

CHANGES PROPOSED BY THE JERSEY FINANCIAL SERVICES COMMISSION TO CUSTOMER DUE DILIGENCE MEASURES FOR COUNTERING MONEY LAUNDERING AND TERRORIST FINANCING

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- Governance
- Risk Management
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1. EXECUTIVE SUMMARY

In November 2011, the Jersey Financial Services Commission (“the Commission”) published a consultation paper (No. 6 of 2011) concerning proposals to amend provisions of the Money Laundering Order 2008 (“MLO”) and the associated Anti-Money Laundering/Countering Financing of Terrorism Handbook (“the AML/CFT Handbook”) dealing with the requirements for enhanced and simplified customer due diligence (“CDD”) in particular situations.

If introduced as proposed, the changes would make customer identification requirements considerably more onerous when customers of financial services business are based in or linked to countries presenting a moderate or high risk in relation to money laundering and terrorist financing. Some simplification of existing CDD measures would, however, be permitted in relation to transactions involving intermediaries, pension schemes, and customers listed on regulated markets.

Overview

As a result of recommendations made by the International Monetary Fund’s report on Jersey’s compliance with the Financial Action Task Force (“FATF”) 40+9 Recommendations, the Commission plans to undertake a broad review of the basis for, and scope of, the CDD concessions in Articles 16 to 18 of the MLO, which will be undertaken in the context of the imminent revision to FATF Recommendations 5 (CDD measures) and 9 (reliance on third parties). In advance of that process, the Commission has made proposals for a number of discrete amendments to the application of enhanced and simplified CDD measures to address:

1. Risks that have changed since the MLO was made in February 2008;
2. Areas that have been identified in which the MLO and AML/CFT Handbook do not work as well as was intended or are not fully understood; and
3. Provisions in the MLO and AML/CFT Handbook that have proved difficult to apply in practice.

The Commission has stated that the proposals are intended both to set additional requirements and provide more extensive guidance in some higher risk areas and, on the other hand, to lighten the regulatory burden in areas such as “suitable certification” so that the overall approach is more proportionate to risk and consistent with the practices of neighbouring countries and territories.

The wider context of the review is a suggestion by the IMF that the MLO and AML/CFT Handbook had created a regulatory regime under which “*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.*” The particular issues identified by FATF were that:

1. Article 17 of the MLO may be applied to intermediaries based in countries that

have banking secrecy, and this creates an “*underlying risk of misuse*”;

2. The full rigour of FATF Recommendation 5 (CDD measures) had not been applied to “*designated*” intermediary accounts, the effect of which would be to limit the application of Article 17 of the MLO to “*pooled*” intermediary accounts;
3. There is no express provision in Article 17 of the MLO preventing 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”; and
4. In situations where funds are received from an account at a bank supervised in Jersey or in a country that imposes requirements in line with the FATF recommendations, the current regulatory regime may in some situations consider that identity verification has already been carried out.

Proposed amendments

The amendments to the MLO and AML/CFT Handbook proposed by the Commission fall into three broad categories:

5. Enhanced CDD measures relating to higher risk countries;
6. Enhanced CDD measures relating to non-face to face customer identification; and
7. Simplified CDD measures in particular situations.

The categories are considered in turn below.

Enhanced CDD: higher risk countries

The Commission proposes to impose more stringent CDD requirements on the businesses which it regulates (“relevant persons”) which deal with customers based in, or connected to, higher risk countries. As a first step, additional guidance is intended to simplify the process of assessment of country risk in two ways:

1. The common characteristics of countries that may be considered to present a higher risk will be explicitly stated in revised section 3.3.4.1 of the AML/CFT Handbook; and
2. A new Appendix D1 to the Handbook will collate information from a number of external sources on countries assessed as posing a higher risk but not falling into FATF’s existing Groups 1 and 2.

The new measures will complement the recently updated Appendix D to the AML/CFT Handbook, which lists countries in FATF Groups 1 and 2.

A new section 3.4.2 of the Handbook will set out enhanced CDD measures which must be carried out where a customer has links to a Group 1 country. The measures relate to both customer identification and tracing of customer source of wealth and customer source of funds. Group 1 currently comprises Iran and North Korea.

