 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 business that assists in *money laundering*, the *financing of terrorism*, or the *financing of proliferation*, 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 products or services;

will face the loss of its reputation, risk the loss of its *Licence* or other regulatory sanctions (where regulated and supervised), damage the integrity of Jersey's finance industry, and may risk prosecution for criminal offences.

2. Jersey has had in place a framework of *AML* legislation since 1988, and for the *CFT* since 1990. This legislation has continued to be updated as new threats have emerged, including legislation to extend the definition of criminal conduct for which a *money laundering* offence can be committed and to combat international terrorism.

3. Criminals are aware of the *AML/CFT/CPF* measures taken by the traditional financial sector over the past decade and may seek 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. *Lawyers*, *Trust Company Businesses* and providers of *accountancy services* have all been used as a conduit for criminal property to enter the financial system and are sometimes referred to as "gatekeepers". Some have also been used to assist terrorists and proliferators of weapons of mass destruction to plan and finance their operations.

4. For example, criminals may 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 route into the banking system.

5. The result has been that international *AML/CFT/CPF* legislation and standards have been extended beyond the traditional financial sector to all *supervised businesses*. *This Handbook* applies to all *supervised persons* (throughout *this Handbook*, where provisions of the *Money Laundering Order* are quoted, paraphrased, or summarised, the text refers to a *relevant person* to match the language of the *Money Laundering Order*).

6. Jersey's defences against *money laundering*, the *financing of terrorism*, and *financing of proliferation* rely heavily on the vigilance and co-operation of the finance sector. *The Money Laundering Order* is therefore also in place covering *supervised persons*.

7. The primary legislation is defined in the Glossary of *this Handbook* as the *Anti-Money Laundering and Counter-Terrorism Legislation*.

8. The international standards require that all *Financial Institutions, DNFBPs* and *VASPs* must be supervised on a risk-based approach by an appropriate *AML* supervisory body. Within Jersey, the *JFSC* has been designated as the relevant supervisory body under the *Supervisory Bodies Law*. The *JFSC* is the *AML/CFT/CPF* supervisor for all *supervised persons*. Ensuring compliance and acting against those that do not comply with the measures to guard against *money laundering, t*he *financing of terrorism*, and the *financing of proliferation*, is crucial to the effectiveness of Jersey's preventative regime.

9. *Supervised persons* may get a visit from the *JFSC* to carry out an examination. Further information related to this can be found on the *JFSC's* website. In certain circumstances, the *JFSC* may also serve a notice on a *supervised person* which would require, among other things, senior management to attend interviews and to answer questions and/or provide information and documents.

10. Each *supervised person* in Jersey must recognise the role that it must play in protecting itself, and its *employees*, from involvement in *money laundering*, the *financing of terrorism*, and the *financing of proliferation*, and in protecting the Island's reputation. This relates not only to business operations within Jersey, but also operations conducted by *supervised persons* outside the island.

11. The *JFSC* strongly believes that the key to the prevention and detection of *money laundering*, the *financing of terrorism*, and the *financing of proliferation* lies in the implementation of, and strict adherence to, effective *systems and controls*, including sound *CDD* measures based on international standards. The *AML/CFT/CPF Handbook* therefore establishes standards which match international standards issued by the *FATF*. *This Handbook* also has regard to the standards promoted by the Basel Committee, *IOSCO* and the *IAIS*. The *Handbook* takes account of the requirements of EU legislation to counter *money laundering*, the *financing of terrorism*, and the *financing of proliferation* and its application of standards set by the *FATF*.

12. The *JFSC* is also mindful of the importance of financial services being generally available to all Jersey residents and, where necessary, *this Handbook* incorporates measures to guard against the financial exclusion of Jersey residents from financial services and products.

13. Throughout *this Handbook*, *supervised persons* should have regard to the defined terms set out in the Glossary of *this Handbook*.

1.1 *Guidelines*

14. The *Handbook* applies to *supervised persons* whose activities and/or operations are within the specified list of activities in Schedule 2 of the *Proceeds of Crime Law* that are *financial services business.*

15. *Guidelines,* that are published on the *JFSC* website, provide guidance on interpretation of provisions and expressions relating to the list of activities and operations constituting *financial services business* including what is meant by "when conducted as a business". The *Guidelines* assist entities in determining whether their activities and operations are within scope of the *statutory requirements.* Account must also be taken of the *FATF Recommendations,* particularly where the same expressions are used.

