



**Jersey Financial  
Services Commission**

## › **Feedback on Consultation Paper No. 9 2015**

### › **Electronic Customer Due Diligence**

Feedback to a consultation on proposals to provide additional guidance on the application of customer due diligence measures in the Handbooks for the Prevention and Detection of Money Laundering and the Financing of Terrorism for:

- › Financial Services Business Regulated under the Regulatory Laws
- › The Accountancy Sector
- › The Legal Sector
- › Estate Agents and High Value Dealers

## › Consultation Feedback

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

This paper reports on responses received by the *Commission* on the *Consultation Paper*.

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## › 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
CDD	means customer due diligence – as defined in Article 3 of the <i>Money Laundering Order</i>
Commission	means the Jersey Financial Services Commission
Four Handbooks	means the <i>AML/CFT Handbook</i> , <i>Handbook for the Accountancy Sector</i> , <i>Handbook for the Legal Sector</i> and <i>Handbook for Estate Agents and High Value Dealers</i>
Handbook for Estate Agents and High Value Dealers	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for Estate Agents and High Value Dealers
Handbook for the Accountancy Sector	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Accountancy Sector
Handbook for the Legal Sector	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector
Jersey Finance	means Jersey Finance Limited
Money Laundering Order	means the Money Laundering (Jersey) Order 2008
obliged person	means an obliged person as defined in Article 16(1) of the <i>Money Laundering Order</i>
Proceeds of Crime Law	means the Proceeds of Crime (Jersey) Law 1999
relevant person	means a person carrying on a financial services business (as described in Schedule 2 of the <i>Proceeds of Crime Law</i> ) and which is carrying on that business in or from within Jersey, or, if a Jersey legal person, carrying on that business in any part of the world

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# 1 Executive Summary

## 1.1 Overview

1.1.1 In October 2015, the *Commission* issued Consultation Paper No. 9 2015: Electronic *CDD* (the *Consultation Paper*), to seek views on proposed additional guidance on the application of customer due diligence measures for:

- › Financial Services Business Regulated under the Regulatory Laws
- › The Accountancy Sector
- › The Legal Sector
- › Estate Agents and High Value Dealers

1.1.2 The purpose of this paper is to provide feedback on the responses received to the *Consultation Paper*.

## 1.2 Feedback received

1.2.1 The consultation period closed on 20 November 2015. The majority of responses received by the *Commission* were received directly by the *Commission* and five responses were made through *Jersey Finance*. In total, the *Commission* received 17 responses.

1.2.2 Section 2 of this Feedback Paper presents a summary of the substantive comments received and the *Commission's* response, as appropriate, to each.

1.2.3 The *Commission* is grateful to respondents for taking the time to consider and comment on the proposals. A full list of respondents is provided in Appendix A.

## 1.3 Next steps

1.3.1 The *Commission* published the proposed additional guidance, with amendments as set out in this Feedback Paper, as a new chapter of Section 4 of Part 4 of the *Four Handbooks* in December 2015. The *Four Handbooks* can be accessed on the *Commission's* website.

## 2 Summary of responses

### 2.1 Structure of this section

- 2.1.1 This section summarises the substantive comments received in response to the *Consultation Paper*. While not every comment received is individually listed, this section contains summaries of the most commonly made and pertinent comments in relation to each question posed and, as appropriate, the *Commission's* response to those comments.
- 2.1.2 Paragraph references in this section are to the guidance as published, rather than the guidance as consulted upon, for ease of understanding.
- 2.1.3 The *Consultation Paper* asked two questions, as set out below.

### 2.2 Question at paragraph 6.1 of Consultation Paper No. 9 2015

Do you consider any guidance provided in the new chapter of Section 4 of Part 4 of the *Four Handbooks* to be unclear?

- 2.2.1 The majority of respondents who answered this question considered the proposals to be clear.
- 2.2.2 One respondent suggested that, whilst the suggested risks (section 4.2.5 of the new chapter) are consistent with the use of the proposed technology, the documented considerations associated with the risks (section 4.2.6) seem overly burdensome. The respondent considered that the guidance on risk was "too specific" and suggested keeping this section higher level to provide flexibility for firms.
- 2.2.3 The same respondent (along with one other) also queried why the use of technology is considered to present a different "risk level" compared to the use of more regular *CDD* methods (such as certified copies or independent data sources) such that a specific risk assessment is required, as opposed to inclusion within an existing *AML/CFT* business risk assessment.
- 2.2.4 One respondent suggested that, since paragraph 12 of the guidance refers to the outsourcing of *CDD*, this term should be defined.
- 2.2.5 One respondent queried whether the risk assessment should be undertaken when the business makes the decision to use a specific application or each time the application is used as part of *CDD*.
- 2.2.6 One respondent suggested that the technology required in order to rely on the proposed "safe harbour" should be of the highest level and thus potentially very expensive. The respondent queried whether the cost of this technology could initially place smaller firms at a disadvantage.
- 2.2.7 One respondent suggested that the positioning of the guidance in a new chapter in Part 4: Section 4 of the *Four Handbooks* may create an impression that E-*CDD* is entirely different from, and more risky than, traditional methods of *CDD* such as certified true copies and independent data sources. The respondent suggested that the guidance should be incorporated into the body of Part 1: Section 4 of the *Four Handbooks*.

