

# **CONSULTATION PAPER NO. 3 2014**

## **REVISION TO THE MONEY LAUNDERING (JERSEY) ORDER 2008**

In order to address recommendations made by the International Monetary Fund and comments made by MONEYVAL in relation to the application of customer due diligence measures.

ISSUED JUNE 2014

# CONSULTATION PAPER

Please note that terms in *italics* are defined in the Glossary of Terms.

The *Commission* invites comments on this consultation paper.  
Responses may be sent directly to [cpcodes@jerseyfsc.org](mailto:cpcodes@jerseyfsc.org) by 18 July 2014.

Alternatively, responses may be made via an online survey, the link to which will appear here within the next few days.

If you require any assistance, clarification or wish to discuss any aspect of the proposal prior to formulating a response, it is of course appropriate to contact the *Commission*. The *Commission* contact is:

**Andrew Le Brun**  
Director, Financial Crime Policy  
Jersey Financial Services Commission  
PO Box 267  
14-18 Castle Street  
St Helier  
Jersey  
JE4 8TP

Telephone: +44 (0) 1534 822065  
Email: [a.lebrun@jerseyfsc.org](mailto:a.lebrun@jerseyfsc.org)

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

# GLOSSARY OF TERMS

AML/CFT	means anti-money laundering and countering the financing of terrorism.
AML/CFT Handbook	means the Handbook for the Prevention and Detection of Money Laundering and Terrorist Financing for Financial Services Business Regulated under the Regulatory Laws.
CDD	means customer due diligence.
CDD measures	means <i>identification measures</i> and on-going monitoring. A full definition is provided in Article 3 of the <i>Money Laundering Order</i> .
Commission	means the Jersey Financial Services Commission.
Commission Law	means the Financial Services Commission (Jersey) Law 1998.
FATF	means the Financial Action Task Force.
Handbook for the Accountancy Sector	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Accountancy Sector.
Handbook for the Legal Sector	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector.
identification measures	means, inter alia, measures to find out the identity of a customer (and its owners and controllers, and any parties on whose behalf it acts); to verify that information by reference to reliable and independent sources; and to collect wider relationship information. A full definition is provided in Article 3 of the <i>Money Laundering Order</i> .
IMF	means the International Monetary Fund.
Money Laundering Order	means the Money Laundering (Jersey) Order 2008.
relevant person	means a person carrying on a financial services business (as described in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999) and which is carrying on that business in or from within Jersey, or, if a Jersey legal person, carrying on that business in any part of the world.
Supervisory Bodies Law	means the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008.
Three Handbooks	means the <i>AML/CFT Handbook</i> , the <i>Handbook for the Accountancy Sector</i> and the <i>Handbook for the Legal Sector</i> .

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# 1 EXECUTIVE SUMMARY

## 1.1 Overview

- 1.1.1 In 2009, the *IMF* published a “third round”<sup>1</sup> report on Jersey’s compliance with the 40+9 Recommendations of the *FATF*.
- 1.1.2 Whilst Jersey was assessed as “complying” or “largely complying” with 44 of the 49 *FATF* Recommendations and 15 of the 16 “core” and “key” *FATF* Recommendations, a number of recommendations were made in the report about how Jersey’s framework for *AML/CFT* could be improved.
- 1.1.3 In response to recommendations made in the report and following public consultation (Consultation Paper No. 7 2013<sup>2</sup> - 19 July 2013) changes were made to a number of important elements of the *Money Laundering Order*.
- 1.1.4 These changes were based on benchmarking against similar provisions in place in the United Kingdom, Isle of Man and Guernsey; in particular those provisions that had previously attracted “largely compliant” ratings from the *IMF* or *FATF* when assessing compliance with former Recommendation 5.
- 1.1.5 Former Recommendation 5 is regarded as a core *FATF* recommendation<sup>3</sup>. “Core” Recommendations are likely, under the future European Directives, to be critical to “equivalence” tests and third country access to European markets. Equivalence will only be likely to be found where a country has been assessed as “largely compliant” or “compliant” with “Core” recommendations. Where a third country’s *AML/CFT* regime is not found to be equivalent, it is possible that future access to European markets may be compromised.
- 1.1.6 In line with the *FATF*’s expectation that every jurisdiction that is not a member of the *FATF* should be subject to the mutual evaluation and follow-up process of a *FATF*-Style Regional Body, Jersey is now covered by MONEYVAL’s rules of procedure. One effect of these rules is that a “progress report” was presented to, and discussed at, a plenary meeting of MONEYVAL in December 2013 (along with a similar report for Guernsey). This “progress report” considered the action taken by the insular authorities to address recommendations made in the *IMF* report.

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<sup>1</sup> This is the term used to describe assessments conducted using the Methodology for Assessing Compliance with the *FATF* 40 Recommendations and 9 Special Recommendations - published in February 2004.

<sup>2</sup> [www.jerseyfsc.org/the\\_commission/general\\_information/press\\_releases/release302.asp](http://www.jerseyfsc.org/the_commission/general_information/press_releases/release302.asp)

<sup>3</sup> Former Recommendations 1, 5, 10, 13 and Special Recommendations II and IV are “core” recommendations.