No new regulatory requirements are envisaged in relation to Group 2 countries (currently Bolivia, Cuba, Ethiopia, Kenya, Myanmar, Nigeria, São Tomé & Príncipe, Sri Lanka, Syria and Turkey) but

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important revisions to the existing guidance are proposed. In particular:

1. Measures taken to establish customer source of funds and source of wealth would be identical to those required in respect of Group 1 countries, representing a significant addition to the regulatory burden in relation to Group 2 countries; and
2. Enhanced CDD measures would be the same as those required in respect of Group 1 countries, but only one measure (out of a total of five) need be applied to demonstrate compliance.

Where a business relationship or transaction is assessed as presenting higher risk for reasons other than country risk, an addition is made to the existing guidance in relation to banking relationships – a relevant person will discharge its regulatory obligations if it undertakes any one of ten measures set out at revised section 3.4.4 of the Handbook.

Enhanced CDD: non-face to face identification

Significant changes are proposed to the CDD measures to be adopted in three situations where no face to face identification of a customer is possible:

1. Where a relevant person's customer is an individual;
2. Where a relevant person's customer is a trustee, foundation or legal body; and
3. Where a relevant person's customer is referred to it by an introducer or intermediary.

Where a relevant person is dealing with an individual who is not present the current section 4.8 of the AML/CFT Handbook requires an additional check to be made to reduce the risk of identity fraud. This requirement will be omitted from the revised guidance and section 4.8 rewritten in order to make clear that it refers to identification measures, and not the ongoing monitoring of existing customers. In addition, existing regulatory requirements in respect of the "suitable certification" procedures will be replaced by guidance, which will considerably increase flexibility in this area.

New guidance is also proposed in relation to transactions and business relationships carried out remotely by trustees, foundations or legal bodies. Under modifications to sections 4.4 and 4.5 of the Handbook, a relevant person conducting CDD procedures in relation to the individuals connected with such bodies will be entitled to rely on copies of identity documents supplied by a regulated trust and company services provider, provided that the documents held by the trust and company services provider are current originals, or certified copies of current originals.

In cases involving introducers and intermediaries, a revised section 4.8 of the Handbook will highlight the differences between the use of "suitable certification" for an individual customer and the confirmation of identity that may be provided by an introducer where a relevant person relies on Article 16 of the MLO (under which the relevant CDD measures have already

been carried out). It will also explain the difference between reliance on documents supplied by a regulated trust and company services provider for the purposes of CDD to be conducted by the relevant person, and the reliance which a relevant person is entitled to place on CDD measures which have already been carried out by an introducer or intermediary under Article 16 MLO.

Simplified CDD measures

Under the proposals, CDD measures are to be simplified or made less onerous in three areas where money laundering and terrorist financing risk is considered to be lower. The amendments envisaged would have the effect of:

1. Extending the application of the concession set out in Article 17 of the MLO (reliance where an intermediary is a regulated person) to wholly-owned subsidiaries of "regulated persons" where the subsidiaries are not themselves regulated;
2. Allowing simplified CDD measures to be applied to a pension scheme that permits members to assign interests to a person other than a spouse or dependant of a member after the member's death; and
3. Revising the definition of "regulated market" in order to make it easier to apply simplified CDD measures to customers that are companies with securities traded on transparent markets.

Marked up sections of the AML/CFT Handbook have been produced by the Commission in order to illustrate how the proposed changes would affect the existing document. They may be viewed here:

http://www.jerseyfsc.org/the_commission/general_information/consultation_papers/consultation_papers.asp

Next steps

The proposed amendments have the potential to affect all financial services businesses regulated by the Commission.

The proposals set out for consultation have already been presented to the Commission's AML/CFT Steering Group, which is made up of representatives from the Commission, Jersey Finance, the Joint Financial Crimes Unit and industry.

Interested parties are invited to submit their observations on the proposals to the Commission by 29 February 2012.

Following the completion of the consultation exercise the Commission will make the necessary changes to sections 3 and 4 of the AML/CFT Handbook and set in train the necessary procedures for the amendment of the MLO.

2. ENHANCED CDD: HIGHER RISK COUNTRIES

Overview

By reason of Article 15(3A) of the MLO, a relevant person must carry out enhanced CDD checks where it has, or proposes to have a business relationship or to carry out a one-off transaction with a person connected to a country which does not apply, or insufficiently applies, the FATF recommendations (“higher risk countries”).

Article 15(1)(b) of the MLO 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.