1.2 Objectives of the *AML/CFT/CPF Handbook*

16. The objectives of *this Handbook* are:

- to outline the relevant requirements of the *Anti-Money Laundering and Counter-Terrorism Legislation*;
- to set out the *JFSC's* requirements, expressed as *AML/CFT/CPF Codes of Practice* - to be followed by all *supervised persons*;
- to assist *supervised person*s to comply with the requirements of the *Anti-Money Laundering and Counter-Terrorism Legislation* and the *AML/CFT/CPF Codes of Practice*, through practical interpretation;
- to outline good practice in developing *systems and controls* to prevent *supervised persons* from being used to facilitate *money laundering*, the *financing of terrorism*, and the *financing of proliferation;*
- to provide a base from which *supervised persons* can design and implement *systems and controls* and tailor their own *policies and procedures* for the prevention and detection of *money laundering,* the *financing of terrorism*, and the *financing of proliferation* (and which may also help to highlight identity fraud);
- to ensure that Jersey matches international standards to prevent and detect *money laundering*, the *financing of terrorism*, and the *financing of proliferation;*
- 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 emphasise the responsibilities of the board and senior management of a *supervised person* in preventing and detecting *money laundering*, the *financing of terrorism*, and the *financing of proliferation*;
- to promote the use of a proportionate, risk-based approach to *CDD* measures, which directs resources towards higher risk *customers*;
- to emphasise the particular *money laundering*, the *financing of terrorism*, *and* the *financing of proliferation* risks of certain financial services and products;
- to provide an information resource to be used in training and raising awareness of *money laundering*, the *financing of terrorism*, and the *financing of proliferation*.

17. *This Handbook* will be reviewed on a regular basis and, where necessary following consultation, amended considering experience, changes in legislation, and the development of international standards.

18. *This Handbook* is intended to be used by senior management and compliance staff in the development of a *supervised person's systems and controls*, and detailed *policies and procedures*. Each *supervised person* is expected to draw up its own *policies and procedures* based on the guidance set out in the *Handbook*. These *policies and procedures* will also help senior management and staff to comply with their own personal obligations under the *Anti-Money Laundering and Counter-Terrorism Legislation*. *This Handbook* is not intended to be used by *supervised persons* as an internal *procedures'* manual.

19. *Supervised persons* are expected to think about how they might be vulnerable to and exploited by criminals. The *Anti-Money Laundering and Counter-Terrorism Legislation* expects *supervised persons* to manage the risks of being used by criminals, *terrorists,* or *proliferators* of weapons of mass destruction, and to document how they are managing those risks.

20. **All *supervised persons*** should have regard to the main sections of *this Handbook* (Sections 1-11). *Supervised persons* should also refer to the sector-specific sections of *this Handbook* (Sections 12-21) relevant to their type of business when drawing up their *policies and procedures*.

1.3 Structure of the *AML/CFT/CPF Handbook*

21. *This Handbook* describes *statutory requirements* (defined below), sets out principles and detailed requirements (*AML/CFT/CPF Codes of Practice*), and presents ways of complying with *statutory requirements* and the *AML/CFT/CPF Codes of Practice* (G*uidance notes*).

22. *Statutory requirements* describe the statutory provisions that must be complied with by a *supervised person* (natural or legal) when carrying on a *supervised business*, in particular requirements set out in the *Money Laundering Order*. Some *statutory requirements* place obligations on individuals. Failure to follow a *Statutory Requirement* is a criminal offence and may also attract regulatory sanction.

23. The *AML/CFT/CPF Codes of Practice* set out principles and detailed requirements for compliance with *statutory requirements,* failure to follow any *AML/CFT/CPF Codes of Practice* may attract regulatory sanction. The *AML/CFT/CPF Codes of Practice* comprise several individual elements:

- to be followed in the area of corporate governance, which must be in place in order for a *supervised person* to comply with *statutory requirements*; and
- explain in more detail how a s*tatutory requirement* is to be complied with.

24. *Guidance notes* present ways of complying with the *statutory requirements* and *AML/CFT/CPF Codes of Practice* and must always be read in conjunction with these. A *supervised person* may adopt other measures to those set out in the G*uidance 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/CPF Codes of Practice*. This allows a *supervised person* discretion as to how to apply requirements in the particular circumstances of its business, products, services, transactions, and *customers*. The soundly reasoned application of the provisions contained within the *Guidance notes* will provide a good indication that a *supervised person* is in compliance with the s*tatutory requirements* and *AML/CFT/CPF Codes of Practice*.

