

CONSULTATION PAPER NO. 6 2011

CDD MEASURES FOR COUNTERING MONEY LAUNDERING AND TERRORIST FINANCING

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

CONSULTATION PAPER

The Jersey Financial Services Commission (the “**Commission**”) invites comments on this consultation paper. Heather Bestwick at Jersey Finance Limited (“**Jersey Finance**”) is co-ordinating an industry response that will incorporate any matters raised by local businesses. Comments should reach Jersey Finance by the date specified in its Technical Update.

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Alternatively, responses may be sent directly to Andrew Le Brun at the Commission by 29 February 2012. 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

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 the Financing of Terrorism for Financial Services Business regulated under the Regulatory Laws
AML/CFT Steering Group	means the Commission's AML/CFT Steering Group
CDD	means customer due diligence
the Commission	means the Jersey Financial Services Commission
the Commission Law	means the Financial Services Commission (Jersey) Law 1998
country or countries	means country or territory
the EEA	means the European Economic Area
ESMA	means the European Securities and Markets Authority
the EU	means the European Union
the FATF	means the Financial Action Task Force
the IMF	means the International Monetary Fund
IOSCO	means the International Organisation of Securities Commissions
the IOSCO Methodology	means the Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation
Jersey Finance	means Jersey Finance Limited
the Money Laundering Order	means the Money Laundering (Jersey) Order 2008
a relevant person	means a person carrying on a financial services business and which is: <ul style="list-style-type: none">• carrying on that business in or from within Jersey; or• if a Jersey company, carrying on that business in any part of the world
the UK	means the United Kingdom

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1 EXECUTIVE SUMMARY

1.1 Overview

- 1.1.1 Ahead of a wider review of the basis for, and scope of, customer due diligence (“CDD”) concessions in Articles 16 to 18 of the Money Laundering (Jersey) Order 2008 (the “**Money Laundering Order**”) that permit simplified measures to be applied to lower risk customers and products and services and reliance to be placed on certain third parties, thought is being given to a number of discrete amendments to the application of enhanced and simplified CDD measures to address:
 - 1.1.1.1 Risks that have changed since the Money Laundering Order was made by the Minister for Economic Development in February 2008 (which coincided with publication of the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Financial Services Business regulated under the Regulatory Laws (the “**AML/CFT Handbook**”).
 - 1.1.1.2 Provisions that have been identified where the Money Laundering Order and AML/CFT Handbook do not work quite as was intended or are not fully understood.
 - 1.1.1.3 Provisions in the Money Laundering Order and AML/CFT Handbook that have proved to be problematical to apply.
- 1.1.2 The outcome is proposals that, on the one hand, set additional requirements and provide more extensive guidance in some higher risk areas, and, on the other, lighten the regulatory burden, so that requirements and guidance in areas such as “suitable certification” may be applied in a way that is more proportionate to risk and consistent with practice followed in neighbouring countries and territories (collectively referred to hereafter as “**country**” or “**countries**”).
- 1.1.3 The wider review that is mentioned above is in response to recommendations made by the International Monetary Fund (the “**IMF**”) report on Jersey’s compliance with the 40+9 Recommendations of the Financial Action Task Force (the “**FATF**”) and will take place within the context of the imminent revision to FATF Recommendations 5 (CDD measures) and 9 (reliance on third parties). The review will also consider whether there is a need to make separate provision in the Money Laundering Order in a case where there is a change in the beneficial ownership of a collective investment fund which is affected through a secondary market.
- 1.1.4 In particular, this review will need to respond to the suggestion made by the IMF that “available concessions from conducting full CDD represent an overly-generous implementation of the FATF’s facility to apply reduced or simplified measures for certain low-risk scenarios”. In large part, it seems that this view was formed on the basis that:

- 1.1.4.1 Article 17 of the Money Laundering Order may be applied to intermediaries that are based in countries that have banking secrecy and this creates an “underlying risk of misuse”.
- 1.1.4.2 The full rigour of FATF Recommendation 5 (CDD measures) should be applied to “designated” intermediary accounts, the effect of which would be to limit the application of Article 17 of the Money Laundering Order to “pooled” intermediary accounts.
- 1.1.4.3 There is no express provision in Article 17 of the Money Laundering Order to prevent the application of simplified measures in the case that an underlying customer (or customers) of an intermediary “can present a higher risk of money laundering”.
- 1.1.4.4 There is provision for receipt of funds from an account at a bank that is supervised in Jersey or in a country that imposes requirements that are in line with the FATF Recommendations to be considered to provide satisfactory means of verifying the identity of a customer in some very limited lower risk cases.

1.2 What is proposed and why?

- 1.2.1 It is proposed to revise the Money Laundering Order in a way that:
 - 1.2.1.1 Extends 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.
 - 1.2.1.2 Allows simplified CDD measures to be applied to a pension scheme that permits members to transfer membership interests to a person post death.
 - 1.2.1.3 Revises the definition of “regulated market” so that it will be easier to apply simplified CDD measures to customers that are companies with securities traded on transparent markets.
- 1.2.2 It is proposed to revise the AML/CFT Handbook in a way that will:
 - 1.2.2.1 Facilitate the identification of higher risk countries and the measures to be taken to effectively mitigate risk.
 - 1.2.2.2 Clarify the identification measures to be taken to satisfy a requirement in the Money Laundering Order to apply enhanced CDD measures in a case where a customer who is an individual has not been physically present for identification purposes.

- 1.2.2.3 Clarify the identification measures to be taken to satisfy a requirement in the Money Laundering Order to apply CDD measures (including enhanced measures) in a case where there is no face to face contact between the relevant person and the individuals who are concerned with a trust or foundation, or individuals who are the beneficial owners or controllers of a legal body – where the arrangement or legal body which is to be the customer is administered by a regulated trust and company services provider.
- 1.2.3 Some other changes – that are not thought to be substantive – are also proposed, in order to clarify or add to existing provisions in the AML/CFT Handbook.
- 1.2.3.1 Some changes are proposed to the presentation of factors to be taken into account in the assessment of product or service risk, delivery risk and customer risk (in section 3.3.4.1 of the AML/CFT Handbook).
- 1.2.3.2 The scope of stage 5 of the CDD process in section 3.3.6 of the AML/CFT Handbook is extended to cover relationships that are subject to enhanced customer due diligence measures (rather than only those that are assessed as presenting higher risk).
- 1.2.3.3 A number of references to the term “establish” have been changed to clarify what was originally intended in the AML/CFT Handbook. For example, references to “establishing identity” have been replaced by “finding out identity” in sections 4.3.1, 4.4.1, 4.5.1 and 4.5.3.
- 1.2.3.4 A new method of verifying residential address (use of a tenancy contract or agreement) is added to section 4.3.2 of the AML/CFT Handbook.
- 1.2.3.5 An explanation of the application of identification measures to the subsidiary of a person that is a body corporate which has securities listed on a “regulated market” is clarified in section 4.5 of the AML/CFT Handbook.
- 1.2.3.6 Do you have any comments on changes proposed to the AML/CFT Handbook that are not addressed elsewhere in this consultation paper?**
- 1.2.4 In order to understand what the proposed changes to the AML/CFT Handbook would look like, marked-up sections of the AML/CFT Handbook are attached to this consultation paper highlighting new, amended, and deleted text. The sections that follow in this consultation paper are designed to be read alongside the marked-up sections of the AML/CFT Handbook.
- 1.2.5 Accordingly:
- 1.2.5.1 A marked-up version of section 3 of the AML/CFT Handbook is attached as Appendix B.