The Commission has already updated its licensing policies to address country risk; its Sensitive Activities Policy is also currently under review.

In summary, the Commission proposes to:

1. Require certain additional enhanced CDD measures to be applied to relationships and one-off transactions carried out with persons connected to higher risk countries, and to set out in some detail how a relevant person may demonstrate compliance with those measures; and
2. Set out in some detail how a relevant person may demonstrate compliance with the requirement in the MLO 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.

2.1 Assessment of country risk

Overview

The Commission proposes to enlarge upon the guidance in section 3.3.4.1 of the AML/CFT Handbook on the factors relevant to an assessment of country risk. This guidance will assist with the identification of higher risk countries, other than those which are listed in Group 1 or Group 2 in the existing Appendix D of the AML/CFT Handbook, which are already identified by the Commission as presenting a higher risk and must be treated as such.

In particular, the Commission intends that the guidance should:

1. Set out the common characteristics of countries that may be considered to present a higher risk, e.g. those identified by FATF as having strategic AML/CFT deficiencies, those which harbour major production of illicit drugs, and those which have strong links to terrorist activities. Those countries identified as being AML/CFT deficient are listed in Group 3 of the exiting Appendix D.; and
2. Provide references to reliable and independent external sources that produce lists of countries that present a higher risk for each type.

Common characteristics

A fuller list of factors to consider when assessing country risk is provided at section 3.3.4.1 of the proposed revised version of the Handbook. In addition to the factors identified at 1) above, the following factors are suggested by the Commission:

1. High levels of organised crime;
2. Involvement in the proliferation of nuclear or other weapons;
3. Particular vulnerability to corruption;
4. Little or no confidence in the rule of law;
5. Little or no confidence in government effectiveness;
6. Political instability;
7. Subjection to sanctions measures effective in Jersey or elsewhere (as appropriate);
8. Lack of transparency e.g. excessive secrecy laws;
9. Inadequate regulatory and supervisory standards on international cooperation and information exchange; and
10. A cash intensive economy.

Factors indicative of lower country risk which it is proposed to include in the revised Handbook (also at section 3.3.4.1) are as follows:

1. A favourable rating in the Worldwide Governance Indicators project;
2. The application of national financial reporting standards which follow international financial reporting standards;
3. A commitment to international export control regimes (e.g. the Nuclear Suppliers Group); and
4. A favourable assessment by the Financial Stability Board concerning adherence to regulatory and supervisory standards on international cooperation and information exchange.

External sources

It is envisaged that a new Appendix D1 to the AML/CFT Handbook will collate information from a range of external sources in a way which will ease assessment of which countries present a higher risk. A draft version has been created, which may be viewed here:

http://www.jerseyfsc.org/pdf/Consultation_Paper_No6_2011_AppendixC.pdf

The appendix is in the form of a matrix, with ten sources listed in columns running from left to right. Where a country is listed by one of the sources, its name appears in the column associated with that source. The rows containing countries are arranged alphabetically. Rows for countries listed by three of the sources are highlighted green; rows for countries listed by four or more sources are highlighted yellow.

Countries categorised as Group 1 (Iran and North Korea) and Group 2 (Bolivia, Cuba, Ethiopia, Kenya, Myanmar, Nigeria, São Tomé & Príncipe, Sri Lanka, Syria and Turkey) and set out in Appendix D to the AML/CFT Handbook, are not included in Appendix D1 as enhanced customer

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due diligence measures must always be applied to a business relationship or one-off transaction carried out with a person connected to a Group 1 country and countries listed in Group 2 must always be assessed as higher risk in the case of a business relationship with, or one-off transaction carried out with, a person connected to them

The sources relied on by the Commission are as follows:

1. FATF's ongoing review of country risk (currently shown as at 28 October 2011);
2. The UK Serious Crime Agency's UK Threat Assessment (2009/10);
3. The United States Department of State's International Narcotics Strategy Report (March 2011);
4. The United States Department of the Treasury's Terrorist Assets Report and Country Reports on Terrorism (both 2010);
5. The Commission's list of sanctions by regime (3 November 2011);
6. Transparency International's Corruption Perceptions Index (2010);
7. The Worldwide Governance Indicators project (1996-2010);
8. The Failed States Index compiled by US think-tank Fund for Peace and Foreign Policy magazine (2011);
9. The OECD's progress report on the jurisdictions surveyed by the OECD Global Forum in implementing the internationally agreed tax standard (2 November 2011); and
10. The Financial Stability Board's report on promoting global adherence to regulatory and supervisory standards on international cooperation and information exchange (2 November 2011).