25. The provisions of the *statutory requirements* and of the *AML/CFT/CPF Codes of Practice* are described using the term **must**, indicating that these requirements are mandatory. However, in exceptional circumstances, where strict adherence to any of the *AML/CFT/CPF Codes of Practice* would produce an anomalous result, a *supervised person* may apply in advance in writing to the *JFSC* for a variance from the requirement. Section 1.9 of *this Handbook* also explains that an obligation to do something outside Jersey may be met through applying measures that are at least equivalent to the *AML/CFT/CPF Codes of Practice*.

26. 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/CPF Codes of Practice*.

27. *This Handbook* also contains **Overview** text which provides context relevant to particular sections or sub-sections of the *AML/CFT/CPF Handbook*.

28. *This Handbook* is not intended to provide an exhaustive list of *systems and controls* to counter *money laundering*, the *financing of terrorism*, and the *financing of proliferation*. In complying with the *statutory requirements* and *AML/CFT/CPF Codes of Practice*, and in applying the G*uidance notes*, a *supervised person* should (where permitted) adopt an appropriate 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 to engage in *money laundering*, the *financing of terrorism*, *and* the *financing of proliferation*.

29. The text in *statutory requirements* sections necessarily paraphrases provisions contained in the *Anti-Money Laundering and Counter-Terrorism Legislation* and should always be read and understood in conjunction with the full text of each law. *Statutory requirements* are presented in light blue boxes and in italics, to distinguish them from other text.

1.4 Legal status and sanctions for non-compliance

1.4.1 *AML/CFT/CPF Handbook*

30. *This Handbook* is issued by the *JFSC*:

- pursuant to its powers under Article 8 of the *Commission Law*;
- in accordance with Article 22 of the *Supervisory Bodies Law*, which provides for *Codes of Practice* to be prepared and issued for the purpose of setting out principles and detailed requirements;
- in light of the *Proceeds of Crime Law*, which provides for the *Money Laundering Order*;
- in Article 37 (1) (a) of the *Proceeds of Crime Law,* the Chief *Minister* must prescribe measures to be taken (or not to be taken) by persons who carry on *financial services business*; and
- in Article 37 (1) (c) of the *Proceeds of Crime Law,* the Chief *Minister* may prescribe measures to be taken by persons or categories of persons appointed for the purposes of fulfilling the obligations prescribed in respect of persons referred to in Article 37 (1) (a).

31. The *AML/CFT/CPF Codes of Practice* in *this Handbook* are applicable to **all *supervised persons*.**

32. Sector-specific sections for *supervised persons* subject to the funds, security issuers and their service providers, *TCSPs, Wire Transfers Regulations, prepaid cards, AMLSPs, VASPs, real estate agents, high value dealers, Lawyers and Accountants* are set out at Sections 12-21 of *this Handbook* and provide some additional *AML/CFT/CPF Codes of Practice* and *Guidance notes* for *supervised persons* carrying on those types of business.

1.4.2 *Money Laundering Order*

33. The *Money Laundering Order* is made by the *Minister* for External Relations and Financial Services under Article 37(1)(a) of the *Proceeds of Crime Law*. The *Money Laundering Order* prescribes measures to be taken (including measures not to be taken) by a *relevant person* for the purposes of preventing and detecting *money laundering,* the *financing of terrorism* and *proliferation financing*.

34. Article 37(1)(b) of the *Proceeds of Crime Law* provides, where applicable, for a *relevant person* to appoint persons or categories of persons for the purpose of fulfilling the obligations of the *relevant person* (see section 15 *of this Handbook*).

35. 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 *supervised person* 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 the *AML/CFT/CPF Codes of Practice* and G*uidance notes* issued by the *JFSC*, as amended from time-to-time.

36. The sanction for failing to comply with the *Money Laundering Order* may be an unlimited fine or up to two years imprisonment, or both.

37. Under Article 39A(2) of the *Proceeds of Crime Law*, if a 'relevant offence' is proved to have been committed by a *financial services business* with the consent or connivance of a '*relevant person*' (both as defined in Article 39A(1) of that law) that '*relevant person*' is also guilty of the offence and liable to the same penalty for that offence as the *financial services business*.

38. Under Article 35A of the *Proceeds of Crime Law*, a *financial services business* commits an offence if a person is engaged in *money laundering* when acting in the capacity of a person associated with that business (as defined in Article 35A(4) of the *Proceeds of Crime Law*).

