

THE HANDBOOK ON COUNTERING FINANCIAL CRIME AND TERRORIST FINANCING

(AMENDMENT NO. 2) RULES,

2020 No. 60

GREFFE
ROYAL COURT

18 JUN 2020

GUERNSEY

Made: 17 June 2020

Coming into Operation: 19 June 2020

The Guernsey Financial Services Commission (“the Commission”), in exercise of the powers conferred on it by section 49AA of *The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999*¹, section 15 of *The Disclosure (Bailiwick of Guernsey) Law, 2007*², section 11 of the *Transfer of Funds (Guernsey) Ordinance, 2017*³, section 11 of the *Transfer of Funds (Sark) Ordinance, 2017*⁴, and section 11 of the *Transfer of Funds (Alderney) Ordinance, 2017*⁵ makes the following Rules.

Citation and Commencement

1. These Rules may be cited as The Handbook on Countering Financial Crime and Terrorist Financing (Amendment No. 2) Rules, 2020.
2. These Rules shall come into force on 19 June 2020.
3. The amendments made by the Annexes shall have prospective effect from 19 June 2020.

¹ No. VIII of 1999 (Ordres en Conseil Vol. XXXIX, pa. 137), as amended by The Criminal Justice (Proceeds of Crime)(Bailiwick of Guernsey)(Amendment) Ordinance, 2018, section 1(8).

² No. XVI of 2007, as amended by The Disclosure (Bailiwick of Guernsey)(Amendment) Ordinance, 2018, sections 5(a), (b) and (c).

³ No. XXVII of 2017.

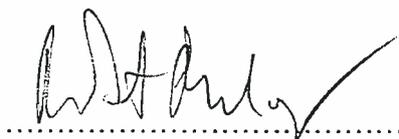
⁴ No. X of 2017.

⁵ No. 3 of 2017.

Amendments

- A. The Handbook on Countering Financial Crime and Terrorist Financing is amended in accordance with the Annex.

Dated this 17 day of June, 2020

A handwritten signature in black ink, appearing to read 'Bob Moore', is written over a horizontal dotted line.

Bob Moore

Vice Chairman of the Guernsey Financial Services Commission

For and on behalf of the Commission

Annex

Amendments to The Handbook on Countering Financial Crime and Terrorist Financing, 2019⁶

In this Annex underlining indicates new text and striking through indicates deleted text.

Chapter 3 – Risked Based Approach

3.7 Content and Structure

~~4041.~~ The firm must not copy the *business risk assessments* prepared by another business, or use ‘off-the-shelf’ assessments which pre-identify suggested *ML* and *FT* risks without the firm ensuring the assessments have been tailored to its business and the specific risks that it faces.

3.9 Review

~~52.~~ The *NRA* process is an iterative one, which will involve the exercise being repeated over time. Therefore, the firm must take into account the findings of any updated *NRA* and reflect the firm’s assessment of whether the risks identified in any updated *NRA* are relevant, or potentially relevant, to the firm, and where they are, identify the measures for mitigating those risks. This must form part of the next review (which must occur at a minimum of annually) of the firm’s *business risk assessment*, unless the Commission calls upon firms to do this sooner.

~~5456.~~ Where changes to the *business risk assessments* are made, the firm must give consideration to whether the policies, procedures and controls of the firm remain appropriate and effective in light of the revised *business risk assessments* and make any changes it considers appropriate in a timely manner.

3.11 New Products and Business Practices

~~6264.~~ If the firm decides to proceed with the offering or adoption of a new product or business practice, the *board* of the firm must approve the *risk* assessment undertaken in accordance with Paragraph 3(3)(c)(i) of *Schedule 3* and that approval must be documented.

⁶ No. 76 of 2019.

3.12 New Technologies

~~65~~67. The *risk* assessment of a new or developing technology must include, as a minimum, an assessment of the *ML* and *FT* risks and vulnerabilities inherent in the use or adoption of the technology in order that appropriate controls can be implemented. This includes evaluating the technology itself, together with the anticipated use of the technology and the threats posed by this use.

~~67~~69. If the firm decides to proceed with the adoption or use of a new or developing technology for a new or pre-existing product, the *board* of the firm must approve the *risk* assessment undertaken in accordance with Paragraph 3(3)(c)(ii) of *Schedule 3* and that approval must be documented.

3.14 Management and Mitigation

~~73~~75. Based on the outcome of its *relationship risk assessment*, the firm must decide whether or not to accept (or continue) each *business relationship* or whether or not to accept any instructions to carry out an *occasional transaction*.

~~75~~80. In addition to the *risk* factors set out above, the firm must also give consideration to the following when undertaking or reviewing a *relationship risk assessment*:

- (a) where the product or service provided by the firm is a life insurance policy, the type or types of beneficiary of that policy;
- (b) the purpose and intended nature of the *business relationship* or *occasional transaction*, including the possibility of *legal persons* and *legal arrangements* forming part of the relationship;
- (c) the type, volume, value and regularity of activity expected; and
- (d) the expected duration (if a *business relationship*).

