

CONSULTATION PAPER NO. 2 2013

REVISION TO THE MONEY LAUNDERING (JERSEY) ORDER 2008

A consultation on proposals to amend provisions dealing with enhanced and simplified customer due diligence

ISSUED 10 MAY 2013

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Heather Bestwick at Jersey Finance Limited (“**Jersey Finance**”) is coordinating an Industry response that will incorporate any matters raised by local businesses. Comments should reach Jersey Finance by 10 June 2013.

Responses should be sent to:

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Alternatively, responses may be sent directly to Andrew Le Brun at the Commission by 10 June 2013. 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:

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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

CDD	means customer due diligence
the Commission	means the Jersey Financial Services Commission
the Commission Law	means the Financial Services Commission (Jersey) Law 1998
the FATF	means the Financial Action Task Force
the AML/CFT Handbook	means the Handbook for Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business Regulated under the Regulatory Laws
Jersey Finance	means Jersey Finance Limited
the Money Laundering Order	means the Money Laundering (Jersey) Order 2008

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1 THE COMMISSION

1.1 Overview

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

1.2 Commission’s functions

1.2.1 The Commission Law prescribes that the Commission shall be responsible for:

1.2.1.1 the supervision and development of financial services provided in or from within Jersey;

1.2.1.2 providing the States, any Minister or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;

1.2.1.3 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;

1.2.1.4 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 may, by Regulations, transfer; and

1.2.1.5 such other functions as are conferred on the Commission by any other Law or enactment.

1.3 Guiding principles

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

1.3.1.1 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;

1.3.1.2 the protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters;

1.3.1.3 the best economic interests of Jersey; and

1.3.1.4 the need to counter financial crime in both Jersey and elsewhere.

2 CONSULTATION

2.1 Background

- 2.1.1 In November 2011, the Commission published proposals to revise the Money Laundering (Jersey) Order 2008 (the “**Money Laundering Order**”)¹ in a way that would:
- 2.1.1.1 extend the application of the concession that is set out in Article 17 of the Money Laundering Order to wholly-owned subsidiaries of “regulated persons” – that are not themselves regulated;
 - 2.1.1.2 allow simplified customer due diligence (“**CDD**”) measures to be applied under Article 18 of the Money Laundering Order to a pension scheme that permits members to transfer membership interests to a person post death; and
 - 2.1.1.3 revise the definition of “regulated market” in Article 18 of the Money Laundering Order so that it would be easier to apply simplified CDD measures to customers that are companies with securities listed on transparent markets.
- 2.1.2 Feedback on these proposals was published in December 2012² and an extract from that paper is attached as Appendix B to this consultation paper.
- 2.1.3 On the basis of responses received to the consultation paper, Section 3.4.2 of the Handbook for Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business Regulated under the Regulatory Laws (the “**AML/CFT Handbook**”) was revised on 1 February 2013. It now includes a definition of “relevant connection”, in the context of a business relationship with a person associated with a country or territory that does not apply, or insufficiently applies, the Financial Action Task Force (the “**FATF**”) Recommendations.

2.2 What is proposed and why?

- 2.2.1 In line with feedback reproduced in Appendix B of this paper, Articles 17 and 18 of the Money Laundering Order are to be revised.
- 2.2.2 Article 13(3A) of the Money Laundering Order - which provides that enhanced CDD measures must be applied where a relevant person has a business relationship with a person connected with a country that does not apply, or insufficiently applies, the FATF Recommendations - is also to be revised.
- 2.2.3 It is to include a definition of what is meant by a “relevant connection” - based on guidance recently published in Section 3.4.2 of the AML/CFT Handbook - and is to make reference to countries for which the FATF calls for enhanced CDD to be applied by financial institutions - in line with revised FATF Recommendation 19.

¹ http://www.jerseyfsc.org/pdf/Consultation_Paper_No6_2011_CDD_Measures.pdf

² http://www.jerseyfsc.org/pdf/Feedback_to_CP_No6_2011_CDD_Measures.pdf

- 2.2.4 Finally, following the introduction of the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012, Article 23C of the Money Laundering Order is to be deleted.

2.3 Who would be affected?

- 2.3.1 The amendments that are proposed will affect all persons carrying on a financial services business and which are:
- 2.3.1.1 carrying on that business in or from within Jersey; or
 - 2.3.1.2 if a Jersey company, carrying on that business in any part of the world.
- 2.3.2 Such a person is referred to in the Money Laundering Order as a “**relevant person**”.

2.4 Basis for consultation

- 2.4.1 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*”.