1.2.5.2 Proposed Appendix D1 is attached as Appendix C.

1.2.5.3 A marked-up version of section 4 of the AML/CFT Handbook is attached as Appendix D.

1.3 Who would be affected?

1.3.1 The amendments that are proposed will affect all persons carrying on a financial services business¹ and which are:

1.3.1.1 carrying on that business in or from within Jersey; or

1.3.1.2 if a Jersey company, carrying on that business in any part of the world.

1.3.2 Such a person is referred to in the Money Laundering Order and in this paper as a “**relevant person**”.

1.3.3 Whilst references are made only to the AML/CFT Handbook (that applies to regulated financial services business), it is proposed to make similar amendments to other Handbooks that are published by the Commission for accountants and lawyers.

¹ This term is defined in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999

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 Financial Services Commission (Jersey) Law 1998 (the “**Commission Law**”), as amended, 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 Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (which are described as “regulatory requirements” in the AML/CFT Handbook).

2.2 Responding to the consultation

- 2.2.1 The Commission invites comments in writing from interested parties on the proposals included in this consultation paper. 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.
- 2.2.2 To assist in analysing responses to the consultation paper, respondents are asked to:
- 2.2.2.1 prioritise comments and to indicate their relative importance; and
 - 2.2.2.2 respond as specifically as possible and, where they refer to costs, to quantify those costs.

2.3 Next steps

- 2.3.1 The proposals set out in this consultation paper have already been presented to the Commission’s Steering Group for countering money laundering and the financing of terrorism (the “**AML/CFT Steering Group**”), made up of representatives from the Commission, Jersey Finance, the Joint Financial Crimes Unit, and industry. A full list of members can be found on the Commission’s website.
- 2.3.2 A full list of representative bodies that have been sent this consultation paper is available at Appendix A.
- 2.3.3 Following consultation, the Commission will:
- 2.3.3.1 Make appropriate changes to sections 3 and 4 of the AML/CFT Handbook.
 - 2.3.3.2 Request law drafting time to make appropriate amendments to the Money Laundering Order.

3 THE COMMISSION

3.1 Overview

3.1.1 The Commission is a statutory body corporate established under 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, 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 the Minister for Economic Development 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 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 ENHANCED CDD: HIGHER RISK COUNTRIES

4.1 Overview

- 4.1.1 Article 15(3A) of the Money Laundering Order requires a relevant person to carry out enhanced CDD measures where it has, or proposes to have, a business relationship or carry out a one-off transaction with a person connected to a country that does not apply, or insufficiently applies, the FATF Recommendations.
- 4.1.2 Article 15(1)(b) of the Money Laundering Order requires a relevant person to carry out enhanced CDD measures in any situation which by its nature can present a higher risk of money laundering, including where this is as a result of a connection to a country that is assessed as presenting a higher risk.
- 4.1.3 In line with the Island's Strategy for anti-money laundering and countering the financing of terrorism ("AML/CFT"), the Commission is tasked with providing additional guidance to relevant persons that will facilitate their identification of higher risk countries, and selection of measures to be taken to effectively mitigate the risks identified.
- 4.1.4 The Commission's various licensing policies have already been updated to address country risk and its Sensitive Activities Policy is also currently under review.
- 4.1.5 It is proposed to:
 - 4.1.5.1 Require certain additional enhanced CDD measures to be applied to relationships and one-off transactions carried out with persons connected to countries identified by the FATF as not applying, or insufficiently applying, the FATF Recommendations, and to set out in some detail how a relevant person may demonstrate compliance with those measures.
 - 4.1.5.2 Set out in some detail - though with more flexibility than relationships described in paragraph 4.1.5.1 above - how a relevant person may demonstrate compliance with the requirement in the Money Laundering Order to apply enhanced CDD measures to a relationship or one-off transaction that is assessed as presenting a higher risk because of, or in part due to, a higher assessment of country risk (either because country risk must be considered to be higher, or as a result of an assessment using factors set out in section 3.3.4.1 of the AML/CFT Handbook).

- 4.1.6 Currently, FATF Recommendation 21 addresses higher risk countries. Inter alia, it provides that: *“financial institutions should give special attention to business relationships and transactions with persons, including companies and financial institutions, from countries which do not or insufficiently apply the FATF Recommendations”*.

4.2 Risk factors

- 4.2.1 It is proposed to provide more guidance in section 3.3.4.1 of the AML/CFT Handbook on the factors that will be relevant to an assessment of country risk. This guidance will not be relevant in the case of a relationship or one-off transaction with a person that is connected to a country that:
- 4.2.1.1 does not apply, or insufficiently applies, the FATF Recommendations (and which is listed in Group 1 in Appendix D of the AML/CFT Handbook); or
 - 4.2.1.2 must be considered to present a higher country risk as a result of a regulatory requirement (and which is listed in Group 2 in Appendix D of the AML/CFT Handbook).
- 4.2.2 In particular, it is proposed that guidance should:
- 4.2.2.1 set out the *types* of countries that may be considered to present a higher risk, e.g. those identified by the FATF as having strategic AML/CFT deficiencies (and which are listed in Group 3 in Appendix D of the AML/CFT Handbook), those which provide a home to major illicit drug production, or those having strong links with terrorist activities; and
 - 4.2.2.2 provide references to reliable and independent external sources that produce actual lists of countries that present a higher risk for each type.
- 4.2.3 To assist with implementation of this guidance, it is proposed to bring all of these external sources together into an appendix to the AML/CFT Handbook (Appendix D1) in a way that will facilitate assessment of which countries present a higher risk. Where a country is identified in Appendix D1 as presenting a higher risk for different reasons by three or more, or four or more, separate external sources, it will be more prominently listed in the Appendix.

4.2.3.1 Do you think that the types of countries listed at section 3.3.4.1 of the AML/CFT Handbook are relevant to an assessment of money laundering or terrorist financing risk? If not, please explain why.

4.2.3.2 Should any additional types of country be added to section 3.3.4.1 of the AML/CFT Handbook? If so, please say which.