~~78~~83. In light of the above, when undertaking a *relationship risk assessment* the firm must ensure that all relevant *risk* factors are considered, both singly and in combination, before making a determination as to the level of overall assessed *risk*.

~~80~~85. The firm's procedures may provide for standardised profiles to be used for *relationship risk assessments* where the firm has *satisfied* itself, on reasonable grounds, that such an approach effectively manages the *risk* for each particular *business relationship* or *occasional transaction*. However, where the firm has a diverse *customer* base, or where a wide range of products and services are offered, it must develop a more structured and rigorous system to show that

judgement has been exercised on an individual basis rather than on a generic or categorised basis.

~~8186~~. Whatever method is used to assess the *risk* of a *business relationship* or *occasional transaction*, the firm must maintain clear documented evidence as to the basis on which the *relationship risk assessment* has been made.

~~8287~~. Where, despite there being high *risk* factors identified, the firm does not assess the overall *risk* as high because of strong and compelling mitigating factors, the firm must identify the mitigating factors and, along with the reasons for the decision, *document* them and retain them on the relevant *business relationship* or *occasional transaction* file.

~~8388~~. Based upon the results of the *relationship risk assessment*, the firm must determine, on the basis of *risk*:

- (a) the extent of the identification information to be obtained on the *key principals* to the *business relationship* or *occasional transaction* in accordance with Paragraphs 4 and 5 of *Schedule 3* and Chapters 4 to 8 of this *Handbook*;
- (b) how and to what extent that information will be verified using *identification data*;
- (c) whether to apply *SCDD* measures where the *business relationship* or *occasional transaction* has been assessed as being low *risk* and displays one or more of the characteristics in Chapter 9 of this *Handbook*; and
- (d) the extent to which the resulting *business relationship* will be monitored on an ongoing basis.

3.15 Notices, Instruction or Warnings

~~8489~~. From time to time *the Commission* issues ~~Business from Sensitive Sources Notices, Advisory Notices, Instructions or~~ and Warnings which highlight potential *risks*, ~~including those arising from particular countries, territories and geographic areas.~~ The This information ~~contained within these notices~~, together with sanctions legislation applicable in *the Bailiwick*, must be considered when undertaking or reviewing a *relationship risk assessment*.

Chapter 8 – Enhanced Customer Due Diligence

8.7 High Risk Countries and Territories

~~97~~96. As part of its policies, procedures and controls, the firm must:

- (a) be aware of concerns about weaknesses in the AML and CFT systems of other countries or territories; and
- (b) consider any updates to Appendix H of this Handbook and Business from Sensitive Sources Notices, and Instructions and Warnings issued from time to time by *the Commission*.

8.8 Bearer Shares and Bearer Warrants

~~101~~99. Where the firm's *risk appetite* allows for a *customer*, the *beneficial owner* of a *customer*, or any other *legal person* in the ownership and control structure of the *customer* to have *bearer shares* and/or *bearer warrants*, the firm must have appropriate and **effective** policies, procedures and controls in place to mitigate the *risk* posed by their use.

~~102~~100. Where the firm establishes or maintains a *business relationship* or undertakes an *occasional transaction* falling within Paragraph 5(1)(e) of *Schedule 3*, the firm must apply both of the following measures in respect of that *business relationship* or *occasional transaction*, together with the *ECDD* measures set out in Paragraph 5(1) of *Schedule 3*:

- (a) determine and satisfy itself as to the reasons why the *customer*, the *beneficial owner* of the *customer*, or other *legal person* in the ownership and control structure of the *customer* has *bearer shares* and/or *bearer warrants*; and
- (b) have custody of the *bearer shares* and/or *bearer warrants*, or be satisfied as to their location and immobilisation. This should include confirming the number and location of the *bearer shares* and/or *bearer warrants* on a periodic basis, or alternatively, receiving a written undertaking from the custodian of those *bearer shares* and/or *bearer warrants* that the firm will be notified of any changes to records relating to them and their custodian.

~~103~~101. The firm must apply the above policies, procedures and controls to a *business relationship* or *occasional transaction* irrespective of whether the identified *bearer share* or *bearer warrant* represents an amount below the relevant threshold for ownership or control of the *legal person*.

Chapter 9 – Simplified Customer Due Diligence

9.8.3 Qualifying Products and Services

53. For an *intermediary* to be considered as the *customer* of the firm, the *intermediary relationship* must be for the provision of one of the following products and services:
- (a) Investment of life company *funds* to back the life company's policyholder liabilities where the life company opens an *account* (see Section 9.8.3.1. below);
 - (b) Undertaking various restricted activities by a POI licensee, as part of its relationship falling within the scope of *the POI Law*, with another regulated FSB where the *funds* (and any income) may not be returned to a third party unless that third party was the source of *funds* (see Section 9.8.3.2. below); ~~or~~
 - (c) Investments into a CIS or NGCIS (for example, by a discretionary or advisory investment manager or custodian) acting in its own name and as the registered owner of the shares or units of the CIS (see Section 9.8.3.3. below); or
 - (d) The offering of insurance products to another regulated FSB by a Guernsey licensed insurer, as part of its relationship falling within the scope of the IB Law.