2.5 Responding to the consultation

- 2.5.1 The Commission invites comments in writing from interested parties on the proposed amendment to the Money Laundering Order that is attached to this consultation paper as Appendix C. 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.
- 2.5.2 To assist in analysing responses to the consultation paper, respondents are asked to:
- 2.5.2.1 prioritise comments and to indicate their relative importance; and
 - 2.5.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

2.6 Next steps

- 2.6.1 Following consultation, the Commission will:
- 2.6.1.1 if necessary, prepare supplementary law drafting instructions to amend the Money Laundering (Amendment No. 5) (Jersey) Law 201-.
 - 2.6.1.2 recommend to the Minister for Treasury & Resources that he makes the Order.

APPENDIX A

List of representative bodies who have been sent this consultation paper.

The consultation paper has been sent to all members of the Commission's AML/CFT Steering Group. Members are listed on the Commission's website under AML/CFT Steering Group.

In addition, copies of this paper have been sent to:

- Association of English Solicitors Practising in Jersey
- Association of Investment Companies
- Chartered Institute for Securities & Investment – Jersey branch
- Institute of Directors – Jersey branch
- Jersey Association of Trust Companies
- Jersey Bankers' Association
- Jersey Chamber of Commerce and Industry Incorporated
- Jersey Compliance Officers Association
- Jersey Estate Agents Association
- Jersey Finance Limited
- Jersey Funds Association
- Jersey International Insurance Association
- Jersey Motor Traders Association
- Jersey Society of Chartered and Certified Accountants
- Law Society of Jersey
- Personal Finance Society - Jersey branch

APPENDIX B

5 SUMMARY OF RESPONSES – SIMPLIFIED CDD MEASURES

5.1 Question 6.2.5.1

Do you agree that the scope of the concession in Article 17 of the Money Laundering Order should be extended to include wholly-owned subsidiaries of “regulated persons” that meet the criteria listed above? If you do not, please explain why.

- 5.1.1 Thirteen responses were received to this question.
- 5.1.2 Eleven respondents agreed that the scope of Article 17 of the Money Laundering Order should be extended to include wholly-owned subsidiaries.
- 5.1.3 One of those eleven respondents thought that some of the conditions attached to the extension of the concession to wholly-owned subsidiaries of regulated persons should be changed, but did not explain what those changes should be.
- 5.1.4 Another of the eleven thought that guidance should be provided to explain how a relevant person might determine that a regulated person had a sound reason for placing a wholly-owned subsidiary between itself and its customers.
- 5.1.5 One respondent agreed that the scope of the concession in Article 17 should be extended to include wholly-owned subsidiaries of regulated persons, but did not agree with the criteria proposed in section 6.2.4 of the consultation paper, which it thought presented too onerous a burden and would require extensive due diligence.
- 5.1.6 One respondent did not say whether it agreed with the proposal. However, it thought that the basis for extending use of the concession was too prescriptive and might hamper use of the concession in practice. It also thought that the proposed concession should include reference to associated companies under common ownership rather than subsidiaries.

Commission Response

- 5.1.7 The Commission will request the Minister to extend the application of the concession in Article 17 of the Money Laundering Order to wholly owned subsidiaries of “regulated persons” – based on the circumstances listed in section 6.2.4 of the consultation paper, except that:
 - 5.1.7.1 it is not proposed to make reference to the application of a “sound reason” on the basis that other conditions are considered to be sufficient; and
 - 5.1.7.2 it will be necessary for the wholly owned subsidiary to be established in the same jurisdiction as the “regulated person”.

- 5.1.8 Article 17 provides that a relevant person need not apply certain identification measures to a customer who is acting for one or more third parties - if that relevant person “thinks fit”. Section 4.10.1 of the AML/CFT Handbook explains that a relevant person must first assess the risk in avoiding the application of such measures. Such an assessment of risk will necessarily require a dialogue with the customer that can readily cover the matters described in section 6.2.4 of the consultation paper.
- 5.1.9 This amendment is not intended to fundamentally change the basis for the application of the concession set out in Article 17 - which is limited to customers carrying on some prudentially supervised activities (and not also wholly owned subsidiaries of such companies, which may not be prudentially supervised or subject to requirements to counter money laundering and terrorist financing). Rather the purpose of the amendment is to recognise that some “regulated persons” carry on their activities through wholly-owned nominee companies, where the substance is that the relationship is still between the relevant person and “regulated person”.

5.2 Question 6.2.5.2

Do you consider that the scope of the concession set out in Article 18(7) of the Money Laundering Order should also be extended to include wholly-owned subsidiaries of “regulated persons” that meet the criteria listed above?