- 4.2.3.3 Do you currently use any external public sources that produce actual lists of countries that are not referred to in section 3.3.4.1 of the AML/CFT Handbook and which are relevant to an assessment of money laundering or terrorist financing risk? If so, please provide details.**
- 4.2.3.4 Do you think that any of the external sources listed in Appendix D1 are unreliable or not independent? If so, please explain why.**
- 4.2.3.5 Do you think that the proposed Appendix D1 is useful? If not, how could it be improved?**
- 4.2.3.6 Do you think that it is important for external sources to be provided for each of the types of country that are listed at section 3.3.4.1 of the AML/CFT Handbook?**

4.3 Enhanced CDD measures – countries that do not apply FATF Recommendations

4.3.1 In the case of a customer that is connected to a country that does not, or insufficiently applies, the FATF Recommendations² (and which is listed in Group 1 in Appendix D of the AML/CFT Handbook), it is proposed that regulatory requirements in new section 3.4.2 of the AML/CFT Handbook provide that enhanced CDD measures must include:

- 4.3.1.1 Requiring any new business relationship (and continuation thereof) or one-off transaction to be approved by senior management.
- 4.3.1.2 Measures to establish the source of wealth of the customer and source of the funds involved in the business relationship or one-off transaction.

4.3.2 These requirements are in line with existing statutory requirements applying to customers that are, or are connected to, politically exposed persons, by virtue of Article 15(5A) of the Money Laundering Order. The requirement to establish source of wealth and source of funds would replace (and add to) existing guidance³.

- 4.3.2.1 Do you think that these additional regulatory requirements should also apply in any situation which by its nature can present a higher risk of money laundering or terrorist financing (under Article 15(1)(b) of the Money Laundering Order)? If so, please explain why.**

² Currently the FATF identifies Iran and North Korea as presenting an ongoing and substantial money laundering and terrorist financing risk.

³ Guidance currently provides that, in the case of higher risk, a relevant person may demonstrate that it has collected relevant relationship information where it takes reasonable measures to establish: (i) source of funds and source of wealth for each customer; and (ii) where it considers whether it is appropriate to take measures to verify source of funds and wealth.

4.3.3 In order to demonstrate that a relevant person has taken measures to establish source of wealth and source of funds (in line with proposed regulatory requirements), it is proposed that those measures include one or more of the following:

4.3.3.1 Commissioning a satisfactory independent report from a specialist security agency about source of wealth and source of funds, which adequately explains how sources have been verified.

4.3.3.2 Where a relevant person is part of a group, obtaining adequate information from the group's internal security department/business intelligence unit (or equivalent) about source of wealth and source of funds and how sources have been verified.

4.3.3.3 Where a relevant person is part of a group, obtaining adequate information from a part of the group which has direct representation in the country with which the customer has a connection about source of wealth and source of funds and how sources have been verified.

4.3.3.4 Collecting and verifying information on both sources on the basis of a face to face interview.

4.3.3.5 Do you consider the measures that are proposed to establish source of wealth and source of funds for customers that are connected with a country that does not apply, or insufficiently applies, the FATF Recommendations (and which is listed in Group 1 in Appendix D) to be proportionate?

4.3.3.6 Do you consider that the measures that are proposed should also apply to established relationships, where a connection with a country is made during the course of that relationship? If not, what alternative measures might be appropriate?

4.3.4 Also, it is proposed to clarify how a relevant person may otherwise demonstrate that it has applied enhanced CDD measures - under Article 15(3A) of the Money Laundering Order. It will demonstrate that it has done this where it does all of the following:

4.3.4.1 In a case where a relationship is to be established on a non-face to face basis, requires a "suitable certifier" to certify (in addition to confirming that a document is a true copy of an original document (or extract thereof) that verifies the identity and/or residential address of an individual) that the photograph contained in the document certified bears a true likeness to the individual requesting certification (or words to that effect).

4.3.4.2 Assigns a dedicated relationship manager to the business relationship.

4.3.4.3 Requires more frequent reviews of the business relationship, e.g. annual reviews.

4.3.4.4 Requires the review of the business relationship to be undertaken by the compliance function, or other employees not directly involved in managing the customer, e.g. by a customer monitoring team.

4.3.4.5 Sets lower monitoring thresholds for transactions connected with the business relationship.

4.3.4.6 Do you consider the other measures that are proposed for customers that are connected with a country that does not apply, or insufficiently applies, the FATF Recommendations (and which is listed in Group 1 in Appendix D) to be proportionate?

4.4 Enhanced CDD measures – other higher risk countries

4.4.1 In the case of a relationship or one-off transaction that is assessed by a relevant person as presenting a higher risk as a result of, or in part due to, a connection with a country that *must* be considered to present a higher country risk because it has strategic AML/CFT deficiencies and is failing to properly deal with those deficiencies⁴ (and which is listed in Group 2 in Appendix D of the AML/CFT Handbook), it is not currently proposed to introduce any additional regulatory requirements⁵.

4.4.2 Instead, it is proposed to:

4.4.2.1 revise existing guidance on the reasonable measures to be taken to establish source of funds and source of wealth; and

4.4.2.2 provide additional guidance on how a relevant person might otherwise demonstrate that it has applied enhanced CDD measures under Article 15(1)(b) of the Money Laundering Order.

4.4.3 It is proposed that guidance in new section 3.4.3 of the AML/CFT Handbook on the reasonable measures to be taken to establish source of funds and source of wealth should follow that suggested for countries that do not apply, or insufficiently apply, the FATF Recommendations (outlined at section 4.3 above). As guidance currently provides that, in the case of higher risk, a relevant person may demonstrate that it has collected relevant relationship information measures when it considers whether it is appropriate to verify source, this proposal could have the effect of adding significantly to the measures to be conducted before a relationship may be established.

⁴ Currently Bolivia, Cuba, Ethiopia, Kenya, Myanmar, Nigeria, São Tomé & Príncipe, Sri Lanka, Syria and Turkey are listed by the FATF as having strategic AML/CFT deficiencies and failing to properly deal with those deficiencies.

⁵ Where a country must be considered to present a higher country risk, it is possible that a relationship or one-off transaction may still be assessed as presenting a risk that is other than higher risk – because of other factors that serve to reduce risk. For example, product or service risk, delivery risk or customer risk may be assessed as lower.

- 4.4.4 It is proposed that guidance in new section 3.4.3 of the AML/CFT Handbook on other enhanced CDD measures to be applied should also follow that for countries that do not apply, or insufficiently apply, the FATF Recommendations, except that *one or more* of the measures listed at paragraph 4.3.4 above (rather than all of them) should be applied (dependent on a risk assessment).
- 4.4.5 It is also proposed to follow the approach that is outlined above for any relationship or one-off transaction that is assessed by a relevant person as presenting a higher risk as a result of, or in part due to, a connection with a country that *it considers* presents a higher risk as a result of the factors that are set out in section 3.3.4.1 of the AML/CFT Handbook (see section 4.2 above).