- 1.1.7 Jersey's "progress report" was based on information provided by the insular authorities, including changes made to the *Money Laundering Order* by the Money Laundering (Amendment No. 6) (Jersey) Order 2013, and was supplemented by a written analysis prepared by MONEYVAL's Secretariat. This written analysis considered whether sufficient action had been taken by Jersey's authorities to address recommendations made by the IMF in respect of the "core" FATF Recommendations.<sup>4</sup>
- 1.1.8 The MONEYVAL Secretariat raised several issues in relation to action taken to address compliance with former Recommendation 5. If further amendments are not made to the *Money Laundering Order* to address the issues raised, it appears that, despite the benchmarking exercise undertaken as described at paragraph 1.1.4 above, there is a greater risk that Jersey may continue to be assessed as "partially compliant" with former Recommendation 5 in the "fourth round" report on Jersey's compliance with the 40+9 Recommendations due to take place this September.
- 1.1.9 In order to address these recommendations, this paper proposes changes to:
- 1.1.9.1 the *Money Laundering Order*;
  - 1.1.9.2 the *AML/CFT Handbook*;
  - 1.1.9.3 the *Handbook for the Accountancy Sector*; and
  - 1.1.9.4 the *Handbook for the Legal Sector*.

## 1.2 What is proposed and why?

- 1.2.1 Sections 4 to 7 of this paper make proposals to amend the *Money Laundering Order* and the *Three Handbooks* in a way that is consistent with:
- 1.2.1.1 international standards;
  - 1.2.1.2 signalled expectations of MONEYVAL; and
  - 1.2.1.3 the money laundering and terrorist financing risk that is present in Jersey.
- 1.2.2 Articles 17 and 18 of the *Money Laundering Order* allow a *relevant person* to apply simplified *identification measures* to a customer in certain circumstances.
- 1.2.3 Conversely, Article 15 of the *Money Laundering Order* requires a *relevant person* to apply enhanced *CDD measures* to a customer in certain circumstances.
- 1.2.4 The circumstances in which simplified *identification measures* may be applied are already narrowly drawn, but there are proposals in this paper that may have the effect of limiting use still further. In particular:

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<sup>4</sup> [www.jerseyfsc.org/the\\_commission/international\\_co-operation/evaluations/moneyval\\_2013report.asp](http://www.jerseyfsc.org/the_commission/international_co-operation/evaluations/moneyval_2013report.asp)

- 1.2.4.1 It would no longer be possible to apply simplified *identification measures* to a customer who is resident in a country or territory that is not compliant with *FATF Recommendations*.
- 1.2.4.2 Where a *relevant person* applies simplified *identification measures* to a customer pursuant to Article 17 of the *Money Laundering Order*, the *relevant person* would be required to apply specified *identification measures* to third parties for whom that customer acts.
- 1.2.5 Accompanying amendments to the *Three Handbooks* will provide that the exclusion referred to at 1.2.4.1 above applies to countries or territories that are the subject of a *FATF* public statement or are covered by its on-going process and will provide further detail on the nature and application of these *identification measures*.
- 1.2.6 The circumstances in which enhanced *CDD measures* are required are set out in Article 15 of the *Money Laundering Order*. The proposals in this paper have the effect of extending these circumstances to include:
  - 1.2.6.1 non-resident customers;
  - 1.2.6.2 customers who are provided with “private banking” services;
  - 1.2.6.3 customers that are “personal asset holding vehicles”; and
  - 1.2.6.4 customers that are companies with nominee shareholders or that issue shares in bearer form.
- 1.2.7 Accompanying amendments to the *Three Handbooks* will set out the measures that a *relevant person* may take in order to demonstrate that it has applied enhanced *CDD measures* in these circumstances.

## 1.3 Who would be affected?

- 1.3.1 The amendments that are proposed in sections 4 to 7 will affect all *relevant persons* that apply simplified *identification measures* or have a business relationship or conduct one-off transactions with a customer who has the characteristics set out in 1.2.6 above.

## 2 CONSULTATION

### 2.1 Basis for consultation

- 2.1.1 The *Commission* has issued this consultation paper in accordance with Article 8(3) of the *Commission Law*, under which the *Commission* “may, in connection with the carrying out of its functions - ....consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate”.
- 2.1.2 In addition, the *Commission* is required to consult on amendments to Codes of Practice that are issued in accordance with Article 22 of the *Supervisory Bodies Law* (which are described as “regulatory requirements” in the *Three Handbooks*).

### 2.2 Responding to the consultation

- 2.2.1 The proposals set out in this consultation paper have already been discussed with the industry representative bodies listed at Appendix A.
- 2.2.2 The *Commission* invites comments in writing from interested parties on the proposed amendments to the *Money Laundering Order* that is attached to this consultation paper as Appendix B. Where comments are made by an industry body or association, that body or association should also provide a summary of the type of individuals and/or institutions that it represents.
- 2.2.3 The cost to industry of implementing these proposals is considered in section 8 of this consultation paper.
- 2.2.4 To assist in analysing responses to the consultation paper, respondents are asked to:
- 2.2.4.1 prioritise comments and to indicate their relative importance; and
  - 2.2.4.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.
- 2.2.5 Mindful of the necessarily short period of time available for responding, the questions associated with the consultation have been made available as an online survey which should be completed alongside a consideration of the proposed amendments.
- 2.2.6 Whilst the *Commission's* strong preference is (where possible) for respondents to use the online survey, respondents may also email their responses to the *Commission* using the following address: [cpcodes@jerseyfsc.org](mailto:cpcodes@jerseyfsc.org). Where responses are submitted in this manner please include the consultation paper number in the subject line of the email.