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

Overview

Countries that do not apply, or apply fully, the FATF Recommendations are identified by the Commission in the existing Appendix D to the AML/CFT Handbook. The countries concerned are split into three groups according to their classification by FATF:

1. Group 1: Countries covered by enhanced customer due diligence measures (Iran and North Korea);
2. Group 2: Countries and territories that are considered to present a higher risk (Bolivia, Cuba, Ethiopia, Kenya, Myanmar, Nigeria, São Tomé & Príncipe, Sri Lanka, Syria and Turkey); and
3. Group 3: Countries that might be considered to present a higher risk.

Group 3 currently comprises 30 countries, but is expected to grow considerably when FATF's global survey is complete.

The Commission proposes to delineate in greater detail the nature of the enhanced CDD measures required when considering transactions or a business relationship with any counterparty which has links to a Group 1 country by way of a new

section 3.4.2 of the AML/CFT Handbook. Under the proposed measures enhanced CDD must include:

1. The requirement that any new business relationship (and continuation thereof) or one-off transaction be approved by senior management; and
2. Taking measures to establish the source of wealth of the customer and source of the funds involved in the business relationship or one-off transaction.

These requirements are in line with the existing scheme applying to customers that are, or are connected to, politically exposed persons (Article 15(5A) MLO). The existing scheme for enhanced CDD in respect of customers with links to higher risk countries provides that a relevant person may demonstrate that it has collected relevant relationship information where it:

1. Takes reasonable steps to establish the source of funds and source of wealth for each customer; and
2. Where it gives consideration to whether it would be appropriate to take measures to verify source of funds and wealth.

Guidance notes

Guidance on compliance with the enhanced requirements is given in the proposed new section 3.4.2 of the AML/CFT Handbook. In summary, a relevant person will be able to demonstrate that it has taken measures to establish the source of wealth or funds of a customer with links to a Group 1 country where it has done **one or more** of the following:

1. Commissioned 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;
2. Where the relevant person is part of a group, obtained 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;
3. Where the relevant person is part of a group, obtained adequate information from a part of the group which has direct representation in the country or territory with which the customer has a connection about source of wealth and source of funds and how sources have been verified; or
4. Collected and verified information on source of wealth or funds by way of a face-to-face interview.

The proposed new guidance further states that, where a relevant person seeks to demonstrate that it has applied enhanced CDD measures in relation to a transaction or business relationship as defined under Article 15(3A) of the MLO (one which is with a person connected with a country that does not apply, or insufficiently applies, the FATF recommendations) it will succeed where it can show that it has done **all** of the following:

1. In a case where a relationship is to be established non-face to face, required 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);
2. Assigned a dedicated relationship manager to the business relationship;
 3. Required more frequent reviews of the business relationship, e.g. annual reviews;
 4. Required any such 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; and
 5. Set lower monitoring thresholds for transactions connected with the business relationship.

2.3 Enhanced CDD measures – other higher risk countries

No new regulatory requirements are proposed in respect of business relationships or one-off transactions which are assessed as higher risk due (at least in part) to a connection with a country that must be considered to present a higher country risk because of AML/CFT deficiencies. Such countries are listed by the Commission in Appendix D of the Handbook under Group 2.

Two important revisions to the guidance are, however, proposed:

1. Reasonable measures to be taken to establish source of funds and source of wealth would be identical to those required in respect of Group 1 countries (described above). This would represent a significant addition to the regulatory burden in respect of Group 2 countries; and
2. A relevant person would be able to demonstrate that it had applied enhanced CDD measures as required under Article 15(1)(b) of the MLO where it could show that it had applied any **one** of the measures outlined above in respect of Group 1 countries and Article 15(3A) of the MLO.

2.4 Enhanced CDD measures – other higher risk relationships

Where a business relationship or transaction is assessed as presenting higher risk for reasons other than country risk, the Commission proposes that section 3 of the AML/CFT Handbook should continue to provide much greater flexibility in the measures to be taken to establish a customer's source of wealth and source of funds than with respect to country risk in order to comply with Article 15(1)(b) of the MLO.

