

FEEDBACK ON CONSULTATION PAPER NO. 4 2015

REVISIONS TO THE MONEY LAUNDERING (JERSEY) ORDER 2008 AND COMMISSION AML/CFT HANDBOOKS

Proposals to amend provisions in the Money Laundering (Jersey) Order 2008 and 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 the responses received by the *Commission* on Consultation Paper No. 4 2015: Revisions to the Money Laundering (Jersey) Order 2008 and Commission AML/CFT Handbooks

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GLOSSARY OF TERMS

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
Commission	means the Jersey Financial Services Commission
Consultation Paper	means Consultation Paper No. 4 2015: Revisions to the Money Laundering (Jersey) Order 2008 and Commission AML/CFT Handbooks
FATF	means the Financial Action Task Force
Handbook for the Accountancy Sector	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Accountancy Sector
Handbook for the Legal Sector	means the Handbook for the Prevention and Detection of Money Laundering and the Financing of Terrorism for the Legal Sector
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
identification measures	has the same meaning as in Article 3 of the <i>Money Laundering Order</i>
Jersey Finance	means Jersey Finance Limited
Money Laundering Order	means the Money Laundering (Jersey) Order 2008
relevant person	means a person carrying on a financial services business (as described in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 and which is carrying on that business in or from within Jersey, or, if a Jersey legal person, carrying on that business in any part of the world
Three Handbooks	means the <i>AML/CFT Handbook</i> , the <i>Handbook for the Accountancy Sector</i> and the <i>Handbook for the Legal Sector</i>

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1 EXECUTIVE SUMMARY

1.1 Overview

- 1.1.1 In February 2015, the *Commission* issued Consultation Paper No. 4 2015: Revisions to the Money Laundering (Jersey) Order 2008 and Commission AML/CFT Handbooks, to seek views on a number of proposed changes to the *Money Laundering Order* and the *Three Handbooks*¹.
- 1.1.2 The *Consultation Paper* consisted of 61 pages and included a draft of Sections 4 and 13 of the *AML/CFT Handbook*. In addition, the *Commission* ran two presentations at the Town Hall on 13 March 2015 outlining proposed changes. These presentations were attended by around 400 people.
- 1.1.3 The consultation period closed on 18 March 2015. The majority of responses received by the *Commission* were submitted electronically to the *Commission* and one response was made through *Jersey Finance*. In total, the *Commission* received 10 responses.

1.2 What is proposed and why?

- 1.2.1 The *Consultation Paper* proposed amendments to the *Money Laundering Order* to require:
 - 1.2.1.1 *Identification measures* to be applied to a customer to include determining whether the customer is acting indirectly for a third party and, if so, to identify that third party.
 - 1.2.1.2 Policies and procedures to include policies and procedures for determining whether a relationship is with a person who is subject to sanctions legislation.
- 1.2.2 The *Consultation Paper* proposed amendments to the *Three Handbooks* to clarify:
 - 1.2.2.1 What is to be understood by the term “regulated trust and company service provider” in particular sections of the *Three Handbooks*.
 - 1.2.2.2 Explain that “any third party (or parties) on whose behalf the customer acts” includes a named beneficiary of a life assurance policy.

¹ Also similar changes, as appropriate, to the *Handbook for Estate Agents and High Value Dealers*.

- 1.2.2.3 Explain how someone may be a beneficial owner or controller of a customer, other than through “ownership” of shares, interests etc, or voting rights.
- 1.2.2.4 Explain who a trust and company service provider may consider to be its customer in the case of a relationship in respect of a trust or limited partnership.
- 1.2.3 Each of these amendments is consistent with:
 - 1.2.3.1 international standards;
 - 1.2.3.2 signalled expectations of MONEYVAL; and
 - 1.2.3.3 the money laundering and financing of terrorism risk that is present in Jersey.

1.3 Feedback received

- 1.3.1 The *Commission* is grateful to respondents for taking the time to consider and comment on the proposals.
- 1.3.2 A full list of respondents is provided in Appendix A.
- 1.3.3 Sections 3, 4, 5, 6, 7, and 8 of this Feedback Paper present a summary of the comments received with the *Commission’s* response, as appropriate, to each.

1.4 Next steps

- 1.4.1 Following receipt and analysis of the submissions described in this Feedback Paper, the Money Laundering (Amendment No. 8) (Jersey) Order 200- was presented to the Chief Minister along with a recommendation that he make the Order. The Order came into force on 24 March 2015.
- 1.4.2 Following receipt and analysis of the submissions described in this Feedback Paper, the *Three Handbooks* were amended in line with the original proposals, with amendments as set out in this Feedback Paper. Amendments to the *Three Handbooks* took effect on 24 March 2015. Similar amendments are to be made also to the *Handbook for Estate Agents and High Value Dealers*.