## 2.3 Next steps

- 2.3.1 Following consultation, the *Commission* will:
  - 2.3.1.1 If necessary, prepare supplementary law drafting instructions to amend the Money Laundering (Amendment No. 7) (Jersey) Law 2014.
  - 2.3.1.2 Recommend to the Chief Minister that he makes the Order.
  - 2.3.1.3 Prepare appropriate changes to the *Three Handbooks*.
- 2.3.2 It is intended that the amending Order should have effect before the end of August 2014.

## 3 THE COMMISSION

### 3.1 Overview

3.1.1 The Jersey Financial Services Commission (the “**Commission**”) is a statutory body corporate established under the Jersey Financial Commission Law (Jersey) Law 1998 (the “**Commission Law**”). It is responsible for the supervision and development of financial services provided in or from within Jersey.

### 3.2 Commission’s functions

3.2.1 The *Commission Law* prescribes that the *Commission* shall be responsible for:

- 3.2.1.1 the supervision and development of financial services provided in or from within Jersey;
- 3.2.1.2 providing the States of Jersey, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;
- 3.2.1.3 preparing and submitting to Ministers recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure;
- 3.2.1.4 such functions in relation to financial services or such incidental or ancillary matters:
  - as are required or authorised by or under any enactment, or
  - as the States of Jersey may, by Regulations, transfer; and
- 3.2.1.5 such other functions as are conferred on the *Commission* by any other Law or enactment.

### 3.3 Guiding principles

3.3.1 The *Commission’s* guiding principles require it to have particular regard to:

- 3.3.1.1 the reduction of risk to the public of financial loss due to dishonesty, incompetence, malpractice, or the financial unsoundness of persons carrying on the business of financial services in or from within Jersey;
- 3.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;
- 3.3.1.3 the best economic interests of Jersey; and
- 3.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

## 4 SIMPLIFIED IDENTIFICATION MEASURES - EXCLUSIONS

### 4.1 Overview

4.1.1 This section proposes changes to Article 17 (Simplified identification measures in circumstances where the customer is a relevant person) and Article 18 (Simplified customer due diligence measures) of the *Money Laundering Order*.

4.1.2 Former *FATF* Recommendation 5 is a “core” recommendation.

### 4.2 CDD measures in place in Jersey

4.2.1 The requirement to perform *CDD measures* – in line with former *FATF* Recommendation 5 – is set out in Article 13 of the *Money Laundering Order*.

4.2.2 Subject to an assessment of the risk, Articles 17 and 18 of the *Money Laundering Order* allow (but do not require) the application of simplified *identification measures* in certain circumstances.

4.2.3 Following recent amendments to the *Money Laundering Order*, Articles 17 and 18 of the *Money Laundering Order* may not be applied in any case where:

4.2.3.1 the *relevant person* suspects money laundering;

4.2.3.2 to do so would present a higher risk of money laundering; or

4.2.3.3 the customer has a relevant connection with a country or territory that is subject to a *FATF* call to apply countermeasures.

### 4.3 MONEYVAL’s written analysis

4.3.1 MONEYVAL’s view is that, in line with the *FATF* Recommendation, the application of simplified *CDD measures* should be limited to customers resident in countries that are compliant with *FATF* Recommendations, regardless of the risk of the product or service provided.

4.3.2 Inter alia, the written analysis referred to in paragraph 1.1.7 above, states that “while the considered conclusion of the authorities is appreciated, it is to be noted that Criterion 5.10 simply states that the application of simplified *CDD measures* to customers resident in another country should be limited to countries compliant with *FATF* Recommendations, irrespective of whether the product or service itself is low risk. It is therefore recommended that the authorities reconsider their position”.

## 4.4 Proposals

- 4.4.1 In light of the comments by MONEYVAL, it is proposed to more tightly regulate the circumstances in which a *relevant person* might apply simplified *identification measures*.
- 4.4.2 An amendment to Article 17 of the *Money Laundering Order* is proposed to prohibit the application of simplified *identification measures* set out in that Article in any case where the customer is resident in a country that is not compliant with *FATF Recommendations*.
- 4.4.3 An amendment to Article 18 of the *Money Laundering Order* is proposed to prohibit the application of simplified *identification measures* set out in that Article in any case where the customer is resident in a country that is not compliant with *FATF Recommendations*.
- 4.4.4 An amendment to Article 1 of the *Money Laundering Order* is proposed to make it clear that a reference to a country not being compliant with *FATF Recommendations* is a reference to a country in respect of which *FATF* has made a public statement identifying the country as one with deficiencies in its anti-money laundering strategy or its strategy for countering the financing of terrorism.
- 4.4.5 To support these changes, it is also proposed to amend guidance provided in relevant sections of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) to explain that this exclusion applies to countries that are the subject of a *FATF* public statement or are covered by its on-going process.
- 4.4.6 Importantly, these proposals will not have the effect that customers resident in these countries must be treated as higher risk. The proposals will simply remove the possibility of simplified *identification measures* being applied in these circumstances.
- 4.4.7 These countries are currently listed at Appendix D1 and D2 of the *AML/CFT Handbook*.<sup>5</sup>

## 4.5 Questions

- 4.5.1 **Do you consider that the proposals are effective and proportionate?**  
Yes/ No  
If no, is this because:
- a) **The proposals will have a disproportionate impact on compliance costs on you/your business (e.g. due to your customer base).**
  - b) **The proposals will have a disproportionate impact on compliance costs on the financial services industry in Jersey.**

