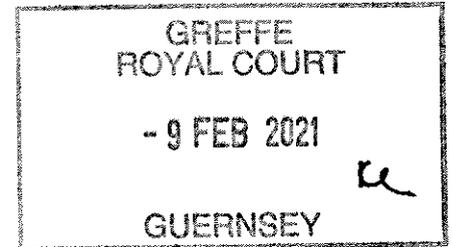


**THE HANDBOOK ON COUNTERING FINANCIAL CRIME  
AND TERRORIST FINANCING  
(AMENDMENT NO. 1) RULES,**

**2021  
No.15**



*Made: 5 February 2021*

*Coming into Operation: 15 February 2021*

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*<sup>1</sup>, section 15 of *The Disclosure (Bailiwick of Guernsey) Law, 2007*<sup>2</sup>, section 11 of the *Transfer of Funds (Guernsey) Ordinance, 2017*<sup>3</sup>, section 11 of the *Transfer of Funds (Sark) Ordinance, 2017*<sup>4</sup>, and section 11 of the *Transfer of Funds (Alderney) Ordinance, 2017*<sup>5</sup> 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. 1) Rules, 2021.
2. These Rules shall come into force on 15 February 2021.

---

<sup>1</sup> 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).

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

<sup>3</sup> No. XXVII of 2017.

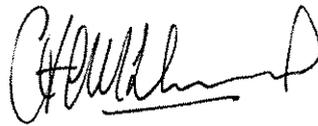
<sup>4</sup> No. X of 2017.

<sup>5</sup> No. 3 of 2017.

**Amendments**

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

Dated this 5 day of February, 2021



.....

Cees Schrauw

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, 2019<sup>6</sup>

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

#### Chapter 3 – Risk Based Approach

~~89.~~90. From time to time the Commission issues Notices, Instructions or Warnings which highlight potential risks. This information, together with sanctions legislation applicable in the Bailiwick, must be considered when undertaking or reviewing a relationship risk assessment.

#### Chapter 7 – Legal Persons and Legal Arrangements

93. During the course of establishing a trust relationship for which it is to act as trustee, the firm must, in order to identify and verify the identity of the customer and beneficial owners, identify:

- (a) the settlor(s), including the initial settlor(s) and any persons or legal arrangements subsequently settling funds into the trust;
- (b) any protector(s), enforcer(s) and co-trustee(s);
- (c) any beneficiary (whether his or her interest under the trust is vested, contingent or discretionary and whether that interest is held directly by that person or as the beneficial owner of a legal person or a legal arrangement that is a beneficiary of the trust), any class of beneficiaries and/or any other person who is likely to benefit from the trust; and
- (d) any other natural person who exercises ultimate effective control over the trust.

96. The information collected by the firm on the identity of persons described in Commission Rule 7.93.(c) above must at a minimum include their full name and date of birth. The extent to which the other information specified in Commission Rule 5.5. is obtained by the firm will depend on the likelihood of that person benefiting from the trust, with such an assessment documented. All information on the identity of that natural person specified under Commission Rule 5.5. must be collected and the identity of that person verified by the firm in accordance with Commission Rule 5.8. prior to any

---

<sup>6</sup> No. 76 of 2019.

distribution of trust assets in accordance with Commission Rule 7.108., unless Commission Rule 7.109. applies. For the avoidance of doubt where a legal person or a legal arrangement has been identified as “any other person” the firm must apply this rule to its beneficial owner/s.