- 2.2.8 One respondent posed several questions, as follows:
- 2.2.8.1 “Is there still a need for scanned documents to be certified – the beginning part of the document allows to capture the image of the document, but parts of paragraph 6 refer to copies certified by a suitable certifier?”
  - 2.2.8.2 Paragraph 7 uses the word “anticipates” why not simply say it’s allowed?
  - 2.2.8.3 In paragraph 12 is the reference to third parties relevant as effectively the outsourcing is to clients to capture and not true third parties as per traditional outsourcing?
- 2.2.9 One respondent suggested that the term “E-CDD” may be confused with EDD (enhanced due diligence) due to the similarity of the abbreviation.
- 2.2.10 One respondent noted that the guidance, at paragraph 11, refers to section 2.4.4 of the *Four Handbooks* – requiring compliance with the *Commission’s* policy statement and guidance notes on outsourcing. The policy statement and guidance notes require prior notification of an intention to outsource so as to allow the *Commission* time to consider the proposal and raise any concerns. The respondent suggested that this requirement to notify should be made clearer in the guidance itself.
- 2.2.11 One respondent suggested that use of the term “third party” in the guidance may cause confusion as this term has a specific meaning (i.e. the person for whom a client is acting). The respondent suggested that this be changed to “service provider” or “independent third party”.
- 2.2.12 One respondent suggested that the second bullet-point of paragraph 12 is missing a reference to the person to whom a *relevant person* would outsource. The respondent suggested that this bullet should be changed to read: “Consider the risks involved in outsourcing any part of the *CDD* process to a service provider/independent third party using a smart phone or tablet application to apply identification measures...”

*Commission response*

- 2.2.13 In relation to the points set out in paragraph 2.2.2, the *Commission* does not agree that the considerations in relation to risk are overly burdensome. As guidance, none of the considerations are mandatory requirements, but rather potential measures that might be used to mitigate risk. The guidance is intended to provide a steer for those *relevant persons* who might be unfamiliar with the potential features of this technology and the majority of feedback received confirmed that such detail is of assistance.
- 2.2.14 In relation to the point set out in paragraph 2.2.3, a specific risk assessment is not required because the *Commission* considers the risks to be necessarily higher than traditional *CDD* methods, but rather is required pursuant to Article 11(3)(bb) of the *Money Laundering Order*. The *Commission* does, however, accept that such an assessment might be included in an existing *AML/CFT* business risk assessment, provided all appropriate matters are included therein.

- 2.2.15 In relation to the point set out in paragraph 2.2.4, the *Commission* does not intend defining the phrase “outsourcing of *CDD*”, as the concept of outsourcing is generally understood and referred to within other sections of the *Four Handbooks* without the need for definition. In this respect, the outsourcing of a *CDD* function is to be treated in the same manner as the outsourcing of any other *AML/CFT* related function.
- 2.2.16 In relation to the point set out in paragraph 2.2.5, a new paragraph 13 has been included in the guidance to make it clear that the risk assessment should be undertaken when a *relevant person* makes the decision to incorporate a specific application into its *CDD* measures and not each time the application is used as part of *CDD*.
- 2.2.17 In relation to the point set out in paragraph 2.2.6, the *Commission* has no evidence in respect of the potential costs of implementing the technology but accepts that, as with any new technology, first adopters may be limited to those with more substantial financial resources. Nevertheless, the *Commission* considers that the use of such technology should be addressed in guidance.
- 2.2.18 In relation to the point set out in paragraph 2.2.7, the *Commission* considers that the guidance is best positioned in a new chapter in Part 4: Section 4 of the *Four Handbooks*. New or developing technology has a specific status and associated legal requirements pursuant to the the *Money Laundering Order* (see Article 11(3)(bb)) and Part 4: Section 4 of the *Four Handbooks* is intended to be the source for guidance on such new and developing technologies.
- 2.2.19 In relation to the question set out in paragraph 2.2.8.1, there is no requirement for documents to be certified as a part of *E-CDD*. *E-CDD* (undertaken with appropriate safeguards) is an alternative to the traditional methods that are referred to at paragraph 6 (including suitable certification).
- 2.2.20 In relation to the point set out in paragraph 2.2.8.2, the *Commission* has amended the wording of the guidance as suggested.
- 2.2.21 In relation to the question set out in paragraph 2.2.8.3, this paragraph is referring to the possibility that the application provider might perform parts of the *CDD* process (e.g. PEP/Sanctions checks).
- 2.2.22 In relation to the point set out in paragraph 2.2.9, the guidance has been amended to use the term “*E-ID*”, so as to avoid any such confusion.
- 2.2.23 In relation to the point set out in paragraph 2.2.10, the *Commission* does not intend reproducing within the guidance any of the specific contents of the *Commission’s* policy statement and guidance notes on outsourcing. This is primarily to avoid the necessity to update the guidance to reflect any future amendments to the policy statement and guidance notes on outsourcing and is consistent with other references to outsourcing in the *Four Handbooks*.
- 2.2.24 In relation to the point set out in paragraph 2.2.11, the *Commission* has amended the wording of the guidance as suggested.
- 2.2.25 In relation to the point set out in paragraph 2.2.12, the *Commission* has amended the wording of the guidance as suggested.