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<sup>5</sup> [http://www.jerseyfsc.org/pdf/Part\\_1\\_Appendix\\_D2\\_AML\\_Handbook.pdf](http://www.jerseyfsc.org/pdf/Part_1_Appendix_D2_AML_Handbook.pdf)

- c) You do not consider that countries or territories that are the subject of a FATF public statement or are covered by its on-going process should be considered to be not compliant with FATF Recommendations.
- d) The proposals will place Jersey businesses at a disadvantage to competitors in other jurisdictions.
- e) Other, please explain: \_\_\_\_\_

Additional comments to explain your selection (optional):

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## 5 SIMPLIFIED IDENTIFICATION MEASURES - IDENTIFICATION OF THIRD PARTIES

### 5.1 Overview

- 5.1.1 This section proposes changes to Article 17 (Simplified identification measures in circumstances where the customer is a relevant person) of the *Money Laundering Order*.
- 5.1.2 Former FATF Recommendation 5 is a “core” recommendation.

### 5.2 CDD measures in place in Jersey

- 5.2.1 The requirement to perform *CDD measures* – in line with former FATF Recommendation 5 – is set out in Article 13 of the *Money Laundering Order*.
- 5.2.2 Subject to an assessment of the risk of applying simplified *identification measures*, Article 17 of the *Money Laundering Order* allows (but does not require) such measures to be applied where a customer is acting for one or more third parties, in certain specified scenarios and subject to a number of conditions.
- 5.2.3 The effect of the application of simplified *identification measures* under Article 17 of the *Money Laundering Order* is that a *relevant person* need not identify those third parties nor collect information on, or evidence to verify the identity of, the third parties for which its customer acts. Except in this particular respect, *identification measures* and on-going monitoring must continue to be applied.

### 5.3 MONEYVAL’s written analysis

- 5.3.1 Inter alia, MONEYVAL’s written analysis referred to in paragraph 1.1.7 above observes that “*While it is noted positively that the Jersey authorities have taken steps to strengthen the requirements for the application of simplified identification measures in relation to those categories of intermediaries that may be subject to simplified measures, it appears that no measures have been taken to introduce the requirement in Article 17 to routinely identify any of the intermediary’s underlying customer(s) (or beneficial owners or controllers) before entering into a relationship with the intermediary. In this respect, it is to be noted that criterion 5.9 permits the application of simplified or reduced CDD measures when identifying and verifying the identity of the customer and the beneficial owner. However, the general rule remains that customers must be subject to the full range of CDD measures, including the requirement to identify the beneficial owner. The authorities are therefore recommended to ensure that the concessions available comply with this requirement*”.

## 5.4 Proposals

- 5.4.1 It is proposed to more tightly regulate the circumstances in which simplified *identification measures* might be applied by a *relevant person* under Article 17 of the *Money Laundering Order*.
- 5.4.2 In order to apply simplified *identification measures* to an intermediary under Article 17 of the *Money Laundering Order*, it is proposed that a *relevant person*, in addition to existing provisions, will be required to :
- 5.4.2.1 consider the value and extent of each third party's financial interest in the product, arrangement, account or other investment vehicle offered to the customer by the *relevant person* at the time that the relationship is established or the one-off transaction is carried out; and
- 5.4.2.2 where the *relevant person* considers that the value or financial interest of the third party is significant, apply the identification measure described in Article 3(4)(a) (namely, "finding out identity") to that third party.
- 5.4.3 To support these changes, it is also proposed to amend guidance provided in relevant sections of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) stating that:
- 5.4.3.1 For the purposes of this provision, "finding out identity" shall comprise of:
- For third parties who are individuals - finding out the legal name, principal residential address and date of birth of the third party.
  - For third parties who are legal persons - finding out the name, date and country of incorporation and registered office address of the third party.
  - For third parties who are trustees - finding out the name and date of establishment of the trust, and the mailing address of the trustee.
  - For third parties who are concerned with foundations - finding out the name, date and country of incorporation and mailing address of the foundation.
  - For third parties who are partnerships - finding out the name, date and country of incorporation and registered office address or business address of the partnership.
- 5.4.3.2 In relation to the provision described at paragraph 5.4.2.2 above, the measures should generally be applied to all third parties with interests greater than 25%. The effect of this will be that, where there is a single third party, that third party will always be considered to be significant. For "pooled accounts" a 25 %

threshold will be applied. This is consistent with the arrangement by which guidance currently establishes a 25% threshold for determining beneficial owners pursuant to Article 2(4).

## 5.5 Questions

5.5.1 Do you consider that the proposals are effective and proportionate?

Yes/No

If no, is this because:

- a) The proposals will have a disproportionate impact on you/your business, (e.g. due to the proportion of low fee-earning services you provide that would attract this additional compliance cost).
- b) The proposals will have a disproportionate impact on compliance costs on the financial services industry in Jersey.
- c) The proposals will place Jersey businesses at a disadvantage to competitors in other jurisdictions.
- d) The collection of basic identity information will not be sufficient to enable a relevant person to make a determination of risk in relation to third parties.
- e) The proposed 25 % threshold is too high.
- f) The proposed 25 % threshold is too low.
- g) Your customers will be reluctant to supply basic information on third parties.
- h) Information may soon become out of date and not relevant.
- i) Other, please explain: \_\_\_\_\_

Additional comments to explain your selection (optional):

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## 6 ENHANCED CDD MEASURES

### 6.1 Overview

6.1.1 This section proposes changes to Article 15 (Enhanced customer due diligence) of the *Money Laundering Order*.

6.1.2 Former *FATF* Recommendation 5 is a “core” recommendation.

### 6.2 CDD measures in place in Jersey

6.2.1 The requirement to perform *CDD measures* – in line with former *FATF* Recommendation 5 – is set out in Article 13 of the *Money Laundering Order*.