Additional guidance is, however, proposed in relation to banking relationships, as set out at section 3.4.4 of the revised Handbook. In brief summary, this suggests that where a relevant person considers that it would be appropriate to verify the source of funds or source of wealth of a potential or existing customer, it will discharge its CDD obligations under Article 15(1)(b) if it

undertakes any **one** of the following measures (subject to the proviso that the nature of the measure to be applied will depend on the circumstances of the relationship or transaction and the factors leading to the customer being considered to be higher risk):

1. Obtaining additional CDD information from either the customer, the internet, public or commercially available databases or professional intermediaries;
2. In a non-face to face relationship, certification of identity documents;
3. Taking fresh or additional steps to verify CDD information previously obtained, e.g. obtaining an up to date copy of an expired passport;
4. Commissioning due diligence reports from independent experts to verify CDD information held;
5. Undertaking internet research;
6. Requiring any relationship or transaction with the customer to be approved by senior management;
7. Assigning a dedicated relationship manager to the business relationship;
8. Requiring more frequent reviews of the business relationship e.g. annual reviews;
9. Requiring review of the business relationship by the compliance function or other employees not directly involved in managing the customer; and
10. Setting lower monitoring thresholds for transactions connected with the business relationship.

3. ENHANCED CDD: NON-FACE TO FACE IDENTIFICATION

Overview

Article 15(3) of the MLO requires a relevant person to carry out enhanced CDD measures where a customer has not been physically present for identification purposes. This means taking additional steps to those set out in the guidance at sections 4.3 to 4.5 of the AML/CFT Handbook.

Section 4.8 of the 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.

Together with removing references in section 4 of the Handbook to identity fraud and linking it instead to Article 15(3) of the MLO, the Commission proposes to clarify the application of customer identification measures (and enhanced measures) to cases where a relationship is established or one-off transaction carried out in one of the following ways:

1. By direct contact with an individual by post, telephone or the internet;
2. By contracting 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;
3. By contracting 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
4. By contracting 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.

The Commission further intends to highlight the distinction between the collection of evidence of identity as part of CDD measures carried out under Articles 13 and 15(3) of the MLO and the collection of a copy of evidence of identity from an introducer or intermediary under Article 16 of the MLO.

3.1 Enhanced CDD measures – individuals

Under the current arrangements, 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.

The Commission proposes to delete the reference to “identity fraud”, which it declares to be outside the scope of the Handbook, and instead to make a link to Article 15(3) of the MLO. It further proposes to delete the existing requirement in section 4.8 of the Handbook to carry out enhanced CDD, on the basis that this duplicates

the requirement set out in Article 15(3) of the MLO.

The Commission further proposes to reorganise the construction of section 4.8 of the Handbook to address the illogicality of the current position: as it stands, after setting out a number of options for addressing identity fraud, the section then sets what are now considered to be overly prescriptive and onerous obligations (e.g. certification of true likeness) should the “suitable certification” option be selected. The Commission states that it is concerned that this imposes an unnecessary burden on those conducting CDD checks, which is out of step with the practice in comparable jurisdictions

In order to address these matters (and others identified by the Commission), it is proposed in broad summary that:

1. Section 4.8 of the Handbook be revised so as to clearly state that it concerns enhanced identification measures (and not enhanced ongoing monitoring);
2. The assurance that is obtained from the enhanced identification measures taken under Article 15(3) be broadly the same. Where the measures to be applied are not “suitable certification” or verification of identity using additional sources listed in the Handbook, enhanced measures should be a combination of other checks that adequately take into account a relevant person’s risk assessment of a particular customer;
3. Regulatory requirements on “suitable certification” be replaced by guidance;
4. References to the certification of true likeness be removed (though the Commission comments that 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); and
5. Section 4.8 of the Handbook should cease to deal with the measures to be taken in the case of a relationship or one-off transaction that is considered to present a higher risk as these measures are described fully in the revised section 3.4.

Examples of acceptable persons for the purposes of certification of identity are given at paragraph 137 of the revised Handbook. The list includes professionals such as lawyers, notaries, actuaries, accountants and tax advisors. Processes for certification are discussed more generally at revised section 4.8.2.

3.2 Enhanced CDD measures – legal arrangements and bodies

Having considered the current operation of the MLO and the Handbook, the Commission states that it has come to the view that 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 of Article 15(3) of

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the MLO (which applies when a customer is not physically present for identification purposes).