- 4.4.5.1 Do you consider the measures that are proposed for customers that are assessed as presenting a higher risk as a result of, or in part due to, a connection with a higher risk country to be proportionate? If not please explain why.**
- 4.4.5.2 Do you consider that the measures that are proposed should also apply to established relationships, where a connection with a country is made during the course of that relationship? If not, what alternative measures might be appropriate?**
- 4.4.5.3 Can you estimate what percentage of customers would be subject to enhanced CDD measures under 15(1)(b) of the Money Laundering Order due to country risk?**
- 4.4.5.4 What would it cost your business to conduct each of the measures listed at 4.3.3 above to establish source of wealth and source of funds for a prospective customer?**
- 4.4.5.5 Do you think that it is possible to satisfactorily address risk by performing just one of the measures listed at paragraph 4.3.4 above? Should guidance provide instead for two or more (or other number), or all measures to be carried out? Please provide support for your answer.**

4.5 Enhanced CDD measures – other higher risk relationships

- 4.5.1 In the case of a business relationship or one-off transaction that is assessed as presenting higher risk, other than because of a connection to a higher risk country, it is intended that section 3 of the AML/CFT Handbook should continue to provide much greater flexibility (than is proposed at sections 4.3 and 4.4 above) in the measures to be taken to establish a customer's source of wealth and source of funds and otherwise to demonstrate compliance with Article 15(1)(b) of the Money Laundering Order.

- 4.5.2 Some additional guidance is proposed in new section 3.4.4 of the AML/CFT Handbook on measures that may be taken in order to demonstrate that a relevant person has complied with the Money Laundering Order. Currently, these are orientated to banking relationships.

4.5.2.1 Do you apply any other effective measures to address risks that are not listed in the proposed guidance? If so, please provide details of those measures, explaining how effective they have been in practice.

5 ENHANCED CDD: NON-FACE TO FACE IDENTIFICATION

5.1 Overview

- 5.1.1 Article 15(3) of the Money Laundering Order requires a relevant person to carry out enhanced CDD measures where a customer has not been physically present for identification purposes. This means doing something over and above the guidance that is laid out in sections 4.3 to 4.5 of the AML/CFT Handbook.
- 5.1.2 Section 4.8 of the AML/CFT Handbook currently lists examples of measures that could be applied to meet this requirement. One option is the “suitable certifier” regime, which requires the certifier to confirm, inter alia, that a photograph contained in a document bears a true likeness to the individual requesting certification.
- 5.1.3 Along with removing references in section 4 of the AML/CFT Handbook to identity fraud and linking it instead to Article 15(3) of the Money Laundering Order, it is proposed to clarify the application of customer identification measures (and enhanced measures) to cases where a relationship is established or one-off transaction carried out:
- 5.1.3.1 directly with an individual – by post, by telephone or via the Internet;
 - 5.1.3.2 with the trustee of a trust, where there is no face to face contact with the trustee or between the relevant person and the individuals who are concerned with the trust;
 - 5.1.3.3 with a foundation, where there is no face to face contact with the foundation or between the relevant person and the persons who are concerned with the foundation; and
 - 5.1.3.4 with a legal body, where there is no face to face contact with the legal body or with the persons who are its beneficial owners or controllers.
- 5.1.4 It is also proposed to highlight the differences between: (i) the collection of evidence of identity as part of CDD measures carried out under Articles 13 and 15(3) of the Money Laundering Order; and (ii) the collection of a copy of evidence of identity from an introducer or intermediary under Article 16 of the Money Laundering Order.
- 5.1.5 Currently FATF Recommendation 8 provides that: *“financial institutions should be required to have policies and procedures in place to address any specific risks associated with non-face to face business relationships or transactions. These policies and procedures should apply when establishing customer relationships and when conducting ongoing due diligence”*.

5.2 Enhanced CDD – individuals

5.2.1 The current regulatory requirement in section 4.8 of the AML/CFT Handbook provides that, where a relationship is established or one-off transaction carried out remotely (or where the identity of an individual is to be verified using documentary evidence where the individual is not physically present), a relevant person must perform an additional check to reduce the risk of identity fraud.

5.2.2 It is proposed to delete the reference to “identity fraud”, which is outside the scope of the AML/CFT Handbook, and instead to make a link to Article 15(3) of the Money Laundering Order. It is also proposed to delete the existing requirement in section 4.8 of the AML/CFT Handbook, on the basis that this duplicates the requirement set out in Article 15(3) of the Money Laundering Order.

5.2.2.1 Do you agree that the current regulatory requirement in section 4.8 of the AML/CFT Handbook duplicates Article 15(3) of the Money Laundering Order? If you do not agree, please explain why.

5.2.2.2 Do you agree that the scope of the AML/CFT Handbook should not extend to the prevention of fraud? If you do not agree, please explain why.

5.2.3 It is also proposed to reorganise the construction of section 4.8 of the AML/CFT Handbook to address the current illogical position of setting out a number of options for addressing identity fraud, and then setting very prescriptive and onerous obligations (e.g. certification of true likeness) should one – “suitable certification” - be selected.

5.2.4 In particular, at the present time:

5.2.4.1 Measures may range from a card activation check (little effort and little assurance) to the use of “suitable certification” (greater effort and greater assurance) with little in between.

5.2.4.2 If the certification provided by the certifier is not in line with the requirements for “suitable certification” set out in section 4.8.1 of the AML/CFT Handbook (most likely on true likeness), time and effort is spent addressing this. The concern is that this could put Jersey at a disadvantage because certifiers are being requested to certify on matters that are not required in other countries⁶.

5.2.5 Whilst it is the Commission’s view that the AML/CFT Handbook already permits a relevant person to carry out a measure that is similar to “suitable certification”, but which does not include the certification of true likeness, it is proposed to clarify the use of “suitable certification” within the context of enhanced measures.

⁶ For example, neither Guernsey nor the UK appears to require certification of “true likeness”.