6.2.2 Article 15 of the *Money Laundering Order* requires enhanced *CDD measures* to be applied in certain specified scenarios.

6.2.3 The effect of the application of enhanced *CDD measures* is that a *relevant person* must apply *CDD measures* that involve specific and adequate measures to compensate for the higher risk of money laundering. These measures will reflect the risk assessment for a particular customer.

### 6.3 MONEYVAL’s written analysis

6.3.1 MONEYVAL’s written analysis referred to in paragraph 1.1.7 above states that “*During the 2009 assessment, Jersey was found not to require enhanced CDD measures for all examples of higher-risk business set out in the FATF Recommendations*”.

6.3.2 It further states that “*It appears that no changes have been implemented to address this matter in the period since the assessment. The authorities are therefore recommended to seriously re-consider implementing the recommendation made by the assessment team in 2009 regarding this matter*”.

6.3.3 MONEYVAL considers that, in line with the *FATF* Recommendations, categories of customer that require the application of enhanced due diligence measures should include non-resident customers, customers provided with private banking services, legal persons or arrangements that are personal asset holding vehicles and companies that have nominee shareholders or shares in bearer form.

### 6.4 Proposals

6.4.1 It is proposed to extend the categories of customer to which enhanced *CDD measures* are required to be applied under Article 15 of the *Money Laundering Order*, to include:

6.4.1.1 non-resident customers;

- 6.4.1.2 customers who are provided with “private banking” services;
- 6.4.1.3 customers that are “personal asset holding vehicles”; and
- 6.4.1.4 customers that are companies with nominee shareholders or that issue shares in bearer form.
- 6.4.2 It is proposed to explain these categories in the *Money Laundering Order* as follows:
- 6.4.2.1 Resident: a person is regarded as being resident in a country if -
- in the case of an individual, he or she has provided an address in that country; or
  - in the case of a legal person, the person is registered, incorporated or otherwise established under the law of that country.
- 6.4.2.2 “Private banking” services: a service shall be regarded as a private banking service if:
- the service is offered, or it is proposed to offer the service, only to persons identified by the service provider as being eligible for the service, having regard to the person’s net worth; and
  - the service -
    - (i) involves a high value investment,
    - (ii) is a non-standard banking or investment service tailored to the person’s needs, or uses corporate or trust investment structures, tailored to the person’s needs, or
    - (iii) offers opportunities for investment in more than one jurisdiction.
- 6.4.2.3 Customers that are personal asset holding vehicles: this shall apply where the customer is-
- a legal person established by an individual for the purpose of holding assets for investment purposes; or
  - an individual<sup>6</sup> acting on behalf of a legal arrangement established for the purpose of holding assets for investment purposes.
- 6.4.3 To support these changes it is also proposed to amend guidance provided in relevant sections of the *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) to make it clear that enhanced CDD measures will be in addition to *identification measures* undertaken.

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<sup>6</sup> It is intended that this should also apply to non-individuals who may be acting on behalf of a legal arrangement established for the purpose of holding assets for investment purposes.

- 6.4.4 The *AML/CFT Handbook* (and equivalent provisions in the *Handbook for the Accountancy Sector* and *Handbook for the Legal Sector*) will also set out the measures that a *relevant person* may take in order to demonstrate that it has applied enhanced *CDD measures* in relation to the above categories of customer.
- 6.4.5 Interested parties are invited to make submissions proposing measures (either *identification measures* or ongoing monitoring) that will be effective methods of compensating for the specific money laundering risks attached to the categories of customers set out at paragraph 6.4.1 above.
- 6.4.6 Importantly, these proposals will not have the effect that these categories of customers must always be treated as presenting the highest risk. The proposals will require additional *CDD measures* to be applied, but the nature of those measures can still be determined on the basis of the particular risk of a customer.

## 6.5 Questions

- 6.5.1 **Do you consider that the proposals are effective and proportionate?**

Yes / No

If no, is this because:

- a) The proposals will have a disproportionate impact on compliance costs on you/your business.
- b) The proposals will have a disproportionate impact on compliance costs on the financial services industry in Jersey.
- c) The proposals will place Jersey businesses at a disadvantage to competitors in other jurisdictions.
- d) One or more of the definitions proposed are too broad.
- e) One or more of the definitions proposed are too narrow.

Please explain: \_\_\_\_\_

\_\_\_\_\_

- 6.5.2 **Please include suggestions for additional measures (either *identification measures* or ongoing monitoring) that are commensurate with the risks attached to each of the identified categories of customer:**

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- 6.5.3 **Additional comments:**

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## 7 MISCELLANEOUS AMENDMENTS

### 7.1 Overview

- 7.1.1 This section proposes a number of changes to the *Money Laundering Order* unrelated to earlier sections that will update references, correct typographical errors and improve clarity.