In light of this the Commission proposes 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 Handbook in order to explain how a relevant person may demonstrate that it has applied CDD measures and enhanced CDD measures in a case where:

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;
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; or
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.

In order to simplify the existing scheme, the Commission proposes that a relevant person may demonstrate that it has applied the CDD measures required under Article 3(2)(b)(iii) or (c) (iii) of the MLO (determining the identity of any third party for which a customer is believed to be acting) **and** the enhanced CDD measures required under Article 15(3) of the MLO where the relevant person obtains:

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;
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; or
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.

In each case, it is proposed that the trust and company services provider will be required to confirm that:

1. The documentation provided is current (i.e. has not expired or been superseded);
2. The trust or company services provider concerned 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
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.

In a case where the trustee or legal body is not physically present itself for identification purposes, new paragraph 136 of the Handbook

will confirm 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.

3.3 Article 16 – calling underlying evidence of identity in cases involving introducers and intermediaries

Overview

Article 16 of the MLO concerns reliance on introducers and intermediaries for customer identification measures. In light of the wider changes proposed to customer identification measures, the Commission intends (in section 4.8 of the Handbook) to highlight the differences between:

1. The use of "suitable certification" for an individual as compared with the confirmation that may be provided by an introducer where a relevant person relies on Article 16 of the MLO; and
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 as compared with the confirmation that may be provided where a relevant person relies on Article 16 of the MLO.

"Suitable certification"

The Commission defines "Suitable certification" as a process by which, rather than requesting a customer to present evidence of identity directly to a relevant person, the customer is called on to present himself to a trusted third party along with original documentation that supports his identity (and which is current) specifically for the purpose of entering into a relationship or one-off transaction with the relevant person.

The above procedure should not be confused with a situation in which a relevant person places reliance on an introduction under Article 16 of the MLO (in which 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 (particularly as the document provided may not be current).

CDD measures for legal arrangements and legal bodies

The Commission proposes that whilst CDD measures (including enhanced measures) that are to be applied under Articles 13 and 15(3) of the MLO to a relationship or one-off transaction carried out between a relevant person and a legal arrangement or body may make use of evidence of identity that has already been collected by a regulated trust and company services provider, that evidence:

3. Must be a copy of an **original document** that the relevant person has seen (or which must have been seen by a "suitable certifier");
4. 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. Must be collected and held by the relevant person **before** the relationship is established or one-off transaction carried out.

This means that, in practice, 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.

The above situation should not to be confused with the position which obtains under Article 16 of the MLO, which allows reliance to be placed on CDD measures that have already been completed by another party (an introducer or intermediary), where evidence of identity that may subsequently be provided by the introducer or intermediary to the relevant person may be out of date.

In any event, the risk of placing reliance on a third party in relation to the undertaking of identification measures must be considered – either as part of an assessment of customer risk under Article 13, or an assessment of intermediary or introducer risk under Article 16 of the MLO. Except as otherwise stated in this section, the existing guidance in relation to identification by introducers and intermediaries remains as set out at the existing section 4.10 of the Handbook.

4. SIMPLIFIED CDD MEASURES

Overview

In line with the FATF Recommendations, Articles 17 and 18 of the MLO provide for CDD measures to be simplified in a case where money laundering and terrorist financing risk is considered to be lower.

The Commission states that the practical application of the MLO since its inception has resulted in the identification of a number of areas in which the law and guidance do not work quite as was intended, or have proved problematic to apply. Accordingly, the Commission proposes a number of discrete amendments that would have the effect of:

1. Extending the application of the concession set out in Article 17 of the MLO (reliance where an intermediary is a regulated person) to wholly-owned subsidiaries of “regulated persons” where the subsidiaries are not themselves regulated;
2. Allowing simplified CDD measures to be applied to a pension scheme that permits members to assign interests to a person other than a spouse or dependant of a member after the member’s death; and
3. Revising the definition of “regulated market” in order to make it easier to apply simplified CDD measures to customers that are companies with securities traded on transparent markets.

4.1 Article 17 – reliance on intermediary that is a regulated person

Article 17 of the MLO provides for the establishment and maintenance of relationship or the performance of a one-off transaction by a relevant person with 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 individual customers.