2 STRUCTURE OF THIS FEEDBACK PAPER

2.1 Structure of this Feedback Paper

- 2.1.1 Sections 3, 4, 5, 6, 7, and 8 contain the questions posed in the *Consultation Paper* in relation to the proposed amendments to the *Money Laundering Order* and the *Three Handbooks*.
- 2.1.2 While not every comment received is individually listed, these sections contain 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.

3 SUMMARY OF RESPONSES: IDENTIFICATION MEASURES – WHERE THE CUSTOMER IS ACTING FOR A THIRD PARTY

3.1 Overview

- 3.1.1 Section 4 of the *Consultation Paper* proposed changes to Article 3 of the *Money Laundering Order* (meaning of “customer due diligence measures”) to clarify that *identification measures* to be applied to a customer also include determining whether the customer is acting indirectly for a third party and, if so, identifying that third party.

3.2 Paragraph 4.4.1 of the Consultation Paper

Do you consider that the proposals are effective and proportionate?

Yes/No

If no, please explain.

- 3.2.1 A large majority of respondents who answered this question considered the proposals to be effective and proportionate.
- 3.2.2 One respondent disagreed with the proposals, suggesting that they could potentially make Jersey unattractive as a jurisdiction to place business, thereby giving other jurisdictions (with lower standards) an advantage. The respondent also suggested that the proposals represent a move away from a risk-based approach towards a more prescriptive, rules-based approach.

Commission response

- 3.2.3 In relation to the points set out in paragraph 3.2.2, the *Commission* considers that the proposals:
- 3.2.3.1 Reflect existing practice;
- 3.2.3.2 Follow international standards and, as such, should not place Jersey at a competitive disadvantage; and
- 3.2.3.3 Do not represent a move away from a risk-based approach. *Relevant persons* are still able to nuance their approach according to risk; the proposals simply make clear to whom that risk-based approach must be applied.

4 SUMMARY OF RESPONSES: POLICIES, PROCEDURES AND TRAINING TO PREVENT AND DETECT MONEY LAUNDERING

4.1 Overview

- 4.1.1 Section 5 of the *Consultation Paper* proposed changes to Article 11 of the *Money Laundering Order* (policies, procedures and training to prevent and detect money laundering) to require policies and procedures to include policies and procedures to determine whether a relationship is with a person who is subject to sanctions legislation.

4.2 Paragraph 5.4.1 of the Consultation Paper

Do you consider that the proposals are effective and proportionate?

Yes/No

If no, please explain

- 4.2.1 All respondents who answered this question considered the proposals to be effective and proportionate.

Commission response

- 4.2.2 The *Commission* notes the responses submitted.

5 SUMMARY OF RESPONSES: SECTION 3.3 OF THE AML/CFT HANDBOOK

5.1 Overview

5.1.1 Section 6 of the *Consultation Paper* proposed changes to Section 3.3 of the *AML/CFT Handbook* (guidance on taking a risk-based approach to the application of *identification measures*) to clarify that “any third party (or parties) on whose behalf the customer acts” includes a named beneficiary of a life assurance policy.

5.2 Paragraph 6.4.1 of the Consultation Paper

Do you consider that the proposals are effective and proportionate?

Yes/No

If no, please explain

5.2.1 All respondents who answered this question considered the proposals to be effective and proportionate.

Commission response

5.2.2 The *Commission* notes the responses submitted.

6 SUMMARY OF RESPONSES: SECTION 4 OF THE AML/CFT HANDBOOK

6.1 Overview

- 6.1.1 Section 7 of the *Consultation Paper* proposed a number of changes to Section 4 of the *AML/CFT Handbook*. This section explains who is to be considered the beneficial owner and controller of a customer, and lists what evidence of identity might be obtained in order to comply with Article 13 of the *Money Laundering Order*. Guidance is also given on the timing of obtaining evidence of identity and on what to do where it is not possible to complete *identification measures*.
- 6.1.2 A revised draft of Section 4 of the *AML/CFT Handbook* was attached to the *Consultation Paper*.
- 6.1.3 The change proposed was to provide further guidance on how someone may be a beneficial owner or controller of a customer, other than through “ownership” of shares, interests etc, or voting rights (a so called “material interest”).

6.2 Paragraph 7.4.1 of the Consultation Paper

Do you consider that the proposals are effective and proportionate?

Yes/No

If no, please explain

- 6.2.1 The majority of respondents who answered this question considered the proposals to be effective and proportionate.
- 6.2.2 One respondent disagreed with the proposals, suggesting that they:
 - 6.2.2.1 Would require the creation of an unnecessary paper chain in order to ‘tick’ a box which is not effective in managing risk. No further details or information was provided to explain why the respondent believed this to be the case;
 - 6.2.2.2 Demonstrate that Jersey is not open for business and provide an unfair advantage to other offshore jurisdictions;
 - 6.2.2.3 Demonstrate a prescriptive approach rather than a risk-based approach; and
 - 6.2.2.4 Would cause regulated entities to fail the *Commission’s* visits, due to their complexity and prescriptiveness.