### 7.2 Proposals

- 7.2.1 It is proposed to make the following amendments:
- 7.2.1.1 Amend Article 13(3A) to include reference to Article 3(4)(a) rather than Article 3(4).
  - 7.2.1.2 Amend Article 13(11)(b)(ii) to remove an incorrect reference to Article 3(3).
  - 7.2.1.3 Amend Article 16A(2)(b) to correct a typographical error.
  - 7.2.1.4 Amend Article 17(4) and (9)(a) to clarify the extent of the risk assessment to be undertaken, making it clear that the assessment must also take into account the customer's business.
  - 7.2.1.5 Amend Article 17(12) to correct a typographical error.

### 7.3 Further policy proposals

- 7.3.1 While not included in the current draft amendment to the *Money Laundering Order* (attached to this consultation paper), it is also proposed to make the following amendments when a suitable legislative vehicle becomes available.

#### Consequential amendment to Article 14:

- 7.3.2 It is proposed to amend Article 14 (2) to include reference to Article 13 (6) and (8) in addition to Article 13 (4). This is necessary to make clear that a relationship must be terminated whenever a *relevant person* is unable to apply *identification measures*, regardless of the timing of those *identification measures*.

#### FIU ability to obtain information:

- 7.3.3 Currently Article 21 (4) provides that any *relevant person* who has made a disclosure to a designated police officer or designated customs officer must provide to the designated police officer or designated customs officer such additional information as the officer may reasonably request.
- 7.3.4 It is proposed to amend the *Money Laundering Order* to extend this obligation to all *relevant persons*, not only the *relevant person* that has made a disclosure.

7.3.5 This amendment is required in order to fully comply with former *FATF* Recommendation 26, which provides that the Financial Intelligence Unit have the power to obtain information generally from all entities that are subject to an obligation to report suspicions.

## 7.4 Question

7.4.1 Do you consider that the proposals are effective and proportionate?

Yes/No

If no, please provide reasons:

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## 8 COST BENEFIT ANALYSIS

### 8.1 Costs to Industry

#### Simplified identification measures – exclusions

- 8.1.1 It is thought that the *Commission's* proposals to more tightly regulate the circumstances in which simplified *identification measures* might be applied will be largely cost neutral, except in the case of a *relevant person* who has hitherto:
- 8.1.1.1 Taken on a customer who is resident in one of the countries listed in Appendix D2 (sources 1 and 2) as not compliant with *FATF Recommendations*; and
  - 8.1.1.2 Applied simplified *identification measures* pursuant to Article 17 or 18 of the *Money Laundering Order* in relation that customer.
- 8.1.2 Informal indications from industry bodies in relation to these proposals was that such cases were relatively uncommon, as residence in such countries is already included as a factor when risk assessing the customer.

#### Simplified identification measures – third parties

- 8.1.3 The proposal to require the collection of basic identity information in relation to third parties on whose behalf a customer acts is not expected to materially affect costs for most *relevant persons*.
- 8.1.4 Informal indications from industry bodies in relation to these proposals was that, since the required information was already collected and held by the customer and would not need to be further updated, it could readily be made available to the *relevant person*. Given that this requirement is relatively uncommon in other jurisdictions, there may be practical difficulties obtaining the information from some customers.
- 8.1.5 The most material impact is expected to occur in the case of very low fee services, such as those listed in section 4.10.5 of the *Handbook for the Legal Sector*, where a minimal increase in costs might be disproportionate to the income generated.

#### Enhanced CDD measures

- 8.1.6 It is thought that proposals to require enhanced *CDD measures* to be applied in relation to non-resident customers, private banking, legal persons or arrangements that are personal asset holding vehicles and companies that have nominee shareholders or shares in bearer form will be largely cost neutral.

- 8.1.7 Informal indications from industry bodies in relation to these proposals was that the proposed categories of customer are already often subject to additional measures. Introducing a requirement to apply enhanced *CDD measures* would merely reflect current practice, so long as there remains sufficient flexibility in the measures required to be applied (which is indeed the case).

## 8.2 Costs to the Commission

- 8.2.1 It is not expected that the *Commission* will incur any additional costs as a result of the proposals in this paper.

## 8.3 Benefits

- 8.3.1 The proposals are intended to address recommendations made by the *IMF* and the comments made by *MONEYVAL* and to demonstrate to *MONEYVAL* and others that the Island is committed to preventing its financial system from being used by money launderers and terrorist financiers.
- 8.3.2 This will be a positive factor to take into account when Jersey is assessed for compliance with former Recommendation 5 and makes it more likely to be considered “equivalent” under future European Directives.

## 9 SUMMARY OF QUESTIONS

### REFERENCE

### QUESTION

**4.5.1** Do you consider that the proposals are effective and proportionate?

Yes / No

If no, is this because:

- a) The proposals will have a disproportionate impact on compliance costs on you/your business (e.g. due to your customer base).
- b) The proposals will have a disproportionate impact on compliance costs on the financial services industry in Jersey.
- c) You do not consider that countries or territories that are the subject of a FATF public statement or are covered by its on-going process should be considered to be not compliant with FATF Recommendations.
- d) The proposals will place Jersey businesses at a disadvantage to competitors in other jurisdictions.
- e) Other, please explain: \_\_\_\_\_

Additional comments to explain your selection (optional):

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**5.5.1** Do you consider that the proposals are effective and proportionate?