- 5.2.6 In order to address these matters (and others), it is proposed that:
- 5.2.6.1 The application of section 4.8 of the AML/CFT Handbook is clearly expressed as dealing with enhanced identification measures (and not enhanced ongoing monitoring).
 - 5.2.6.2 The assurance that is obtained from the enhanced identification measures taken under Article 15(3) should be broadly the same. Where the measures that are to be applied are not “suitable certification” or verification of identity using additional sources listed in the AML/CFT Handbook, it is proposed that enhanced measures should be a combination of other checks that adequately take into account the relevant person’s risk assessment of a particular customer.
 - 5.2.6.3 Regulatory requirements on “suitable certification” should be replaced by guidance.
 - 5.2.6.4 References to the certification of true likeness should be dropped (though such certification may still be appropriate in the case of a relationship that is established, or one-off transaction carried out, with an individual on a non-face to face basis and who is also considered to present a higher risk).
- 5.2.7 In addition, it is proposed that section 4.8 of the AML/CFT Handbook should not also set out the measures to be taken in the case of a relationship or one-off transaction that is considered to present a higher risk since this is covered by section 3.4 of the AML/CFT Handbook (enhanced CDD measures).
- 5.2.8 Guidance in new section 4.8 of the AML/CFT Handbook does not consider whether use of suitable certification might also demonstrate that a relevant person has applied the (normal) CDD measures that are required under Article 13 of the Money Laundering Order (set out at Article 3(2)).
- 5.2.8.1 Do you agree with the changes that are proposed to address the risk presented when a customer who is an individual is not physically present for identification purposes? If you do not, please explain why.**

5.2.8.2 Do you think that a relevant person might demonstrate that it has applied the CDD measures required under Articles 13 and 15(3) of the Money Laundering Order by use of suitable certification? If possible, please give examples of cases where suitable certification has been used to meet both sets of requirements.
- 5.2.9 Paragraph 137 of new section 4.8.2 of the AML/CFT Handbook provides examples of acceptable persons who may certify evidence of identity. It includes professionals such as lawyers, notaries, actuaries, accountants and tax advisors.

5.2.9.1 Should this list of examples include other professionals that are subject to professional rules (or equivalent) providing for the integrity of conduct? If yes, please state which professions and provide details about relevant rules and disciplinary action that may be taken where those rules are not complied with.

5.3 Enhanced CDD – legal arrangements and bodies

- 5.3.1 The application of CDD measures set out in sections 4.4 and 4.5 of the AML/CFT Handbook to relationships established, or one-off transactions carried out, remotely by trustees, foundations and legal bodies is unclear, as is the link between these provisions and requirements in Article 15(3) of the Money Laundering Order.
- 5.3.2 As a result, it is proposed to add additional text to sections 4.4.2 (new paragraphs 70 and 71), 4.5.2 (new paragraphs 95 and 96), and 4.5.4 (new paragraphs 111 and 112) and a new part to section 4.8 of the AML/CFT Handbook that explains how a relevant person may demonstrate that it has applied CDD measures and enhanced CDD measures in a case where:
- 5.3.2.1 It establishes a relationship or carries out a one-off transaction with a trustee (remotely or face to face) and it does not have any face to face contact with the individuals concerned with the trust.
- 5.3.2.2 It establishes a relationship or carries out a one-off transaction with a foundation (remotely or face to face) and it does not have any face to face contact with the persons concerned with the foundation.
- 5.3.2.3 It establishes a relationship or carries out a one-off transaction with a legal body (remotely or face to face) and it does not have any face to face contact with the beneficial owners or controllers of that legal body.
- 5.3.3 The proposal is that a relevant person might demonstrate that it has applied the CDD measures required under Article 3(2)(b)(iii) or (c)(iii) (as a result of Article 13) of the Money Laundering Order and the enhanced CDD measures required under Article 15(3) of the Money Laundering Order where it obtains:
- 5.3.3.1 In the case of a trust, documents verifying the identity of the individuals concerned with the trust from a regulated trust and company services provider.
- 5.3.3.2 In the case of a foundation, documents verifying the identity of the persons concerned with the foundation from a regulated trust and company services provider.
- 5.3.3.3 In the case of a legal body, documents verifying the identity of the beneficial owners and controllers from a regulated trust and company services provider.

- 5.3.4 In each case, it is proposed that the trust and company services provider will confirm that:
- 5.3.4.1 documentation provided is current (i.e. has not expired or been superseded);
 - 5.3.4.2 it has seen the original document that it has copied to the relevant person, or that the document that has been copied to the relevant person was provided to the regulated trust and company services provider by a “suitable certifier”; and
 - 5.3.4.3 the document provided to the relevant person is a true copy of a document that is held by the regulated trust and company services provider.
- 5.3.5 In a case where the trustee or legal body is not physically present itself for identification purposes, it is also proposed to make it clearer that it is possible to certify documents concerning the existence of the trust (through the trustee) or legal body that is to be the customer (new paragraph 136 of section 4 of the AML/CFT Handbook).

5.3.5.1 Do you agree that the proposals will effectively address the risk of establishing a relationship with a trust or legal body through a regulated trust and company services provider, and those that are connected to the trust or legal body, on a non-face to face basis? If not, please explain why risk is not properly addressed.

5.4 Article 16 - calling underlying evidence of identity

- 5.4.1 It is proposed to highlight in section 4.8 of the AML/CFT Handbook, the differences between:
- 5.4.1.1 The use of “suitable certification” for an individual on the one hand, and the confirmation that may be provided by an introducer where a relevant person relies on Article 16 of the Money Laundering Order on the other (see paragraph 189 (new paragraph 196) of section 4 of the AML/CFT Handbook).
 - 5.4.1.2 The performance of CDD measures (and enhanced measures) for legal arrangements and legal bodies that are administered by regulated trust and company services providers on the one hand, and the confirmation that may be provided where a relevant person relies on Article 16 of the Money Laundering Order on the other (see paragraph 189 of section 4 of the AML/CFT Handbook).

“Suitable certification”

- 5.4.2 “Suitable certification” is a process where, rather than requesting a customer to present evidence of identity directly to a relevant person, the customer is called on to present himself/ herself to a trusted third party along with original documentation that supports that person’s identity (and which is *current*) specifically *for the purpose of entering into a relationship* or one-off transaction with the relevant person.
- 5.4.3 It should not be confused with the case where a relevant person places reliance on an introduction under Article 16 of the Money Laundering Order (where reliance is placed on CDD measures *that have already been carried out*) and then subsequently calls for evidence of identity to be provided by the introducer (where the document provided may *not be current*).

CDD measures for legal arrangements and legal bodies

- 5.4.4 Whilst the CDD measures (including enhanced measures) that are to be applied under Articles 13 and 15(3) of the Money Laundering Order to a relationship or one-off transaction carried out between a relevant person and a legal arrangement or body make use of evidence of identity that has already been collected by a regulated trust and company services provider, that evidence:
- 5.4.4.1 must be a *copy of an original document* that the relevant person has seen (or must have been seen by a “suitable certifier”);
- 5.4.4.2 is used to satisfy requirements *at the time that the relationship is established* with the relevant person and therefore must be *current* at the time that it is provided to the relevant person (e.g. the original document copied is still valid or records the current residential address of a person); and
- 5.4.4.3 must be collected and held by the relevant person *before* the relationship is established or one-off transaction carried out.
- 5.4.5 In practice, this means that a relevant person could not rely on the provision of a copy of an expired passport, notwithstanding that the passport had been in-date at the time that it was copied.
- 5.4.6 This is not to be confused with a case where a relevant person places reliance on Article 16 of the Money Laundering Order – which allows reliance to be placed on CDD measures that have *already been completed* by another party (*whatever those measures might have involved*), where evidence of identity that may *subsequently* be provided by that party may be *out of date*.
- 5.4.7 In both cases, the risk of placing reliance on a third party to have carried out identification measures must be considered – either as part of an assessment of customer risk under Article 13, or assessment of intermediary or introducer risk under Article 16 of the Money Laundering Order.