- 6.2.3 One respondent queried the status of directors and signatories, who may not necessarily be identified as beneficial owners and controllers; but might be acting on behalf of a customer and require identification pursuant to Article 3(2)(c)(i) of the *Money Laundering Order*.
- 6.2.4 One respondent queried whether the proposals would move Jersey out of line with Guernsey where, in most instances, there is a move toward a more aligned approach.
- 6.2.5 One respondent queried whether the proposals are applicable to each entity in a customer's ownership structure.
- 6.2.6 One respondent suggested that, in order to apply the proposals to a person who exercises ultimate effective control over a third party, an amendment would also be required to Article 3(7) of the Money Laundering Order, which specifies the persons who must be identified in these circumstances.

Commission response

- 6.2.7 In relation to the points set out in paragraph 6.2.2, the *Commission*:
 - 6.2.7.1 Does not agree that the proposals will create an unnecessary paper chain or "tick-box" approach. Rather, they will enable a *relevant person* to assess and determine who the true beneficial owners and controllers of its customers are. This will discourage "tick-box" exercises and will encourage *relevant persons* to exercise their own judgement in order to achieve a practical outcome.
 - 6.2.7.2 Considers that the proposals are in line with international standards and guidance and, as such, should not place Jersey at a competitive disadvantage.
 - 6.2.7.3 Does not agree that the proposals represent a more prescriptive approach and a move away from a risk-based approach. Rather, there is more scope for a *relevant person* to themselves determine which individuals need to be identified.
 - 6.2.7.4 Does not agree that the proposals will necessarily cause regulated entities to "fail the *Commission's* visits". AML/CFT requirements are increasingly placing more responsibility on *relevant persons* to exercise judgement and come to their own conclusions on risk and appropriate methods of mitigation. The *Commission* recognises that this is a complex and often difficult process to manage, but does not accept that the proposals make the process more difficult or unnecessarily complex. However, internal training will be provided on the tiered approach set out in guidance, so that it is understood by examination teams.
- 6.2.8 In relation to the point set out in paragraph 6.2.3, the *Commission* confirms that the requirement to identify all persons purporting to act on behalf of the customer remains. This means that, where a director is not a beneficial owner

or controller, a *relevant person* will still have to consider whether they are acting on behalf of the customer and, if so, apply *identification measures* as appropriate. However, it does not automatically follow that each director will be a person who purports acts on behalf of the customer with respect to a particular business relationship or transaction.

- 6.2.9 In relation to the point set out in paragraph 6.2.4, these proposals were developed in direct response to issues raised by assessors during the recent MONEYVAL onsite evaluation of Jersey (which may not also have been raised in Guernsey's assessment). As such, the *Commission* considers that, while statutory requirements in Jersey and Guernsey remain very similar, a temporary divergence in guidance is justified and appropriate, given the importance that is attached to *FATF* Recommendations dealing with the transparency of legal persons and legal arrangements. As set out in the *Consultation Paper*, the proposals are based upon the revised *FATF* methodology on beneficial ownership (Recommendation 10) and recent guidance on transparency and beneficial ownership which will - in due course - be followed in other jurisdictions.
- 6.2.1 In relation to the point set out in paragraph 6.2.5, the *Commission* confirms that only the ultimate beneficial owners or controllers of a customer must be found out and evidence of identity obtained. However, in order to determine which individuals are those ultimate beneficial owners or controllers, a *relevant person* will need to understand the ownership and control of each entity in the structure. Depending on the way control is exercised within these entities, this may necessitate determining the beneficial owners or controllers of each entity.
- 6.2.2 In relation to the point set out in paragraph 6.2.6, Article 3(7) of the *Money Laundering Order* had been amended to include the phrase "(c) that person is an individual who otherwise exercises ultimate effective control over the third party". This will enable the proposals to have full effect in relation to the identification of beneficial owners and controllers of third parties on whose behalf a customer is acting.

7 SUMMARY OF RESPONSES: SECTIONS 4.4.5 AND 4.5.7 OF THE AML/CFT HANDBOOK

7.1 Overview

- 7.1.1 Section 8 of the *Consultation Paper* proposed a number of changes to Sections 4.4.5 and 4.5.7 of the *AML/CFT Handbook* which contain guidance on obtaining copy documentation from a “regulated trust and company service provider” in order to meet a *relevant person’s* obligations under Article 13 of the *Money Laundering Order*.
- 7.1.2 The *Consultation Paper* proposed limiting the application of Sections 4.4.5 and 4.5.7 to trust companies regulated in the Crown Dependencies.