97.98. Where a trust is a key principal to a business relationship or occasional transaction, the firm must:

(a) identify and verify the identity of the trust (or take reasonable measures to do so in accordance with Paragraph 4(3)(c) or (d) of Schedule 3), including without limitation:

- (i) the full name;
- (ii) any official identification number (for example, a tax identification number or registered charity or NPO number, where relevant); and
- (iii) the date and place of establishment of the trust;

(b) identify and take reasonable measures to verify the identity of the trustees of the trust, unless, in accordance with Section 9.6., they are themselves subject to this Handbook;

(c) require the trustees (or equivalent) of the trust or other legal arrangement to provide the firm with details of the identities of the beneficial owners of the trust, including:

- (i) the settlor(s), including the initial settlor(s) and any persons or legal arrangements subsequently settling funds into the trust;
- (ii) any protector(s), enforcer(s) and co-trustee(s);
- (iii) any beneficiary (whether his or her interest under the trust is vested, contingent or discretionary and whether that interest is held directly by that person or as the beneficial owner of a legal person or a legal arrangement that is a beneficiary of the trust), any class of beneficiaries and/or any other person who to the best of the trustee’s knowledge, is likely to benefit from the trust; and
- (iv) any other natural person who exercises ultimate effective control over the trust; and

(d) understand the ownership and control structure of the trust or other legal arrangement and the purpose and intended nature of the business relationship or occasional transaction.

100. When collecting from the trustees information on the identity of persons described in Commission Rule 7.98.(c)(iii) above, the firm must at a minimum

obtain their full name and date of birth. The extent to which the other information specified in Commission Rule 5.5. is obtained by the firm will depend on the likelihood of that person benefiting from the trust, with such an assessment documented. All information on the identity of that natural person specified under Commission Rule 5.5. must be collected and the identity of that person verified by the firm in accordance with Commission Rule 5.8. prior to any distribution of trust assets in accordance with Commission Rule 7.108., unless Commission Rule 7.109. applies. For the avoidance of doubt where a legal person or legal arrangement has been identified as "any other person" the firm must apply this rule to its beneficial owner/s.

~~99~~.101. Where the business relationship or occasional transaction has been assessed as high risk, the firm must obtain relevant extracts of the trust deed, deeds of amendments and letter(s) of wishes (as applicable to verify the points covered by Commission Rule 7.978.(a)(i)-(iii) above), together with an appropriate assurance from the trustee that the content of such documents does not contain contradictory information with other identification data gathered.

~~105~~.108. Other than where a business relationship or occasional transaction has been assessed as being high risk, the firm must take reasonable measures to verify the identity of any natural person who is a beneficiary of, or any other natural person who benefits from, the trust prior to any distribution of trust assets to (or on behalf of) that natural person.

~~106~~.109. Where a business relationship or occasional transaction has been assessed as being high risk, the firm must, where possible, take reasonable measures to verify the identity of all beneficiaries and other persons who are likely to benefit from the trust at the time that the assessment of risk is made as set out in Commission Rules 7.96. and 7.100. Where it is not possible to do so (for example, because the beneficiaries have not yet been born or are excluded) the reasons must be documented and retained on the relevant customer's file.

~~109~~.112. Where the beneficiaries of a trust are designated by characteristics or by class, the firm must obtain sufficient information concerning the beneficiaries to satisfy itself that it will be able to identify, and verify the identity of, a beneficiary at the time of a distribution or when the beneficiary gains vested rights, for example, a beneficiary who is unaware of their beneficiary status until a point in time or a minor who reaches the age of majority.

~~110~~.113. The firm must take reasonable measures to verify the identity of those beneficial owners exercising control over the affairs of the trust, i.e. any settlor(s), trustee(s), protector(s) and enforcer(s), including the beneficial owners of such entities where they are legal persons or legal arrangements, before or during the course of establishing a business relationship or before carrying out an occasional transaction.

~~111~~.114. Verification of the beneficial owners of a trust must be undertaken either by the firm itself or, provided that the Commission Rules in Chapter 10 of this Handbook are met, by requesting the trustee to provide the relevant information on the identity of such parties by way of a certificate or summary sheet.