5.4.7.1 Are the differences between: (i) use of “suitable certification” and documents provided by regulated trust and company services providers under Articles 13 and 15(3) of the Money Laundering Order on the one hand, and (ii) reliance on an introducer or intermediary under Article 16 of the Money Laundering Order on the other explained sufficiently? If not, how could the explanations provided be improved?

6 SIMPLIFIED CDD MEASURES

6.1 Overview

- 6.1.1 In line with the FATF Recommendations, the Money Laundering Order provides for CDD measures to be simplified in a case where money laundering and terrorist financing risk is considered to be lower. In line with this, Articles 17 and 18 of the Money Laundering Order provide for simplified CDD measures to be taken.
- 6.1.2 Practical application of the Money Laundering Order since February 2008 has identified a number of areas where the legislation does not work quite as was intended, or has proved problematical to use. Accordingly, a number of discrete amendments are proposed that would:
 - 6.1.2.1 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.
 - 6.1.2.2 Allow simplified CDD measures to be applied to a pension scheme that permits members to transfer interests to a person post death.
 - 6.1.2.3 Revise the definition of “regulated market” so that it will be easier to apply simplified CDD measures to customers that are companies with securities traded on transparent markets.

6.2 Article 17 - reliance on intermediary that is a regulated person

- 6.2.1 Article 17 of the Money Laundering Order provides, in strictly limited circumstances, for a relevant person to establish and conduct a relationship or carry out a one-off transaction with a customer that is acting for and on behalf of third parties (an “intermediary”) - without having to perform the identification measures that are specified in Article 3(2)(b) in respect of each of the intermediary’s customers.
- 6.2.2 In particular, it is necessary for the intermediary - a “regulated person” - to be:
 - 6.2.2.1 carrying on a “regulated business” - defined as holding a permit or certificate under the Collective Investment Funds (Jersey) Law 1988, deposit-taking under the Banking Business (Jersey) Law 1991, carrying on insurance business under the Insurance Business (Jersey) Law 1996, or carrying on investment business or fund services business under the Financial Services (Jersey) Law 1998; or
 - 6.2.2.2 regulated and supervised in the conduct of equivalent business by a supervisor outside Jersey.

- 6.2.3 In practice, it is common for a wholly-owned subsidiary of a “regulated person” (or equivalent) that is not itself a “regulated person” to act as an intermediary for the customers of the “regulated person”. The Commission considers that such a practice does not significantly affect risk.
- 6.2.4 To cover such a case, it is proposed that the scope of the concession in Article 17 of the Money Laundering Order be extended to include a legal body that is a wholly-owned subsidiary of a person that is “regulated person”, so long as:
- 6.2.4.1 The wholly-owned subsidiary has no customers who are not also customers of its parent.
- 6.2.4.2 The “regulated person” has a sound reason for placing a wholly-owned subsidiary between itself and its customers.
- 6.2.4.3 The wholly-owned subsidiary operates as an extension of its parent (notwithstanding its separate legal status) using the same systems and controls and following the same policies and procedures.
- 6.2.4.4 The activity that is conducted by the wholly-owned subsidiary is one that is ancillary to a “regulated business”.
- 6.2.5 In practice, it is expected that a relevant person would consider whether the above conditions are met as part of its risk assessment of a “regulated person” under section 4.10 of the AML/CFT Handbook.

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.

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?

6.3 Article 18 – business relationship that relates to a pension scheme

- 6.3.1 Article 18(3) of the Money Laundering Order provides that identification measures under Article 13 are not required where a business relationship or one-off transaction relates to a pension, superannuation or similar scheme, so long as:
- 6.3.1.1 contributions to the scheme are made by an employer or by way of deductions from wages; and
- 6.3.1.2 the rules of the scheme do not permit the assignment of an interest of a member of the scheme *except to the spouse or dependant of a deceased member*.

- 6.3.2 This particular concession may not be used in the case of a scheme that allows just one member (amongst possibly hundreds of other members) to contribute directly to the scheme or to assign his or her rights (except as permitted). In addition, scheme rules drawn up to accommodate this concession might be considered to be discriminatory, as, in practice, many schemes are likely to have members that have neither a spouse nor a dependant.
- 6.3.3 This provision is understood to be in line with the Money Laundering Regulations 2007, and is less restrictive than the example given in FATF Recommendation 5 of a customer, transaction or product that may present a lower risk upon which the concession is based. That example provides that a scheme will present a lower risk where it is entirely funded by an employer and it does not permit the assignment of any member's interest under the scheme, i.e. it becomes a form of deferred remuneration.
- 6.3.4 It has been suggested that this lower risk would not be significantly affected where a scheme provides that there should be no restriction to whom a member's interest might be transferred post the death of that member. This is on the basis that death is unlikely to be attractive to a money launderer or person financing terrorism. Any risk of this concession being exploited might be limited by including a requirement in Article 18 of the Money Laundering Order for any person to whom a payment is made (and who is not a member of the scheme) to be subject to identification measures under Article 13.
- 6.3.5 On this basis, it is proposed to amend Article 18(3) so that it prevents any assignment during the lifetime of a member, but permits an interest in a scheme to be transferred to a person upon the death of a member – on the condition that identification measures are carried out on that person (the transferee) before the distribution of accumulated benefits.
- 6.3.6 By way of comparison, Guernsey and the Isle of Man do not appear to permit assignment of any interest in a pension, superannuation or similar scheme.

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.

6.4 Article 18 – customer that is listed on a “regulated market”

Money Laundering Order

- 6.4.1 Article 18(6A) of the Money Laundering Order provides that simplified CDD measures may apply where the customer of a relevant person is a body corporate, the securities of which are listed on a regulated market, where “regulated market” has the same meaning as in Article 2(5) of the Money Laundering Order.