7.2 Paragraph 8.4.1 of the Consultation Paper

Do you consider that the proposals are effective and proportionate?

Yes/No

If no, please explain

- 7.2.1 The majority of respondents who answered this question considered the proposals to be effective and proportionate.
- 7.2.2 One respondent suggested that the definition of “regulated trust and company service provider” should be wider than those regulated by the Commission, the Guernsey Financial Services Commission or the Isle of Man Financial Supervision Commission, to include “equivalent jurisdictions”.
- 7.2.3 One respondent agreed with the reasons for limiting the definition of “regulated trust and company service provider”, but suggested that neither the Guernsey Financial Services Commission nor the Isle of Man Financial Supervision Commission have the same standards as Jersey, so the proposals would not be effective.

Commission response

- 7.2.4 In relation to the points set out in paragraph 7.2.2 and 7.2.3, the *AML/CFT Handbook* provides a “safe harbour” – describing a particular way in which a *relevant person* can apply *identification measures*. The proposed guidance will mean that obtaining copy evidence from a “Crown dependency-registered trust and company service provider” will be assumed to be an appropriate *identification measure* (i.e. a “safe harbour”), since the *Commission* considers that a *relevant person* can have confidence in the reliability of the *identification measures* applied by those trust and company service providers.

7.2.5 This does not rule out the possibility that a *relevant person* may develop other methods of complying with Article 13 of the *Money Laundering Order* that are equally robust and appropriate, which might include obtaining evidence from a trust and company service provider in an “equivalent jurisdiction”. A *relevant person* will, however, need to be able to demonstrate why that method is considered to be appropriate.

8 SUMMARY OF RESPONSES: SECTION 13 OF THE AML/CFT HANDBOOK

8.1 Overview

- 8.1.1 Section 9 of the *Consultation Paper* proposed a number of changes to Section 13 of the *AML/CFT Handbook*, which is intended to assist with the application of customer *identification measures* where a *relevant person* establishes a business relationship or carries out a one-off transaction in the course of carrying on trust company business.
- 8.1.2 The change proposed was to provide further guidance on who may be considered to be the customer by a trust and company service provider.

8.2 Paragraph 9.4.1 of the Consultation Paper

Do you consider that the proposals are effective and proportionate?

Yes/No

If no, please explain

- 8.2.1 The majority of respondents who answered this question considered the proposals to be effective and proportionate.
- 8.2.2 One respondent disagreed with the proposals, suggesting that they:
- 8.2.2.1 Represent a backward step, as the requirement regarding a dummy settlor was removed from a previous version of the *AML/CFT Handbook*;
 - 8.2.2.2 Will make Jersey an unattractive jurisdiction to conduct business. No further details or information were provided to explain why the respondent believed this to be the case;
 - 8.2.2.3 Represent a prescriptive approach rather than a risk-based approach; and
 - 8.2.2.4 Raise the question of how industry is expected to identify a 'secondary' settlor without this becoming a tick box exercise.

Commission response

- 8.2.3 In relation to the points set out in paragraph 8.2.2, the *Commission*:

- 8.2.3.1 Does not agree that the proposals represent a backward step. *Relevant persons* have been, and continue to be, required to find out the identity of the true settlor. The proposals will simply make the obligation clearer in guidance.
- 8.2.3.2 Considers that the proposals are in line with international standards and guidance and, as such, should not place Jersey at a competitive disadvantage.
- 8.2.3.3 Does not agree that the proposals represent a more prescriptive approach and a move away from a risk-based approach. In the absence of an explanation as to why the respondent believes this to be the case, it is difficult to address concerns directly.
- 8.2.3.4 Given the responsibilities placed on a trustee under statute and customary law, the *Commission* does not agree that the proposals will necessarily cause regulated entities to implement a tick box exercise. As with other AML/CFT obligations, a relevant person is required to take reasonable steps in order to determine whether the declared settlor is, in fact, a “dummy settlor”. The method by which a *relevant person* may achieve compliance (i.e. what steps are “reasonable”) will be determined by the circumstances and the customer risk assessment. Steps might include verification of information from secondary/independent information sources and/or an in-depth investigation of the declared settlor. It is anticipated that “dummy settlors” may also be recognised via on-going monitoring of a business relationship.

APPENDIX A

List of respondents to Consultation Paper No 4 2015

- Apex Trust Company Limited
- GP Secretaries Limited
- HSBC Private Bank (C.I.) Limited (on behalf of all HSBC entities within Jersey)
- Kleinwort Benson
- Lloyds Banking Group
- R&H Trust Co (Jersey) Limited
- RBS International
- One trust company (via Jersey Finance)
and
- 3 individuals