~~137~~.144. Where the product or service provided by the firm is the issuing of a life or other investment linked insurance policy, the firm must, in addition to identifying and verifying the customer and taking reasonable measures to verify the identity of the beneficial owner, also undertake the following measures in relation to any beneficiary as soon as they are identified or designated:

- (a) for a beneficiary that is identified as a specifically named natural or legal person or legal arrangement, take the name of the natural or legal person or legal arrangement; and
- (b) for a beneficiary that is designated by characteristics or by class (for example, a spouse or child) or by other means (for example, under a will), obtain sufficient information concerning the beneficiary for the firm to satisfy itself that it will be able to establish the identity of the beneficiary at the time of distribution.

~~138~~.145. In addition to considering whether the beneficial owner of a life or other investment linked insurance policy is a PEP in accordance with Paragraph 4(3)(f) of Schedule 3, the firm must also make a determination as to whether any beneficiary of such a policy (or the beneficial owner of a beneficiary where that beneficiary is a legal person or legal arrangement) is a PEP at the time that the beneficiary is identified or designated.

~~139~~.146. Where the firm determines that the beneficial owner, any beneficiary, or the beneficial owner of any beneficiary of a life or other investment linked insurance product is a PEP, the firm must act in accordance with the requirements of Paragraph 5 of Schedule 3 and Section 8.5. of this Handbook.

~~140~~.147. Verification of the identity of any beneficiary identified in accordance with Commission Rule 7.144~~37~~. must occur prior to any distribution to (or on behalf of) that beneficiary.

~~141~~.148. When carrying out a relationship risk assessment as required by Paragraph 3 of Schedule 3 and Chapter 3 of this Handbook, the firm must include any beneficiary identified by Commission Rule 7.144~~37~~. above as a relevant risk factor in considering the overall risk of the business relationship or occasional transaction.

~~142~~.149. Where the firm has determined that a beneficiary which is a legal person or legal arrangement poses a high risk, the firm must carry out ECDD measures in accordance with Chapter 8 of this Handbook. This must include identifying and taking reasonable measures to verify the identity of the beneficial owner of the beneficiary prior to any distribution to (or on behalf of) the beneficiary.

~~143~~.150. Where the product or service provided by the firm is:

- (a) an employee benefit scheme or arrangement;
- (b) an employee share option plan;
- (c) a pension scheme or arrangement;
- (d) a superannuation scheme; or
- (e) a similar scheme or arrangement;

and where contributions are made by an employer or by way of deductions from wages and the scheme rules do not permit assignment of a member's interest under the scheme, then the sponsoring employer, the trustee, the foundation council and any other person who has control over the business relationship or occasional transaction (for example, the administrator or the

scheme manager) are to be considered as key principals and must be identified and verified by the firm in accordance with the requirements of Schedule 3 and this Handbook.

~~145~~.152. Where a member or other third party makes contributions to a scheme or arrangement (outside of the sponsoring employer's payroll process) which would fall within the definition of an occasional transaction (for example, a voluntary contribution of more than £10,000 into the scheme) or a business relationship (for example, following the cessation of employment, making arrangements for smaller, regular ongoing contributions), the firm must apply CDD measures, including ECDD measures and/or enhanced measures as appropriate, to that member or third party.

~~147~~.154. When carrying out a relationship risk assessment in accordance with Paragraph 3 of Schedule 3 and Chapter 3 of this Handbook, the firm must include the natural or legal person(s) or legal arrangement(s) providing funds to the scheme or arrangement as a relevant risk factor when determining the overall risk of the business relationship or occasional transaction.

~~149~~.156. Where the firm provides management or custody services and wishes to rely on the CDD measures of the administrator of the NGCIS, the firm must:

- (a) apply CDD measures to the administrator or transfer agent to ensure that it is an Appendix C business and regulated and supervised for investment business; and
- (b) require the administrator or transfer agent to provide a written confirmation which:
  - (i) confirms that the administrator or transfer agent has appropriate risk-grading procedures in place to differentiate between the CDD measures for high risk relationships and low risk relationships;
  - (ii) contains adequate assurance that the administrator or transfer agent applies the necessary CDD measures to the investors in the NGCIS (including the beneficial owners of such); and
  - (iii) contains an assurance that the administrator or transfer agent will notify the firm where an investor in the NGCIS, or the beneficial owner of such, is categorised as a PEP.