Yes / No

If no, is this because:

- a) The proposals will have a disproportionate impact on you/your business, (e.g. due to the proportion of low fee-earning services you provide that would attract this additional compliance cost).
- b) The proposals will have a disproportionate impact on compliance costs on the financial services industry in Jersey.
- c) The proposals will place Jersey businesses at a disadvantage to competitors in other jurisdictions.
- d) The collection of basic identity information will not be sufficient to enable a relevant person to make a determination of risk in relation to third parties.
- e) The proposed 25 % threshold is too high.
- f) The proposed 25 % threshold is too low.
- g) Your customers will be reluctant to supply basic information on third parties.
- h) Information may soon become out of date and not relevant.
- i) Other, please explain: \_\_\_\_\_

Additional comments to explain your selection (optional):

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**6.5.1** Do you consider that the proposals are effective and proportionate?

Yes / No

If no, is this because:

- a) The proposals will have a disproportionate impact on compliance costs on you/your business.
- b) The proposals will have a disproportionate impact on compliance costs on the financial services industry in Jersey.
- c) The proposals will place Jersey businesses at a disadvantage to competitors in other jurisdictions.
- d) One or more of the definitions proposed are too broad.
- e) One or more of the definitions proposed are too narrow.

Please explain: \_\_\_\_\_

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**6.5.2** Please include suggestions for additional measures (either identification measures or ongoing monitoring) that are commensurate with the risks attached to each of the identified categories of customer:

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**6.5.3** Additional comments:

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**7.4.1** Do you consider that the proposals are effective and proportionate?

Yes / No

If no, please provide reasons:

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# APPENDIX A

## List of representative bodies who have provided comments on the draft proposals set out in this consultation paper.

The proposals set out in this consultation paper have been shared in draft form with the following industry representative bodies:

- Law Society of Jersey
- Jersey Bankers' Association
- Society of Trust and Estate Practitioners – Jersey branch
- Jersey Society of Chartered and Certified Accountants
- Jersey Funds Association
- Jersey Association of Trust Companies

The proposals set out in this consultation paper have also been shared in draft form with working groups comprising compliance officers from law firms and accountancy firms.

# **Appendix B:**

## **Draft Money Laundering Order**



Jersey

## **MONEY LAUNDERING (AMENDMENT No. 7) (JERSEY) ORDER 201-**

### **Explanatory Note**

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This Order amends the Money Laundering (Jersey Order) 2008.

*Article 1* defines “principal Order”, a term used in this Order, as the Money Laundering (Jersey) Order 2008.

*Article 2* amends Article 1 of the principal Order so as to define expressions being introduced into the principal Order by this Order.

*Article 3* amends Article 13(3A) to make clear that when a relevant person is finding out the identity of a person, including the person’s name and legal status, by 31st December 2014, the relevant person does not need to obtain evidence of that identity within the same timescale. Article 13 already sets out when evidence of the identity of a person needs to be obtained.

*Article 3* also amends Article 13(11)(b)(ii) of the principal Order so that a relevant person need not comply with the due diligence measures described in Article 13(1) or the enhanced measures in Article 15 before establishing a business relationship or continuing an existing business relationship with the holder of units in a recognised fund, unclassified fund, unregulated fund or non-public fund, if (amongst other conditions) a person who is registered to carry on investment business under the Financial Services (Jersey) Law 1998, or who is carrying on equivalent business to investment business, has in relation to the holder of the units applied the identification measures in Article 3(2). The amendment has removed the requirement for such registered person to also have applied the ongoing customer due diligence measures described in Article 3(3).

*Article 4* amends Article 15 of the principal Order so as to add 4 new circumstances when a relevant person (defined in the principal Order) must apply enhanced customer due diligence measures. These circumstances are when a customer of the relevant person is not resident in Jersey; when the relevant person provides, or proposes to provide a customer with private banking services; when the customer of the relevant person is a legal person established by an individual for the purpose of holding assets for investment purposes, or an individual acting on behalf of a legal arrangement established for the purpose; and when the customer of the relevant person is a company with nominee shareholders or that issues shares in bearer form.

*Article 5* amends the test in Article 16A of the principal Order for determining whether a person is a member of the same financial group as another.



*Article 6* amends Article 17 of the principal Order so as to provide that where a person is applying simplified identification measures in respect of a customer in any of the circumstances set out in that Article, the relevant person must nevertheless consider the value and extent of any third party's financial interest in the product, arrangement, account or other investment vehicle offered to the third party by the customer. Where the relevant person considers that the value or financial interest of any such third party is significant, the relevant person must apply the identity measures described in Article 3(4)(a) to that third party (finding out the identity of the third party, including the third party's legal status).

Article 4 also amends the list of circumstances in Article 17(14) when a relevant person may not rely upon the identification measures of a customer, so as to include the situation where the customer is resident in a country that is not compliant with the recommendations of the Financial Action Task Force ("FATF").

*Article 7* amends the list of circumstances in Article 18(9) when a relevant person may not apply simplified due diligence measures, so as to include the situation where the customer is resident in a country that is not compliant with the recommendations of FATF.

*Article 8* gives the title of this Order and provides for it to come into force [on the day after it is made].



Jersey

## **MONEY LAUNDERING (AMENDMENT No. 7) (JERSEY) ORDER 201-**

### **Arrangement**

#### **Article**

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2	Article 1 of principal Order amended.....	32
3	Article 13 of principal Order amended.....	32
4	Article 15 of principal Order amended.....	33
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Jersey

## **MONEY LAUNDERING (AMENDMENT No. 7) (JERSEY) ORDER 201-**

*Made* [date to be inserted]  
*Coming into force* [date to be inserted]

**THE CHIEF MINISTER**, in pursuance of Articles 37 and 43 of the Proceeds of Crime (Jersey) Law 1999, orders as follows –

### **1 Interpretation**

In this Order “principal Order” means the Money Laundering (Jersey) Order 2008.