9.8.3.4 Insurance Activity

72. Where the firm utilises these provisions, any funds received from the intermediary (and any income resulting from the investment of such) must not be returned to a third party, unless that third party was the source of the funds and the firm is satisfied that the involvement of the third party does not pose an increased ML or FT risk.

9.9.1 Establishing a Pooled Banking Relationship

- ~~76~~78. Where the firm operates an *account falling* within the provisions of Paragraph 9.74~~2~~ and the *business relationship* with the *account* holder has been assessed as being low *risk*, the firm can exercise its own judgement as to the level of *CDD* measures to be applied to the *account* holder in the particular circumstances. However, as a minimum the firm must:

- (a) identify and, subject to the provisions of Section 9.6. of this *Handbook*, verify the identity of the *account* holder; and
- (b) receive written confirmation from the *account* holder which:
 - (i) confirms that the *account* holder has appropriate *risk*-grading procedures in place to differentiate between the *CDD* measures appropriate for *high risk relationships* and those for *low risk relationships*;
 - (ii) contains adequate assurance that the *account* holder applies appropriate and effective *CDD* measures in respect of its customers (and the *beneficial owners* and other *key principals*), including *ECDD* measures for *PEPs* and other *high risk relationships*;
 - (iii) contains sufficient information to enable the firm to understand the purpose and intended nature of the relationship; and
 - (iv) confirms that the *account* will only be operated by the *account* holder and that the *account* holder has ultimate effective control over the relevant product or service.

~~7779~~. Where a *business relationship* has been established with an *account* holder for the provision of a pooled *account*, the firm must prepare and retain documentary evidence of the following:

- (a) the adequacy of its processes to determine the *risk* of the *business relationship* with the *account* holder and the reasonableness of its conclusions that it is a *low risk relationship*;
- (b) that it has applied *CDD* measures in respect of the *account* holder; and
- (c) that the *business relationship* with the *account* holder relates solely to the provision of an *account* falling within Paragraph 9.742.(a)-(d) above.

7880. Where the firm operates a pooled *account* on behalf of an *account* holder which:

- (a) does not fall within Paragraph 9.742.(a)-(d) above; or
- (b) has been assessed as being other than *low risk*, for example, because the firm has concerns in respect of the manner in which a pooled *account* is being operated,

then the firm must not treat the *account* holder as its *customer* and must apply its own *CDD* measures on the underlying *customers* (including the *beneficial owners* and other *key principals*) within the pooled *account* in accordance with the requirements of *Schedule 3* and this *Handbook*.

Chapter 11 – Monitoring Transactions and Activity

11.5 High Risk Transactions or Activity

20. Transactions or activity to or from jurisdictions specified in Appendix H to this Handbook, any Commission Notices, Instructions or Warnings and those covered by sanctions legislation applicable in the Bailiwick ~~the Business from Sensitive Sources Notices and Instructions issued by the Commission~~ must be subject to a greater level of caution and scrutiny.

Explanatory Note

The Handbook on Countering Financial Crime and Terrorist Financing, 2019 (“The Handbook”) came into force on the 1st March 2019 (last amended 29th April 2020).

The Commission makes these amendments, to The Handbook, in order to take into account the Bailiwick of Guernsey’s National Risk Assessment (“NRA”) on money laundering (“ML”) and the financing of terrorism (“FT”) which was published in January 2020. These changes will assist firms in identifying high risk countries and territories for both ML and FT purposes. The following is a summary of the main changes to the Handbook which necessitate amended/new rules: -

1. The creation of an Appendix H to the Handbook, which will list those countries and territories which the Financial Action Task Force (“FATF”) has identified with significant strategic deficiencies in their regimes to counter ML, FT and financing of proliferation for which it has called for the application of countermeasures. In accordance with Paragraph 5(1)(c)(i) of Schedule 3, a firm shall apply enhanced customer due diligence measures to a business relationship or occasional transaction where the customer or beneficial owner has a relevant connection with a country or territory that has been identified by the FATF as a country for such measures are appropriate. This is currently communicated to firms by way of a Business from Sensitive Sources Notice (“BSSN”) – section A. Going forward the FATF’s “call for action” will be communicated to firms by way of updates to Appendix H rather than by way of a BSSN.
2. The creation of an Appendix I to the Handbook, which lists a number of countries and territories that are identified by the UK and US governments, intergovernmental and supranational organisations as presenting certain ML and FT risks. Alongside these sources, information is presented reflecting assessments of a country or territory by non-governmental organisations and think tanks which firms may also find useful when they are determining the level of country risk presented by a business relationship or occasional transaction. Appendix I will also include those countries “under increased monitoring” by the FATF. Going forward the FATF designated countries “under increased monitoring” will be communicated to firms by way of updates to Appendix I rather than by way of a BSSN – section B.
3. The reintroduction of insurance products as a qualifying product and service for an intermediary to be considered the customer of the firm. In particular, where the firm is licensed under The Insurance Business (Bailiwick of Guernsey) Law, 2002 as amended and offers insurance products within the scope of its licence as part of its relationship with another regulated financial services business (“FSB”), the firm can treat that regulated FSB as its customer.