150.157. In addition, the firm must have a programme for reviewing the CDD procedures of the administrator or transfer agent and testing the application of those procedures in respect of the underlying investors within the NGCIS.

151.158. Where the firm is acting as the administrator of an NGCIS and its functions include that of registrar/transfer agent or similar, the firm must apply CDD measures to the investors into the NGCIS as if they were its customers in accordance with the requirements of Section 4.8.2. of this Handbook.

## **Chapter 12 – UN, EU and Other Sanctions**

23. The firm must have in place appropriate and effective policies, procedures and controls to identify, in a timely manner, whether a prospective or existing customer, or any beneficial owner, key principal or other connected party, is the subject of a sanction issued by the UN, ~~UK~~<sup>the EU</sup> or the States of Guernsey's Policy and Resources Committee.

## **Chapter 15 – Employee Screening and Training**

30. In addition to the requirements of Paragraph 15.29. above, the firm must ensure that the ongoing training provided to relevant employees in accordance with Schedule 3 and this Handbook also covers, as a minimum:

- (a) the requirements for the internal and external disclosing of suspicion;
- (b) the criminal and regulatory sanctions in place, both in respect of the liability of the firm and personal liability for individuals, for failing to report information in accordance with the policies, procedures and controls of the firm;
- (c) the identity and responsibilities of the MLRO, MLCO and Nominated Officer;

- (d) dealing with business relationships or occasional transactions subject to an internal disclosure, including managing the risk of tipping off and handling questions from customers;
- (e) those aspects of the firm's business deemed to pose the greatest ML and FT risks, together with the principal vulnerabilities of the products and services offered by the firm, including any new products, services or delivery channels and any technological developments;
- (f) new developments in ML and FT, including information on current techniques, methods, trends and typologies;
- (g) the firm's policies, procedures and controls surrounding risk and risk awareness, particularly in relation to the application of CDD measures and the management of high risk and existing business relationships;
- (h) the identification and examination of unusual transactions or activity outside of that expected for a customer;
- (i) the nature of terrorism funding and terrorist activity in order that employees are alert to transactions or activity that might be terrorist-related;
- (j) the vulnerabilities of the firm to financial misuse by PEPs, including the effective identification of PEPs and the understanding, assessing and handling of the potential risks associated with PEPs; and
- (k) UN, ~~EU~~UK and other sanctions and the firm's controls to identify and handle natural persons, legal persons and other entities subject to sanction.

## Explanatory Note

The Handbook on Countering Financial Crime and Terrorist Financing, 2019 (“The Handbook”) came into force on the 1 March 2019 (last amended 30th October 2020). The following is a summary of the main changes to the Handbook which necessitate amended/new rules: -

1. Firms are required to regularly review any relationship risk assessment and the extent to which a business relationship will be monitored must be on the basis of risk. Additional guidance has been inserted on when these reviews should occur.
2. Rules and guidance to assist firms in identifying and taking reasonable measures to verify beneficial owners of trusts. In particular, when establishing a trust or entering into a business relationship or occasional transaction with a trust, the firm is required to identify any beneficiary in a trust (whether his or her interest under the trust is vested, contingent or discretionary). Moreover, additional guidance has been inserted on the identification and verification of beneficial owners of corporate trustees.
3. The legal framework for implementing sanctions measures in the Bailiwick has changed as a result of Brexit, with effect from 31st December 2020. These changes are made by the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020. The overarching effect of these regulations is to change the Bailiwick's sanctions framework from one that implements targeted financial sanctions and other measures under EU sanctions regimes to one that implements those measures under UK sanctions regimes. The UK regimes also implement UN regimes, including for example those that relate to terrorist financing and the financing of the proliferation of weapons of mass destruction. This is largely a technical change, as the UK sanctions regimes broadly replicate the EU sanctions regimes that they replace.