### **2 Article 1 of principal Order amended**

After Article 1(2) of the principal Order there shall be inserted the following paragraphs –

“(3) In this Order a person is regarded as being resident in a country if –

- (a) in the case of an individual, he or she has provided an address in that country; or
- (b) in the case of a legal person, the person is registered, incorporated or otherwise established under the law of that country.

(4) In this Order a reference to a country not being compliant with FATF recommendations is a reference to a country in respect of which FATF has made a public statement identifying the country as one with deficiencies in its anti-money laundering strategy or its strategy for countering the financing of terrorism.”.

### **3 Article 13 of principal Order amended**

In Article 13 of the principal Order –

- (a) in paragraph (3A), for the words “Article 3(4)” there shall be substituted the words “Article 3(4)(a)”;
- (b) in paragraph (11)(b)(ii) the words “and (3)” shall be deleted.



#### 4 Article 15 of principal Order amended

In Article 15 of the principle Order –

- (a) in paragraph (1)(a) for the words “paragraphs (3), (3A), (4), (4A) and (5)” there shall be substituted the words “paragraphs (2A), (3), (3A), (4), (4A), (5), (8), (10), and (11)”;
- (b) after paragraph (2) there shall be added the following paragraph –  
“(2A) This paragraph applies where the customer is not resident in Jersey.”;
- (c) in paragraph (3B) –
  - (i) in sub-paragraph (c) the words “or incorporated” shall be deleted,
  - (ii) in sub-paragraph (d) for the words “a registered office or other address” there shall be substituted the words “an address”;
- (d) after paragraph (7) there shall be added the following paragraphs –
  - (8) This paragraph applies where the relevant person provides or proposes to provide a customer with private banking services.
  - (9) For the purposes of paragraph (8) a service shall be regarded as a private banking service if –
    - (a) the service is offered, or it is proposed to offer the service, only to persons identified by the service provider as being eligible for the service, having regard to the person’s net worth; and
    - (b) the service –
      - (i) involves a high value investment,
      - (ii) is a non-standard banking or investment service tailored to the person’s needs, or uses corporate or trust investment structures, tailored to the person’s needs, or
      - (iii) offers opportunities for investment in more than one jurisdiction.
  - (10) This paragraph applies where the customer of the relevant person is –
    - (a) a legal person established by an individual for the purpose of holding assets for investment purposes; or
    - (b) an individual acting on behalf of a legal arrangement established for the purpose of holding assets for investment purposes.
  - (11) This paragraph applies where the customer of the relevant person is a company with nominee shareholders or that issues shares in bearer form.”.

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**5 Article 16A of principal Order amended**

At the end of Article 16A(2)(b) of the principle Order for the word “and” there shall be substituted the word “or”.

**6 Article 17 of principal Order amended**

In Article 17 of the principal Order –

- (a) in paragraph (4), for the words “having regard to the customer’s business and the higher risk of money laundering” there shall be substituted the words “having regard to the risk of money laundering inherent in the customer’s business and the higher risk of money laundering associated with that type of business”;
- (b) in paragraph (9)(a), for the words “having regard to the customer’s business and the higher risk of money laundering” there shall be substituted the words “having regard to the risk of money laundering inherent in the customer’s business and the higher risk of money laundering associated with that type of business”;
- (c) after paragraph (9), there shall be inserted the following paragraph –
  - “(9A) If, having satisfied the conditions in paragraph (4) in relation to a customer to which paragraph (3) applies, or paragraph (9) in relation to a customer to which paragraph (5), (6), (7), or (8) applies, the relevant person does not apply the identification measures specified in Article 3(2)(b), the relevant person shall instead –
    - (a) consider the value and extent of any third party’s financial interest in the product, arrangement, account or other investment vehicle offered to the customer by the relevant person; and
    - (b) where the relevant person considers that the value or financial interest of the third party is significant, apply the identification measure described in Article 3(4)(a) to that third party.”;
- (d) in paragraph (12) for the word “Regulation” there shall be substituted the word “Article”;
- (e) for paragraph (14) there shall be substituted the following paragraph –
  - “(14) Nothing in this Article shall permit a relevant person to apply simplified identification measures if –
    - (a) the relevant person suspects money laundering;
    - (b) the relevant person considers that there is a higher risk of money laundering on the basis of the assessments made under paragraph (4) or (9);
    - (c) the customer is resident in a country that is not compliant with the FATF recommendations;
    - (d) the customer is a person in respect of whom Article 15(3A) applies; or

- 
- (e) the customer is a person in respect of whom Article 15(4) applies.”.

#### **7 Article 18 of principal Order amended**

For Article 18(9) of the principal Order there shall be substituted the following paragraph –

- “(9) Nothing in this Article shall apply if –
  - (a) the relevant person suspects money laundering;
  - (b) the relevant person considers that there is a higher risk of money laundering;
  - (c) the customer is resident in a country that is not compliant with the FATF recommendations; or
  - (d) the customer is a person in respect of whom Article 15(3A) applies.”.

#### **8 Citation and commencement**

This Order may be cited as the Money Laundering (Amendment No. 7) (Jersey) Order 201- and shall come into force [the day after it is made.]