39. If the *financial services business* is a body corporate, it is liable to a fine. If the business is not a body corporate, they are liable to imprisonment for a term not exceeding two years or to a fine, or to both.

40. 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, pursuant to Article 21(6) of the *Terrorism Law*, required to take account of any guidance provided (for this purpose guidance will include the *AML/CFT/CPF Codes of Practice* read in conjunction with the overview text and the *Guidance notes*), as amended from time-to-time. 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.

41. It should be emphasised that *this Handbook* is not a substitute for the law and compliance with it is not of itself a defence to offences under the various legislation referenced above. However, *the Handbook* shall be considered by the courts when considering the standards of a *supervised person's* conduct and whether they acted reasonably, honestly, and appropriately, and took all reasonable steps and exercised necessary due diligence to avoid committing the offence.

42. Under Article 21A of the *Commission Law* the *JFSC* may impose a civil financial penalty on a *supervised person* (except where that person is a fund) where the *JFSC* is satisfied that the *supervised person* has, to a significant and material extent, contravened the *Money Laundering Order*.

43. Article 21A of the *Commission Law* also permits the *JFSC* to impose a civil financial penalty on a principal person, a key person or a person who performs or performed a senior management function (all as defined in Article 1 of the *Commission Law*) where the *JFSC* is satisfied that the contravention of the *Money Laundering Order* by the *supervised person* was:

- committed with the consent or connivance of, or is attributable to neglect on the part of, the principal person, key person or the person who performs or performed a senior management function; or
- aided, abetted, counselled, or procured by such a person.

44. The *JFSC* has published a notice designating "senior management functions" on its website – effective from 13 March 2023.

45. These "*senior management functions*" are not to be confused with the requirement for an MLCO to be appointed at "*senior management level*" in Article7(2A)(a) of the Money Laundering Order.

1.4.3 AML/CFT/CPF *Codes of Practice*

46. The *AML/CFT/CPF Codes of Practice* are prepared and issued by the *JFSC* under Article 22 of the *Supervisory Bodies Law*. The *AML/CFT/CPF Codes of Practice* set out the principles and detailed requirements that must be complied with to meet certain *statutory provisions* of the *Supervisory Bodies Law* and the *Anti-Money Laundering and Counter-Terrorism Legislation (Proceeds of Crime Law*, *Terrorism Law*, *Directions Law*, *Targeted Financial Sanctions Measures*, *Wire Transfers Regulations*, and the *Money Laundering Order)* by *supervised persons*. The *AML/CFT/CPF Codes of Practice* comprise several individual *AML/CFT/CPF Codes of Practice.*

47. Article 5 of the *Supervisory Bodies Law* states that the *JFSC* shall be the supervisory body to exercise supervisory functions in respect of a *regulated person (*as defined in Article 1 of the *Supervisory Bodies* Law). The *JFSC* is also designated under Article 6 of the *Supervisory Bodies Law* to exercise supervisory functions in respect of any other person carrying on a *supervised business*. The effect of these provisions is to give the *JFSC* supervisory functions in respect of all *supervised persons*.

48. Article 8A of the *Supervisory Bodies Law* requires a supervisory body (i.e., the *JFSC*) to use a risk-based approach when performing its obligations under said law, which means determining the scrutiny that a *supervised person* requires based on:

- the *money laundering* and *terrorist financing* risks associated with the *supervised person*, as identified by the supervisory body's assessment of the *supervised person's* risk profile;
- the policies, internal controls and procedures associated with the *supervised person*, as identified by the supervisory body's assessment of the *supervised person's* risk profile;
- the *money laundering* or *terrorist financing* risks present in the jurisdiction in which the *supervised person* is based;
- any other characteristic of the *supervised person* that the supervisory body reasonably considers to be relevant.

49. Article 8A(3) of the *Supervisory Bodies Law* requires the supervisory body (i.e. the *JFSC*) to take account of *FATF Recommendations* when devising a risk profile for a *supervised person*.

50. Compliance with the *AML/CFT/CPF Codes of Practice* will be considered by the *JFSC* in the conduct of its *supervisory programme*, including on-site examinations.

51. The consequences of non-compliance with any *AML/CFT/CPF Codes of Practice* could include an investigation by or on behalf of the *JFSC* and the imposition of regulatory sanctions. Regulatory sanctions available to the *JFSC* under the *Supervisory Bodies Law* and the *Regulatory Laws* (where applicable) include:

- issuing a public statement;
- imposing a registration condition;
- objecting to the appointment, or continued appointment, of a principal person (or equivalent controller or manager of a *regulated person*) or key person;
- imposing a direction and making this public, including preventing an individual from working in a *supervised person* and where already appointed requiring their removal; and
- revoking a *supervised person's* registration.