Money Laundering Regulations

- 6.4.2 Article 2(5) of the Money Laundering Order provides that a “regulated market” has the same meaning as in the Money Laundering Regulations 2007 of the United Kingdom (the “UK”).
- 6.4.3 That legislation provides that the term “regulated market”:
- 6.4.3.1 within the European Economic Area (the “EEA”), has the meaning given by point 14 of Article 4(1) of the Markets in Financial Instruments Directive; and
 - 6.4.3.2 outside the EEA, means a regulated financial market which subjects companies whose securities are admitted to trading to disclosure obligations which are contained in international standards and are equivalent to the specified disclosure obligations [set out in European Union (“EU”) Directives].
- 6.4.4 Guidance provided by the UK’s Joint Money Laundering Steering Group sets out which markets may be considered to be a “regulated market”. UK guidance provides that a market will be a “regulated market” where it imposes obligations that are consistent with:
- 6.4.4.1 Article 6(1) to 6(4) of Directive 2003/6/EC [the Market Abuse Directive];
 - 6.4.4.2 Articles 3, 5, 7, 8, 10, 14 and 16 of Directive 2003/71/EC [the Prospectus Directive];
 - 6.4.4.3 Articles 4 to 6, 14, 16 to 19 and 30 of Directive 2004/109/EC [the Transparency Directive]; and
 - 6.4.4.4 Community legislation made under the above provisions.
- 6.4.5 The European Securities and Markets Authority (“ESMA”) maintains a database of “regulated markets” within the EU. Generally, the principal markets in EU/EEA member states are likely to be “regulated markets”, and other markets, e.g. the Alternative Investments Market, not.
- 6.4.6 Outside the EEA, there is no generally available list of markets that may be considered to be “regulated markets” for the purpose of the Money Laundering Regulations 2007 and many relevant persons are reluctant to commit substantial time and effort to assessing non-EEA markets against relevant EU directives.
- 6.4.7 In practice, this limits the use of the concession in Article 18(6A) of the Money Laundering Order.

IOSCO Principles

- 6.4.8 Currently, FATF Recommendation 5 lists public companies that are subject to regulatory disclosure requirements (listed on a stock exchange or similar) as examples of customers where risk may be lower. However, the Recommendation does not set out what those disclosure requirements should be.
- 6.4.9 As a result, it is proposed to amend the definition of a “regulated market” so that it is also possible to benchmark a non-EEA market against international standards that are set by the International Organisation of Securities Commissions (“IOSCO”).
- 6.4.10 It is suggested that the concession in Article 18(6A) should apply to an applicant that is a company that is *listed* on a market which requires that, for *traded* securities:
- 6.4.10.1 there should be full, accurate and timely disclosure of financial results, risk and other information which is material to investors’ decisions (Principle 16); and
 - 6.4.10.2 holders of securities in a company should be treated in a fair and equitable manner (Principle 17).
- 6.4.11 In practice, this would allow a relevant person to:
- 6.4.11.1 Rely on ESMA’s database of “regulated markets” in the EU.
 - 6.4.11.2 Assess other markets’ application of Principles 16 and 17⁷ using IOSCO’s Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation⁸ (the “**IOSCO Methodology**”).
- 6.4.12 The IOSCO Methodology considers whether:
- 6.4.12.1 Information about the identity and holdings of persons who hold a substantial (well below controlling) beneficial ownership interest in a company are required to be disclosed on a timely basis: in public offerings and listing particulars documents; once ownership thresholds requiring disclosure have been reached; and at least on annual basis.
 - 6.4.12.2 It is mandatory for material changes in beneficial ownership to be disclosed in a timely manner.

⁷ Formerly Principles 14 and 15.

⁸ A number of assessments conducted by the IMF using the IOSCO Methodology are published. For example, assessments are published for Australia, Canada, Guernsey, Mexico and the United States.

- 6.4.12.3 There are disclosure requirements applicable to two or more persons acting in concert even though their individual ownership might not have to be disclosed.
- 6.4.12.4 Similar provisions to those set out above apply to holdings of voting securities by directors and senior management.
- 6.4.13 The IOSCO Methodology notes that practices vary amongst countries regarding the threshold that constitutes “substantial ownership” required to be disclosed (e.g. 5% or 10%) as well as the timeliness (e.g. 7 or 10 calendar or business days).

Guernsey and Isle of Man

- 6.4.14 Such a change would bring the approach followed in Jersey much closer to that in Guernsey, which defines a “regulated market” by reference to the Insider Dealing (Securities and Regulated Markets) Order, 1996 (as amended). This Order includes a comprehensive list of exchanges that are “regulated markets”, including the Australian Stock Exchange, Channel Islands Stock Exchange, New York Stock Exchange and Tokyo Stock Exchange, and, in addition, any exchange which is an affiliate member of IOSCO, or any exchange which is regulated or supervised by an ordinary or associate member thereof.
- 6.4.15 The Isle of Man follows a similar approach to Jersey. For a stock exchange to be considered as “recognised” the entities listed on it must be subject to appropriate disclosure requirements. For entities listed within Europe, this means “regulated markets” within the meaning of the Markets in Financial Instruments Directive. For entities listed outside Europe, this means “regulated markets” subject to disclosure requirements consistent with the Markets in Financial Instruments Directive.

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.

7 COST BENEFIT ANALYSIS

7.1 Costs to industry

- 7.1.1 It is thought that the cost of the enhanced CDD measures that it is proposed in section 4.3 above apply to relationships and one-off transactions carried out with persons connected to countries identified by the FATF as applying, or insufficiently applying, the FATF Recommendations might be considerable. However, overall it is thought that the effect of implementation would be limited on the basis that there are currently only two countries listed in Group 1 in Appendix D to the AML/CFT Handbook.
- 7.1.2 Similarly, it is thought that the cost of the enhanced CDD measures that it is proposed in section 4.4 above apply to relationships and one-off transactions that are assessed as presenting a higher risk as a result of, or in part due to, a higher assessment of country risk, might also be considerable. Again, it is thought that the overall effect of implementation for many businesses would be limited on the basis that the measures are likely to apply only to a relatively small group of countries, currently Bolivia, Cuba, Ethiopia, Kenya, Myanmar, Nigeria, São Tomé & Príncipe, Sri Lanka, Syria and Turkey. However feedback received to date from two large banks suggests that the Commission's proposals could affect a sizable number of customer relationships.
- 7.1.3 Proposals in section 5.3 above to explain how a relevant person may demonstrate that it has applied CDD measures (and enhanced CDD measures) in a case where a relationship is established, or one-off transaction carried out, with a trust or a legal body on a non-face to face basis, are considered to be cost neutral, on the basis that what is proposed is likely to be based on current practice - where a relevant person does not place reliance on Article 16 of the Money Laundering Order.
- 7.1.4 Similarly, the amendment that is proposed in section 6.2 above to Article 17 of the Money Laundering Order (dealing with a wholly-owned subsidiary of a "regulated person") is expected to merely "regularise" a practice that is already adopted in Industry.