- 5.2.1 Thirteen responses were received to this question.
- 5.2.2 Eleven respondents agreed that the scope of Article 18(7) of the Money Laundering Order should be extended to include wholly-owned subsidiaries of “regulated persons” that meet the criteria listed at 6.2.4 of the consultation paper.
- 5.2.3 In order to demonstrate that a relevant person had complied with the criteria listed in section 6.2.4, one of the eleven respondents thought that a relevant person should be able to determine the measures to be applied.
- 5.2.4 Two respondents thought that the scope of the concession in Article 18(7) should be extended to include wholly-owned subsidiaries of “regulated persons”, without the application of criteria.

Commission Response

- 5.2.5 The Commission will request the Minister to extend the application of the concession in Article 18(7) of the Money Laundering Order to wholly owned subsidiaries of “regulated persons” - based on the circumstances listed in section 6.2.4 of the consultation paper.
- 5.2.6 Consideration will be given to extending the application of Article 18(7) to other wholly-owned subsidiaries, as part of a wider review of the basis for, and scope of, customer due diligence concessions in Articles 16 to 18 of the Money Laundering Order (referred to in section 1.1 of the consultation paper).

5.3 Question 6.3.6.1

Do you agree that the concession in Article 18(3) of the Money Laundering Order should prevent any assignment of interests during the lifetime of a member, but allow interests to be transferred after the death of a member, subject to the performance of identification measures on the transferee? If you do not, please explain why.

- 5.3.1 Thirteen responses were received to this question.
- 5.3.2 Twelve respondents agreed with the proposal to allow interests in a pension, superannuation or similar scheme to be assigned after the death of a member, subject to the performance of identification measures on the transferee.
- 5.3.3 One of those twelve thought that the nature of the relationship between the deceased member and transferee should also be considered when deciding whether to use the concession.
- 5.3.4 Another of the twelve asked for guidance to be provided on the customer due diligence measures to be conducted on the executor at the time of death of the member.
- 5.3.5 Another of the twelve suggested that the Commission should look at other activities that by their nature pose a low risk, with a view to relaxing some requirements.
- 5.3.6 One respondent did not agree with the proposal. It thought that, if contributions are made by an employer or by way of deductions from wages, then the scheme should be considered to present a lower risk without further conditions.

Commission Response

- 5.3.7 The Commission will request the Minister to amend Article 18(3) of the Money Laundering Order so that identification measures are not required in the case of a business relationship or one-off transaction that relates to a pension, superannuation or similar scheme where:
 - 5.3.7.1 contributions to the scheme are made by an employer or by way of deduction from wages; and
 - 5.3.7.2 the rules of the scheme do not permit the assignment of interests of a member, except after death.
- 5.3.8 Where this concession is applied, there will be no requirement to identify or verify the identity of members of the scheme (nor executors following the death of a member).

- 5.3.9 In a case where a relevant person is the trustee of such a scheme, the Minister will be requested to provide in Article 18(3) that, before an interest can be assigned, identification measures in line with Article 3 of the Money Laundering Order must be applied to the person to whom the interest is to be assigned. Guidance will provide that a relevant person can demonstrate that it has applied measures in line with the Money Laundering Order, where it takes into account the relationship between the member and assignee.
- 5.3.10 Like in Guernsey, the Minister will be requested to extend the application of the concession in Article 18(3) to employee benefit schemes and share option plans.
- 5.3.11 The restriction on assignment of interests is in line with implementation of international standards in the EU.

5.4 Question 6.4.15.1

Do you agree that the term “regulated market” should be benchmarked against IOSCO Principles 16 and 17, in addition to European legislation? If you do not, please explain why.

- 5.4.1 Thirteen responses were received. All respondents agreed with the proposal to revise the definition of “regulated market” to allow benchmarking against Principles 16 and 17 of the International Organisation of Securities Commission (“IOSCO”).
- 5.4.2 One of those respondents asked for the scope of the concession to be extended to wholly-owned subsidiaries of listed companies and another to include the Alternative Investment Market (“AIM”) in London.
- 5.4.3 One of those respondents thought that the proposal was less restrictive than the current position. Another asked for the statutory concession to be supported by clear guidance.