52. In addition, under Article 21A of the *Commission Law* the *JFSC* may impose a civil financial penalty on a *supervised person* (except where that person is a fund) where the *JFSC* is satisfied that the *supervised person* has, to a significant and material extent, contravened an *AML/CFT/CPF Code of Practice*.

53. Article 21A of the *Commission Law* also permits the *JFSC* to impose a civil financial penalty on a principal person, a key person or a person who performs or performed a senior management function (all as defined in Article 1 of the *Commission Law*) where the *JFSC* is satisfied that the contravention of the *AML/CFT/CPF Code of Practice* by the *supervised person* was:

- committed with the consent or connivance of, or is attributable to neglect on the part of, the principal person, key person or the person who performs or performed a senior management function; or
- aided, abetted, counselled, or procured by such a person.

54. The *JFSC* has published a notice designating "senior management functions" on its website – effective from 13 March 2023.

55. The ability of a *supervised person* to demonstrate compliance with *AML/CFT/CPF Codes of Practice* will also be directly relevant to its regulated status and any assessment of fitness and propriety of its *principal persons* and *key persons*. Non-compliance with any *AML/CFT/CPF Code of Practice* may be regarded by the *JFSC* as an indication of:

- a lack of fitness and propriety under Articles 7 or 8B of the *CIF(J) Law*, Article 10 of the *BB(J) Law*, Article 7 of the *IB(J) Law*, and Article 9 of the *FS(J) Law*; and/or
- a failure to follow certain fundamental principles within a Code of Practice issued under each of the *Regulatory Laws*.

56. Where a breach of an *AML/CFT/CPF Code of Practice* results in a contravention of the *Money Laundering Order*, a *supervised person* and its *employees* can be criminally prosecuted.

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1.5 Jurisdictional scope of the *Money Laundering Order* and *AML/CFT/CPF Codes of Practice*

1.5.1 Application of the *Money Laundering Order* and *AML/CFT/CPF Codes of Practice* to *supervised persons* carrying on business in Jersey

57. By virtue of the definition of *relevant person* in Article 1(1), the *Money Laundering Order* applies to **any *supervised person*** who is carrying on a *supervised business* in or from within Jersey. This will include Jersey-based branches of companies incorporated outside Jersey conducting *supervised business* in Jersey.

58. A distinction should be made between a Schedule 2 business and a *Prescribed NPO*. Although both are *supervised persons*, *Prescribed NPO*s are not Schedule 2 businesses, and therefore are not subject to the requirements of the *Money Laundering Order*.

59. By virtue of Articles 5, 6 and 22 of the *Supervisory Bodies Law*, the *AML/CFT/CPF Codes of Practice* apply to **any *supervised person*** who is carrying on a *supervised business* in or from within Jersey. This will include Jersey-based branches of companies incorporated outside Jersey conducting *supervised business* in Jersey.

60. The *AML/CFT/CPF Codes of Practice* in Sections 2 to 11 of *this Handbook* must be complied with by **all *supervised persons***. The sector-specific sections (12 to 21) within *this Handbook* only provide additional *AML/CFT/CPF Codes of Practice* for particular business types in very limited circumstances.

1.5.2 Application of the *Money Laundering Order* to *supervised persons* carrying on business outside Jersey (overseas)

61. Article 10A of the *Money Laundering Order* explains and regulates the application of the *Money Laundering Order* to *supervised business* carried on outside Jersey.

62. Article 10A(2)(a) of the *Money Laundering Order* explains that a Jersey body corporate or other legal person registered in Jersey (*supervised person*) that carries on a *supervised business* through an overseas branch must comply with the *Money Laundering Order* in respect of that business, irrespective of whether it also carries on *supervised business* in or from within Jersey.

63. However, Article 10A(9) of the *Money Laundering Order* explains that a *supervised person* carrying on any of the business activities described in paragraphs 18 to 22 of Part 3 of Schedule 2 to the *Proceeds of Crime Law* need not comply with paragraphs (2), (3) and (4) in a country or territory outside Jersey in respect of their *supervised business*.