7.2 Costs to the Commission

- 7.2.1 It is not thought that the proposals to amend provisions dealing with enhanced or simplified CDD will involve significant costs, with the exception of proposals for the Commission to publish and maintain a list of higher risk countries - based on reliable and independent external sources.
- 7.2.2 This will involve an investment of Commission time in order to make sure that the list remains current, and that the external sources used remain reliable and independent.

7.3 Benefits

- 7.3.1 Whilst it is proposed in section 4.2 above to provide a much more comprehensive list of the types of country that may be considered to present a higher risk, any additional analysis that this may require should be outweighed by proposals to publish a list of countries which present a higher risk - on the basis of reliable and independent external sources. This will provide for much greater consistency in the assessment of country risk by relevant persons and remove some of the subjectivity that is inherent in country risk assessments.
- 7.3.2 The Commission is not aware of any other regulators that publish such a list.
- 7.3.3 It is thought that changes proposed in section 5.2 above to "suitable certification" will offer considerable savings in time that is currently spent following up certificates that do not certify the true likeness of prospective customers.
- 7.3.4 The amendment that is proposed in section 6.3 above to the concession in Article 18(3) of the Money Laundering Order for pension schemes is likely to facilitate use of the CDD concession, with a corresponding reduction in the CDD measures that may be currently applied.
- 7.3.5 The proposal in section 6.4 above to change the definition for "regulated market" is likely to facilitate use of the CDD concession that is available in Article 18(6A) of the Money Laundering Order, with a corresponding reduction in the CDD measures that may be currently applied.

8 SUMMARY OF QUESTIONS

No.	REFERENCE	QUESTION
1.	1.2.3.6	Do you have any comments on changes proposed to the AML/CFT Handbook that are not addressed elsewhere in this consultation paper?
2.	4.2.3.1	Do you think that the types of countries listed at section 3.3.4.1 of the AML/CFT Handbook are relevant to an assessment of money laundering or terrorist financing risk? If not, please explain why.
3.	4.2.3.2	Should any additional types of country be added to section 3.3.4.1 of the AML/CFT Handbook? If so, please say which.
4.	4.2.3.3	Do you currently use any external public sources that produce actual lists of countries that are not referred to in section 3.3.4.1 of the AML/CFT Handbook and which are relevant to an assessment of money laundering or terrorist financing risk? If so, please provide details.
5.	4.2.3.4	Do you think that any of the external sources listed in Appendix D1 are unreliable or not independent? If so, please explain why.
6.	4.2.3.5	Do you think that the proposed Appendix D1 is useful? If not, how could it be improved?
7.	4.2.3.6	Do you think that it is important for external sources to be provided for each of the types of country that are listed at section 3.3.4.1 of the AML/CFT Handbook?
8.	4.3.2.1	Do you think that these additional regulatory requirements should also apply in any situation which by its nature can present a higher risk of money laundering or terrorist financing (under Article 15(1)(b) of the Money Laundering Order)? If so, please explain why.
9.	4.3.3.5	Do you consider the measures that are proposed to establish source of wealth and source of funds for customers that are connected with a country that does not apply, or insufficiently applies, the FATF Recommendations (and which is listed in Group 1 in Appendix D) to be proportionate?
10.	4.3.3.6	Do you consider that the measures that are proposed should also apply to established relationships, where a connection with a country is made during the course of that relationship? If not, what alternative measures might be appropriate?
11.	4.3.4.6	Do you consider the other measures that are proposed for customers that are connected with a country that does not apply, or insufficiently applies, the FATF Recommendations (and which is listed in Group 1 in Appendix D) to be proportionate?

No.	REFERENCE	QUESTION
12.	4.4.5.1	Do you consider the measures that are proposed for customers that are assessed as presenting a higher risk as a result of, or in part due to, a connection with a higher risk country to be proportionate? If not please explain why.
13.	4.4.5.2	Do you consider that the measures that are proposed should also apply to established relationships, where a connection with a country is made during the course of that relationship? If not, what alternative measures might be appropriate?
14.	4.4.5.3	Can you estimate what percentage of customers would be subject to enhanced CDD measures under 15(1)(b) of the Money Laundering Order due to country risk?
15.	4.4.5.4	What would it cost your business to conduct each of the measures listed at 4.3.3 above to establish source of wealth and source of funds for a prospective customer?
16.	4.4.5.5	Do you think that it is possible to satisfactorily address risk by performing just one of the measures listed at paragraph 4.3.4 above? Should guidance provide instead for two or more (or other number), or all measures to be carried out? Please provide support for your answer.
17.	4.5.2.1	Do you apply any other effective measures to address risks that are not listed in the proposed guidance? If so, please provide details of those measures, explaining how effective they have been in practice.
18.	5.2.2.1	Do you agree that the current regulatory requirement in section 4.8 of the AML/CFT Handbook duplicates Article 15(3) of the Money Laundering Order? If you do not agree, please explain why.
19.	5.2.2.2	Do you agree that the scope of the AML/CFT Handbook should not extend to the prevention of fraud? If you do not agree, please explain why.
20.	5.2.8.1	Do you agree with the changes that are proposed to address the risk presented when a customer who is an individual is not physically present for identification purposes? If you do not, please explain why.
21.	5.2.8.2	Do you think that a relevant person might demonstrate that it has applied the CDD measures required under Articles 13 and 15(3) of the Money Laundering Order by use of suitable certification? If possible, please give examples of cases where suitable certification has been used to meet both sets of requirements.
22.	5.2.9.1	Should this list of examples include other professionals that are subject to professional rules (or equivalent) providing for the integrity of conduct? If yes, please state which professions and provide details about relevant rules and disciplinary action that may be taken where those rules are not complied with.

No.	REFERENCE	QUESTION
23.	5.3.5.1	Do you agree that the proposals will effectively address the risk of establishing a relationship with a trust or legal body through a regulated trust and company services provider, and those that are connected to the trust or legal body, on a non-face to face basis? If not, please explain why risk is not properly addressed.
24.	5.4.7.1	Are the differences between: (i) use of “suitable certification” and documents provided by regulated trust and company services providers under Articles 13 and 15(3) of the Money Laundering Order on the one hand, and (ii) reliance on an introducer or intermediary under Article 16 of the Money Laundering Order on the other explained sufficiently? If not, how could the explanations provided be improved?
25.	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.
26.	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?
27.	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.
28.	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.

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
- 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

Draft of Part 1, Section 3 of the AML/CFT Handbook - Customer due diligence requirements

Please [click here](#) to obtain a copy of the consultation version of Part 1, Section 3 of the AML/CFT Handbook.

APPENDIX C

Draft of Appendix D1: Higher risk countries and territories

Please [click here](#) to obtain a copy of Appendix D1.

APPENDIX D

Draft of Part 1, Section 4 of the AML/CFT Handbook - Identification and verification of identity

Please [click here](#) to obtain a copy of the consultation version of Part 1, Section 4 of the AML/CFT Handbook.