Commission Response

- 5.4.4 The Commission will request the Minister to amend the definition of “regulated market” to also mean a market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards. These are that:
- 5.4.4.1 there is full, accurate and timely disclosure of financial results, risk and other information which is material to investors’ decisions; and
- 5.4.4.2 holders of securities are treated in a fair and equitable manner.
- 5.4.5 Accordingly, a relevant person may determine that it is appropriate to use the concession where:
- 5.4.5.1 a particular market has been assessed as complying or largely complying with IOSCO Principles 16 and 17; or

5.4.5.2 the market has been listed on the European Securities and Markets Authority's database of regulated markets in the EU.

5.4.6 Such an approach would not exclude the application of the concession to markets in the European Economic Area that are not regulated markets, e.g. AIM, so long as that market subjects companies whose securities are admitted to trading to disclosure obligations which comply or largely comply with IOSCO Principles 16 and 17.

5.4.7 As in Guernsey, the Minister will be requested to extend the application of the concession to wholly owned subsidiaries of listed persons.



Jersey

MONEY LAUNDERING (AMENDMENT NO. 5) (JERSEY) ORDER 201-

Report

Explanatory Note

This Order further amends the Money Laundering (Jersey) Order 2008 (defined by *Article 1* as the “principal Order”), to align the principal Order with certain of the revised recommendations of the Financial Action Task Force on Money Laundering (“FATF”), and to clarify the application in certain circumstances of simplified or, as the case may be, enhanced customer due diligence (“EDD”) measures.

Article 15 of the principal Order sets out the different circumstances where EDD measures must be applied. (That Article is now to be read with the Money Laundering and Weapons Development (Directions) (Jersey) Law 2012, which also superseded Article 23C of the principal Order: Article 23C is deleted by *Article 6*). *Article 3* amends Article 15 to reflect the FATF recommendation that EDD measures must also be applied where a person is connected in particular ways (described in the provisions inserted into Article 15 as new paragraph (3B)) with a country or territory in relation to which the FATF has called for the application of such measures.

A concession in Article 17 of the principal Order - permitting relevant persons (as defined in Article 1(1) of that Order) not to comply with the obligation to apply identification measures specified in Article 3(2)(b) of that Order, in relation to intermediaries which are regulated persons or carry on business equivalent to regulated business - is extended by *Article 4* so that the concession is available also where a relevant person knows or has reasonable grounds for believing that an intermediary is wholly owned by a regulated person (i.e. a person carrying on regulated business, again as defined in Article 1(1)) and that the activity, policies and procedures of the intermediary comply with specified conditions.

A similar concession in Article 18(7) of the principal Order as to identification measures specified in Article 3(2)(a) and (c) of that Order is extended, in relation to the same intermediaries, by *Article 5*. That Article also amends Article 18(3) and inserts a new paragraph 18(3A) with the effect that identification measures are not required in a case where a business relationship or one-off transaction relates to a pension or similar scheme whose rules permit assignment of a deceased member’s

Appendix C

interests, except to the extent that such measures must be applied by the trustees of the scheme to the assignee of the interest. Another concession permitted by Article 18(6A) in relation to the application of certain identification measures is extended to bodies corporate the securities of which are listed on an IOSCO-compliant market. A definition of the latter term is inserted into the principal Order by *Article 2*, which also makes other provisions relating to interpretation.

Article 7 provides for the citation of this Order and its commencement.





Jersey

**MONEY LAUNDERING (AMENDMENT NO. 5)
(JERSEY) ORDER 201-**

Arrangement

Article

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Jersey

MONEY LAUNDERING (AMENDMENT NO. 5) (JERSEY) ORDER 201-

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

THE MINISTER FOR TREASURY AND RESOURCES, in pursuance of Articles 37 and 43 of the Proceeds of Crime (Jersey) Law 1999, and having consulted the Jersey Financial Services Commission, orders as follows –

1 Interpretation

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

2 Article 1 amended

In Article 1(1) of the principal Order –

- (a) after the definition “equivalent business” there shall be inserted the following definition –
 - “‘FATF’ means the international body known as the Financial Action Task Force;”;
- (b) for the definition “FATF recommendations” there shall be substituted the following definition –
 - “‘FATF recommendations’ means the Forty Recommendations (incorporating the amendments of 22nd October 2004) of the FATF;”;
- (c) after the definition “introducer” there shall be inserted the following definition –
 - “‘IOSCO-compliant market’ means a market which, in line with standards set by the international body known as the International Organisation of Securities Commissions, requires that –
 - (a) for traded securities there must be full, accurate and timely disclosure of financial results, risk and other information which is material to investors’ decisions; and

- (b) holders of traded securities should be treated in a fair and equitable manner;”.