64. Notwithstanding the above paragraph, all the provisions of the *Money Laundering Order* apply to a *supervised person* that is a **legal person** carrying on *supervised business* anywhere in the world. However, in practice this may not apply to all *supervised persons* carrying on *supervised business* on the basis that some businesses currently registered under the *Supervisory Bodies Law* are either sole practitioners or Jersey customary law partnerships.

65. Article 10A(3) of the *Money Laundering Order* requires a *supervised person* (subject to Article 10A(9), see above) who: (i) is registered, incorporated or otherwise established under Jersey law, but who is not a legal person; and (ii) carries on a *supervised business* in or from within Jersey, to apply measures that are at least equivalent to the requirements of the *Money Laundering Order* in respect of any *supervised business* carried on by that person through an overseas branch. This requirement will apply to a limited partnerships registered under the Limited Partnerships (Jersey) Law 1994 and general partnership established under Jersey customary law.

> Note that the term "registered, incorporated or otherwise established" in Article 10A(5) of the *Money Laundering Order* is intended to be understood only to refer to the creation of a 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.

66. Article 10A(2)(b) of the *Money Laundering Order* requires a Jersey body corporate or other legal person (*supervised person*) registered in Jersey (subject to Article 10A(9) of the *Money Laundering Order*, see above) to ensure that any legal person that is majority owned or controlled by that person (referred to in the *Money Laundering Order* as a "subsidiary") applies measures that are at least equivalent to the requirements of the *Money Laundering Order* in respect of any *supervised business* carried on outside Jersey by that subsidiary.

67. Article 10A(4) of the *Money Laundering Order* requires a *supervised person* (subject to Article 10A(9) of the *Money Laundering Order,* see above) who: (i) is registered, incorporated or otherwise established under Jersey law, but who is not a legal person; and (ii) carries on a *supervised business* in or from within Jersey, to ensure that any subsidiary applies measures that are at least equivalent to the requirements of the *Money Laundering Order* in respect of any *supervised business* carried on outside Jersey by that subsidiary. This requirement will apply to a limited partnership registered under the Limited Partnerships (Jersey) Law 1994 and general partnership established under Jersey customary law.

68. In summary, Jersey companies and other legal persons registered in Jersey (subject to Article 10A(9) of the *Money Laundering Order,* see above) are covered by Article 10A(2) of the *Money Laundering Order* in relation to their overseas branches and subsidiaries. Other types of entity who do not have legal personality but who are constituted under Jersey law fall into Articles 10A(3) and (4) of the *Money Laundering Order* in relation to their overseas branches and subsidiaries.

69. Article 10A(6) of the *Money Laundering Order* requires a *supervised person* (subject to Article 10A(9) of the *Money Laundering Order,* see above) to take reasonable steps to comply with paragraphs (2), (3) and (4) to the extent that the law of the country or territory in which that person carries on a *supervised business*, or has a subsidiary carrying on such a business, does not have the effect of prohibiting or preventing the *supervised person* from taking such steps. If the *supervised person* does not comply with paragraphs (2), (3) and (4), the following steps must be taken by the *supervised person*: (i) the *JFSC* must be informed that this is the case; (ii) other reasonable steps to deal effectively with the risk of *money laundering* and the *financing of terrorism or proliferation financing* must be taken.

70. If a *supervised person* carries on a *supervised business* or has a subsidiary carrying on such a business overseas that has more stringent requirements than those set out in the *Money Laundering Order*, Article 10A(10) of the *Money Laundering Order* requires that the *supervised person* ensure that the more stringent requirements are complied with.

1.5.3 Application of *AML/CFT/CPF Codes of Practice* to *supervised persons* carrying on business outside Jersey (overseas)

71. By virtue of Articles 5, 6 and 22 of the *Supervisory Bodies Law*, a *supervised person* (subject to Article 10A(9) of the *Money Laundering Order,* see above) that is a company incorporated in Jersey that carries on a *supervised business* through an overseas branch must comply with the *AML/CFT/CPF Codes of Practice* in respect of that business, irrespective of whether it also carries on *supervised business* in or from within Jersey.

72. By concession, measures that are at least equivalent to *AML/CFT/CPF Codes of Practice* may be applied as an alternative to complying with the *AML/CFT/CPF Codes of Practice*.

73. A *supervised person* (subject to Article 10A(9) of the *Money Laundering Order,* see above) who (i) is registered, incorporated or otherwise established under Jersey law, but who is not a Jersey incorporated company; and (ii) carries on a *supervised business* in or from within Jersey, must apply measures that are at least equivalent to *AML/CFT/CPF Codes of Practice* in respect of any *supervised business* carried on by that person through an overseas branch. This requirement will apply to a foundation or partnership established under Jersey law.