## 2.3 Question at paragraph 6.2 of Consultation Paper No. 9 2015

Are there additional areas where guidance could be provided in the new chapter of Section 4 of Part 4 of the *Four Handbooks*?

- 2.3.1 The majority of respondents who answered this question considered that no additional guidance is needed.
- 2.3.2 One respondent queried why the proposed guidance is limited to the use of electronic products and services for the verification of individuals and noted that the Guernsey Financial Services Commission recently consulted on proposed guidance on the acceptable use of digital certification, electronic signatures and electronic verification. The respondent requested that similar guidance be included in the *Four Handbooks*.
- 2.3.3 One respondent requested that the guidance should clarify that where an *obliged person* has performed *CDD* by way of a smart phone or tablet application, a *relevant person* may continue to place reliance as currently permitted by Article 16 of the *Money Laundering Order* and as per the *Commission's* written assurance template in Appendix C1 of the *Four Handbooks*.
- 2.3.4 One respondent requested specific guidance on:
- 2.3.4.1 What the *Commission* would consider to be the minimum technological specifications for camera clarity and resolution on a smart phone or tablet; and
- 2.3.4.2 How to test application providers and their products (e.g. would professional IT support be recommended to ensure that the technical elements of the applications meet the required standard)?
- 2.3.5 One respondent requested the inclusion of a statement on record keeping requirements, for consistency with other sections of the *Four Handbooks*.
- 2.3.6 One respondent noted that the guidance references smart phones and tablets and queried whether this precluded other platforms e.g. laptops.
- 2.3.7 One respondent requested that an example be included at paragraph 4 – suggesting that verification of the nationality/place of birth for a medium or higher risk individual could be achieved by separately obtaining a copy of a birth certificate in addition to a drivers licence.
- 2.3.8 Two respondents stated that they would welcome further guidance on accepting electronic (online) statements and utility bills as part of the *CDD* process.

### *Commission* response

- 2.3.9 In relation to the points set out in paragraph 2.3.2, the new chapter in Part 4: Section 4 of the *Four Handbooks* specifically addresses the use of technology for the verification of individuals because this was the subject area in which guidance was considered to be most relevant and in which products are entering the market. The provision of guidance in other areas (for example the acceptable use of digital certification, electronic signatures and electronic verification) was not identified as a priority. Nevertheless, the *Commission* will continue to monitor developments in this area and may provide further guidance in these or other areas should this be considered necessary or useful.

- 2.3.10 In relation to the points set out in paragraph 2.3.3, the *Commission* does not intend referring to Article 16 of the *Money Laundering Order* within the guidance. Any *relevant person* considering relying on an *obliged person* is required to assess the *CDD* measures taken by the *obliged person*, regardless of whether the *obliged person* uses face-to-face verification, external data sources, E-ID or any other measure.
- 2.3.11 In relation to the points set out in paragraph 2.3.4.1, the *Commission* does not intend including minimum technological specifications for camera clarity and resolution, because technology is developing at such a rate that any technical specifications would require constant updating. Instead, it is the *relevant person's* responsibility to assess whether the technical specifications are adequate as part of its assessment of the technology.
- 2.3.12 Similarly, in relation to the points set out in paragraph 2.3.4.2, the *Commission* does not intend including more detailed guidance on testing application providers and products. Such testing must be appropriate to the risk of the product and the use to which it is being put and so will differ from case-to-case.
- 2.3.13 In relation to the points set out in paragraph 2.3.5, the *Commission* has included a new paragraph 26 to address record-keeping.
- 2.3.14 In relation to the points set out in paragraph 2.3.6, the guidance is drafted specifically in relation to the use of smart phones and tablets. However, paragraph 2 of the guidance makes it clear that the guidance may be relevant when considering the use of other, similar technology (which may include laptops).
- 2.3.15 In relation to the points set out in paragraph 2.3.7, the *Commission* does not intend including the suggested example at paragraph 4. Paragraph 4 of the guidance refers to the possibility that a *relevant person* may need to obtain further information or evidence by traditional means, should the use of the smart phone or tablet technology not provide all the necessary elements of identity.
- 2.3.16 In relation to the points set out in paragraph 2.3.8, the use of electronic (online) statements and utility bills as part of the *CDD* process is outside the scope of the guidance. However, the *Commission* will continue to monitor developments in this area and may provide further guidance in these or other areas should this be considered necessary or useful.

## Appendix A

### List of respondents to the consultation paper.

- Ogier
- Collas Crill
- Reinet Investment Advisors Limited
- Elian Due Diligence Services
- Barclays
- RBSI
- HSBC
- Crestbridge Limited
- Bank of India
- Standard Bank
- Appleby
- Stanhope Capital (Jersey) Limited

Five anonymous respondents via *Jersey Finance* – a fund administration firm, an investment manager, a private bank/wealth management firm, a bank and a law firm.