3 Article 15 amended

In Article 15 of the principal Order, for paragraph (3A) there shall be substituted the following paragraphs –

“(3A) This paragraph applies where –

- (a) a relevant person has or proposes to have a business relationship, or proposes to carry out a one-off transaction, with a customer having a relevant connection with a country or territory (an ‘enhanced risk state’) in relation to which the FATF has called for the application of enhanced customer due diligence measures; or
- (b) any of the following is a person having such a connection –
 - (i) a beneficial owner or controller of the customer;
 - (ii) a third party for whom the customer is acting;
 - (iii) a beneficial owner or controller of a third party described in clause (ii);
 - (iv) a person acting, or purporting to act, on behalf of the customer.

(3B) For the purposes of paragraph (3A), a person has a relevant connection with an enhanced risk state if the person is –

- (a) the government or a public authority of the state;
- (b) in relation to the state, a politically exposed person within the meaning given to that expression by paragraph (6)(a);
- (c) a person resident or incorporated in the state;
- (d) a person having a registered office or other address for business in the state;
- (e) a customer, where the source of the customer’s funds is or derives from –
 - (i) assets held in the state by the customer or by any person on behalf of the customer, or
 - (ii) income arising in the state.”.

4 Article 17 amended

(1) In Article 17(1) of the principal Order –

- (a) at the end of sub-paragraph (a), the word “or” shall be deleted;
- (b) at the end of sub-paragraph (b), for the full stop there shall be substituted “; or”, and there shall be inserted the following sub-paragraph –
 - “(c) a person –

- (i) wholly owned by a person (the ‘parent’) mentioned in sub-paragraph (a) or (b), and
 - (ii) fulfilling the conditions in paragraph (4).”.
- (2) At the end of Article 17 of the principal Order there shall be added the following paragraph –
- “(4) The conditions mentioned in paragraph (1)(c)(ii) are that –
- (a) the person is incorporated or registered, as the case may be, in the same jurisdiction as the parent;
 - (b) the person has no customers who are not customers of the parent;
 - (c) the person’s activity is ancillary to the regulated business or equivalent business carried on by the parent;
 - (d) in relation to that activity, the person maintains the same policies and procedures as the parent.”.

5 Article 18 amended

- (1) At the end of Article 18(1) of the principal Order, the full stop shall be deleted and there shall be added the words “except as provided by paragraph (3A) in relation to case B.”.
- (2) In Article 18(3) of the principal Order –
- (a) after the word “superannuation” there shall be inserted the words “, employee benefit, share option”;
 - (b) for the words from “except” to the end of that paragraph there shall be substituted the words “except after the death of the member.”.
- (2) After Article 18(3) of the principal Order there shall be inserted the following paragraph –
- “(3A) In a case falling within case B where it is proposed to assign the interest of a deceased member of the scheme, the trustees of the scheme must apply the identification measures described in Article 3(2)(a) to (c) in respect of the proposed assignee, and in the application of Article 3(2) for this purpose, references to the customer shall be taken to include references to the proposed assignee.”.
- (3) In Article 18(6A) of the principal Order –
- (a) at the end of sub-paragraph (a), the word “or” shall be deleted;
 - (b) for sub-paragraph (b) there shall be substituted the following sub-paragraphs –
 - “(b) a body corporate the securities of which are listed –
 - (i) on an IOSCO-compliant market, or
 - (ii) on a regulated market as defined by Article 2(5);
 - or

- (c) a person wholly owned by a person mentioned in sub-paragraph (b),”.
- (4) In Article 18(7) of the principal Order –
 - (a) at the end of sub-paragraph (a), the word “or” shall be deleted;
 - (b) at the end of sub-paragraph (b), for the comma there shall be substituted “; or”, and there shall be inserted the following sub-paragraph –
 - “(c) a person –
 - (i) wholly owned by a person (the ‘parent’) mentioned in sub-paragraph (a) or (b), and
 - (ii) fulfilling the conditions in paragraph (7A),”.
- (5) After Article 18(7) of the principal Order there shall be inserted the following paragraph –
 - “(7A) The conditions mentioned in paragraph (7)(c)(ii) are that –
 - (a) the person is incorporated or registered, as the case may be, in the same jurisdiction as the parent;
 - (b) the person has no customers who are not customers of the parent;
 - (c) the person’s activity is ancillary to the regulated business or equivalent business carried on by the parent;
 - (d) in relation to that activity, the person maintains the same policies and procedures as the parent.”.

6 Article 23C deleted

Article 23C of the principal Order shall be deleted.

7 Citation and commencement

This Order may be cited as the Money Laundering (Amendment No. 5) (Jersey) Order 201- and shall come into force 7 days after the day on which it is made.