> 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.

74. A *supervised person* (subject to Article 10A(9) of the *Money Laundering Order,* see above) that is a Jersey incorporated company must ensure that any subsidiary applies measures that are at least equivalent to *AML/CFT/CPF Codes of Practice* in respect of any *supervised business* carried on outside Jersey by that subsidiary.

75. A *supervised person* (subject to Article 10A(9) of the *Money Laundering Order,* see above) who (i) is registered, incorporated or otherwise established under Jersey law, but who is not a Jersey incorporated company; and (ii) carries on a *supervised business* in or from within Jersey, must ensure that any subsidiary applies measures that are at least equivalent to *AML/CFT/CPF Codes of Practice* in respect of any *supervised business* carried on outside Jersey by that subsidiary. This requirement will apply to a foundation or partnership established under Jersey law.

76. Where overseas provisions prohibit compliance with one or more of the *AML/CFT/CPF Codes of Practice* (or measures that are at least equivalent), the requirements do not apply and the *JFSC* must be informed that this is the case. In such circumstances, the *AML/CFT/CPF Codes of Practice* require a *supervised person* to take other reasonable steps to effectively deal with the risk of *money laundering*, the *financing of terrorism*, and the *financing of proliferation*.

1.6 Definition of *supervised business*

77. *Supervised business* is defined in Article 1 of the *Supervisory Bodies Law*. This reflects the definition of *financial services business* as provided by Article 36 of the *Proceeds of Crime Law* (which in turn refers to Schedule 2 of the *Proceeds of Crime Law)*.

78. In practice, this means that all activities listed in Schedule 2 of the *Proceeds of Crime Law* are covered by the term *supervised business*.

79. Sector-specific sections for *supervised persons* subject to the funds, security issuers and their service providers, *TCSPs, Wire Transfers Regulations, prepaid cards, AMLSPs, VASPs, real estate agents, high value dealers, Lawyers and Accountants* are set out at Sections 12-21 of *this Handbook* and provide some additional *AML/CFT/CPF Codes of Practice* and *Guidance notes* for *supervised persons* carrying on those types of business.

1.7 *Business relationships* and *one-off transactions*

80. The terms *business relationship* and *one-off transaction* are defined in the Glossary of *this Handbook*.

Guidance notes

81. A *supervised person* 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* (e.g., to determine whether a transaction falls within the definition of a *one-off transaction* described in that Article) is appropriate where it applies the value of the underlying asset(s) to which the instruction relates. For example, regarding services provided in respect of a trust, a *supervised person* may apply the value of the trust assets.

82. Where a value to the underlying assets cannot be determined, or no value for the underlying assets is readily available or ascertainable, the *supervised person* should assume the value of the transaction to be €15,000 or more. Please note the lower thresholds for *MVTS*, *VASP* or operating a casino.

83. With reference to paragraph 81, persons carrying on *MVTS, VASP* or operating a casino should apply their specific transaction thresholds set out in Article 4 of the *Money Laundering Order*.

84. Further sector-specific guidance on determining the value of transactions is provided, where appropriate, in the relevant sector-specific sections.

85. Where a transaction is likely to become a *one-off transaction* or develop into a *business relationship*, the *supervised person* should consider undertaking *identification measures* at the outset.

86. Where the *supervised person* suspects *money laundering,* the *financing of terrorism or proliferation financing* whilst undertaking the above, they should refer to Section 9 of *this Handbook*.

1.8 Risk-based approach

Overview

87. To assist the overall objective of detecting and preventing *money laundering*, the *financing of terrorism*, and the *financing of proliferation*, *this Handbook* adopts a risk-based approach. Such an approach:

- recognises that the *money laundering*, *financing of terrorism*, and *financing of proliferation* threat to a *supervised person* varies across *customers*, countries and territories, products and delivery channels;
- allows a *supervised person* to differentiate between *customers* in a way that matches risk in a particular *supervised person*;
- while establishing minimum standards, allows a *supervised person* to apply its own approach to *systems and controls*, and arrangements in particular circumstances;

- helps to produce a more cost-effective system.

88. A risk-based approach requires steps to be taken to identify how a *supervised person* could be used for *money laundering*, the *financing of terrorism*, or the *financing of proliferation* and establishing the most effective and proportionate way to manage and mitigate the risks in the same way as for all business risks faced by a *supervised person*.