Under Article 17, the intermediary concerned must be a “regulated person”; i.e. either carrying on a regulated business within Jersey or under regulation or supervision while conducting an equivalent business outside of Jersey

The Commission acknowledges that, 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 states that it does not believe that such a practice significantly affects risk.

In order to reduce the regulatory burden in such cases, the Commission proposes to extend the scope of the concession in Article 17 of the MLO to include a legal body that is a wholly-owned subsidiary of a person that is a “regulated person”, provided that:

1. The wholly-owned subsidiary has no customers who are not also customers of its parent;
2. The “regulated person” has a sound reason for placing a wholly-owned subsidiary between itself and its customers;

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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; and
4. The activity that is conducted by the wholly-owned subsidiary is one that is ancillary to a “regulated business”.

In practice, the Commission expects that a relevant person would consider whether the above conditions were met as part of its wider risk assessment of a “regulated person” under the existing section 4.10 of the Handbook.

4.2 Article 18 – business relationships relating to pension schemes

Article 18(3) of the MLO 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:

1. Contributions to the scheme are made by an employer or by way of deductions from wages; and
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.

The Commission states that it has identified two particular respects in which the current position appears to be over-restrictive:

1. The concession at Article 18(3) may not be used in the case of a scheme that allows even a single member (amongst any number of other members) to contribute directly to the scheme or to assign his or her rights (except as permitted); and
2. Scheme rules drawn up to accommodate the 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.

The Commission states that it considers there to be little potential for abuse or risk of money laundering where assignment of benefit by individual members of a scheme is possible only after their own decease. Accordingly, the Commission proposes 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.

The Commission observes that the measure represents a more lenient treatment in this comparatively low risk area than that which obtains under the current arrangements in Guernsey and the Isle of Man.

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

By reason of Article 18(6A) of the MLO, simplified CDD measures may be applied 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 MLO. The definition of “regulated market” adopted by the MLO is that provided for by the UK Money Laundering Regulations 2007, which in turn refer to Article 4(1) of the EU Markets in Financial Instruments Directive (MiFID) for markets within the European Economic Area (“EEA”), and regulated financial markets of an equivalent standard outside the EEA.

The European Securities and Markets Authority 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 not. For example, the UK Main Market is a regulated market, but the Alternative Investment Market (“AIM”) is not.

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. The Commission’s view is that many relevant persons are reluctant to commit significant time and effort to assessing non-EEA markets against relevant EU directives; in practice, this has limited the application of the concession in Article 18(6A) of the MLO.

The Commission proposes 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”).

It suggests that the concession in Article 18(6A) of the MLO should apply to an applicant that is a company which is listed on a market which requires that, for traded securities:

1. There should be full, accurate and timely disclosure of financial results, risk and other information which is material to investors’ decisions (IOSCO Principle 16); and
2. Holders of securities in a company should be treated in a fair and equitable manner (IOSCO Principle 17).

In practice, this would allow a relevant person to rely on ESMA’s database of “regulated markets” within the EU and assess other markets’ application of Principles 16 and 17 using IOSCO’s Methodology for Assessing Implementation of the IOSCO Objectives and Principles of Securities Regulation (the “IOSCO Methodology”).

In assessing a market, the IOSCO Methodology considers whether:

1. Information about the identity and holdings of persons who hold a substantial (well below controlling) beneficial ownership interest in a company must 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 an annual basis;
2. It is mandatory for material changes in beneficial ownership to be disclosed in a timely manner;
3. There are disclosure requirements applicable to two or more persons acting in concert even

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though their individual ownership might not have to be disclosed; and

4. Similar provisions to those set out above apply to holdings of voting securities by directors and senior management.

The Commission notes that the adoption of such an approach would bring the Jersey regulatory regime much closer to the position currently adopted by Guernsey and the Isle of Man.

5. NEXT STEPS?

The Commission has invited comments on its proposals.

Jersey Finance Limited is co-ordinating an industry response which is intended to incorporate any matters raised by local financial services business.

Responses should be sent to:

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Alternatively, responses may be sent directly to Andrew Le Brun at the Commission. Respondents requiring assistance or clarification or wishing to discuss any aspect of the proposals prior to formulating a response are likewise invited to contact the Commission directly. The Commission contact is:

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The Commission states that all responses received will be made available for public inspection unless a specific request is made to the contrary.

The closing date for the receipt of submissions is 29 February 2012.