89. The possibility of being used to assist with *money laundering,* the *financing of terrorism*, and the *financing of proliferation* poses many risks for *supervised persons* including:

- criminal and disciplinary sanctions for the *supervised person* and for *key* and *principal persons;*
- civil action against the *supervised person* as a whole and against individual staff; and
- damage to reputation leading to loss of business.

90. *Systems and controls* will not detect and prevent all *money laundering*, *terrorist financing,* or *proliferation financing* activity. A risk-based approach will, however, serve to balance the cost burden placed on a *supervised person* and on its *customers* with a realistic assessment of the threat of it being used in connection with *money laundering,* the *financing of terrorism,* or the *financing of proliferation* by focusing effort where it is needed and has most impact.

91. How a risk-based approach is applied will also depend on the structure of the *supervised person's* business, its size and the nature of its products and services.

92. The *policies and procedures* put in place should be proportionate to the size of the business and the identified risks.

93. *Policies and procedures* may be more straightforward for smaller businesses. Such businesses may offer a smaller range of products or services, with most *customers* falling into similar categories. In these circumstances, a simpler approach may be appropriate for most *customers*, with the focus being on those *customers* that fall outside the usual categories. Larger businesses with a small range of products or services can put standard *AML/CFT/CPF policies and procedures* in place based on generic profiles of *customers*.

94. In more complex *business relationship*s, risk assessment, mitigation, and ongoing monitoring will be more sophisticated and will consider additional information held and knowledge of the *customer's* business activities.

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

Jersey Financial Services Commission

1.9 Equivalence of requirements in other countries and territories

1.9.1 Equivalent business

96. Articles 16 and Part 3A of the *Money Laundering Order* respectively permit reliance to be placed on an *obliged person* and exemptions from *CDD* requirements to be applied to a *customer* carrying on a *supervised business* that is overseen for *AML/CFT/CPF* compliance in Jersey or carrying on business that is *equivalent business*. Sections dealing with the acquisition of a business or block of *customers* and verification of identity also provide concessions from *AML/CFT/CPF Codes of Practice* on a similar basis.

97. *Equivalent business* is defined in Article 5 of the *Money Laundering Order*.

98. The condition set out in Article 5 requiring that the business must be subject to requirements to combat *money laundering,* the *financing of terrorism,* and the *financing of proliferation* consistent with those in the *FATF Recommendations* will be satisfied, **among other things**, where a person is located in an equivalent country or territory.

1.9.2 Equivalent countries and territories

99. With effect from 31 May 2021, the *JFSC* no longer maintains a list of equivalent countries and territories within *this Handbook*. Guidance to assist *supervised persons* to determine equivalence is set out in Section 1.9.3 of *this Handbook*.

100. A country or territory may be considered to be equivalent where:

a. *Financial Institutions* and *DNFBPs* are required to take measures to detect and prevent *money laundering*, the *financing of terrorism*, and the *financing of proliferation* that are consistent with those in the *FATF Recommendations*.

b. *Financial Institutions* and *DNFBPs* are supervised for compliance with those requirements by a regulatory or supervisory authority.

1.9.3 Determining equivalence

101. Requirements for measures to be taken by an *obliged person* or *customer* will be considered to be consistent with the *FATF Recommendations* only where those requirements are established by law, regulation, or other enforceable means.

102. In determining whether or not the requirements for measures to be taken in a country or territory are consistent with the *FATF Recommendations*, a *supervised 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 FSRB or subject to its assessment and follow-up process, a member state of the *EU*, or a member of the *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 *FATF Recommendations* 10-13, 15-21 and 26. Where a person with a specific connection to a *customer* is a *DNFBP* (a term that is defined by the *FATF*), then *FATF Recommendations* 22, 23 and 28 will be relevant;

- specifically – the extent to which a country or territory is achieving *FATF's* immediate outcomes that are directly relevant to the application of available concessions, namely whether *FATF* 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*, the *financing of terrorism*, and the *financing of proliferation*, such as those conducted by the *FATF, FSRBs*, the *IMF* and the World Bank (and published remediation plans);
    c. other publicly available information concerning the effectiveness of a country's or territory's framework.

103. Where a *supervised person* assesses whether a country or territory is an equivalent country or territory, the *supervised person* 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.

104. Links to potential sources of additional information are included in **Appendix B** of *this Handbook*. These are not intended to be exhaustive, nor are they placed in any order of priority. Independent research and judgement will be expected to cater for the requirements in the individual case.