

UPDATE

The Revised Handbook

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On 12 November the Commission released its final draft of the revised Handbook on Countering Financial Crime and Terrorist Financing. What is the Handbook and what do you need to know about the revisions to it?

Following a period of consultation with industry, the final draft of the Revised Handbook on Countering Financial Crime and Terrorist Financing (**Revised Handbook**) is finally here, released on 12 November 2018 (see [here](#)).

What is the Handbook?

Since 2007 the Guernsey Financial Services Commission (**Commission**) has published a Handbook (**Handbook**) outlining its expectations in relation to, amongst others, the anti-money laundering and countering the financing of terrorism framework (**AML/CFT**) to be adopted by those subject to regulation by the Commission. The Handbook, in its various iterations, is a fundamental part of that AML/CFT framework in Guernsey.

The intention of the Handbook, in its past, current and revised form, is to ensure compliance with the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation issued by the Financial Action Task Force (**FATF**).

While the underlying purpose of the Handbook is to minimise the potential for the abuse of the Bailiwick's financial system, it seeks to achieve this purpose by providing guidance to those working within that system. The Handbook is intended to help firms to comply with the legislation, rules and regulations regarding AML/CFT and related offences. It does this both by providing guidance as to how provisions may be interpreted, and by providing indications of good practice. All of this is intended to continue to elevate the standards AML/CFT compliance in Guernsey and to protect the integrity of this jurisdiction.

This protection requires continuous progress. The revisions in the Revised Handbook are intended to bring the Bailiwick's AML/CFT framework into line with the FATF standards issued in 2012 and to address recommendations made by MONEYVAL in its 2015 evaluation of Guernsey.

What do you need to know about the changes?

The current Handbook, last updated in June 2017, remains effective for now. The Commission will be formally making the rules in the Revised Handbook during the first quarter of 2019 to allow any technical issues within the rules and guidance to be addressed.

The Revised Handbook is essential reading for those in senior positions in Specified Businesses (see below) operating in Guernsey. The following are key changes to be aware of:

- One Handbook

The revised Handbook will apply to all 'Specified Businesses', covering both 'Financial Services Businesses' and 'Prescribed Businesses' and the current separation between Financial Services Businesses and Prescribed Businesses is to be removed.

- MLCO

The concept of a Money Laundering Compliance Officer (**MLCO**) is introduced. All firms comprising over one individual are to appoint a MLCO. The MLCO is to have primary responsibility for the firm's compliance with AML/CFT procedures.

- Distinguish AML from CFT risks

Business Risk Assessments must ensure that the assessments of AML risks and CFT risks are distinct from one another. While they may be addressed in one document, the differences between them must be clearly addressed. Throughout the Revised Handbook there is a greater emphasis on CFT risks than in previous iterations of the Handbook. Business Risk Assessments must also refer to the Bailiwick's National Risk Assessment.

- PEPs – Domestic PEPs, Foreign PEPs and International Organisation PEPs

PEPs are to be classified as 'Domestic PEPs' or 'Foreign PEPs' with risk assessments and mitigation steps to be tailored accordingly.

The concept of an 'International Organisation PEP' is introduced. An International Organisation PEP is a person who is, or who has been at any time, entrusted with a prominent function by an international organisation. The term also includes the immediate family and close associates of such a person. Risk assessment and mitigation must again be tailored accordingly.

- Ultimate /Actual Ownership and Control

Obligations regarding the identification of beneficial owners are expanded upon, extending beyond legal ownership and control into ultimate / actual ownership and control. The aim is to identify the human person who actually owns and take advantage of the capital assets of the legal person in question. The changes also seek to identify those exerting effective control over that legal person, whether or not they hold formal positions. It is intended to move beyond simple consideration of who the natural or legal persons are on paper, and to get to the underlying reality.

- Collective Investment Schemes

Every collective investment scheme authorised by or registered with the Commission must have a firm licensed under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 responsible for ensuring that the scheme's investors are subject to the relevant regulatory requirements. The revised Handbook provides greater clarity of each party's obligations for AML/CFT obligations in that context.

- Review and Revise Business Risk Assessments, Policies, Procedures and Controls

Firms are to carry out and document business risk assessments in respect of AML and CFT requirements which are specific to them as soon as reasonably practicable after 31 March 2019. Firms must have reviewed their business risk assessments and have the revised AML and CFT assessments approved by their boards no later than four months after the later of:

- the effective date of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) (Amendment) Ordinance, 2018 (intended to come into force on 31 March 2019); or
- the publication of the Bailiwick's National Risk Assessment.

Firms are required to review and revise policies, procedures and controls to ensure that they remain appropriate and effective as soon as reasonably practicable after 31 March 2019. Firms must have reviewed and revised their policies, procedures and controls and these must have been approved by the

firm's board, by no later than three months from the above deadline regarding reviews of business risk assessments.

Schedule 3

The introduction of the Revised Handbook is to be accompanied by the introduction of Schedule 3 into the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999. Schedule 3 is concerned with Specified Businesses (i.e. both Financial Services Businesses and Prescribed Businesses) and imposes statutory obligations upon them. The Revised Handbook assists firms in interpreting those obligations.

In particular, Schedule 3 provides the requirements placed upon Specified Businesses in connection to:

- Risk assessment and mitigation;
- Applying CDD measures;
- Monitoring customer activity and ongoing CDD;
- Reporting suspected money laundering and terrorist financing activity;
- Employee screening and training;
- Record keeping; and
- Ensuring compliance, corporate responsibility and related requirements.

Implications

The Revised Handbook demonstrates the evolving nature of AML/CFT compliance, and the commitment of Guernsey as a jurisdiction to remain at the forefront of developments in this area.

The Revised Handbook follows considerable stakeholder engagement. The Commission has taken pains to produce a Revised Handbook which has regard to the practical realities for those conducting business in Guernsey. The Revised Handbook emphasises flexibility and it is not intended that all businesses will meet their obligations in an identical fashion.

While the Commission's approach to the production of the Revised Handbook has been collaborative, firms ought to be aware that the changes are to be taken seriously. The risks which the Revised Handbook, together with the broader AML/CFT framework, seeks to guard against are matters which impact materially upon the reputation of the Bailiwick. The Commission will be unimpressed by complacency in respect of these standards and significant failures to meet them may result in regulatory and/ or criminal enforcement actions.

Specified Businesses ought to consider the Revised Handbook and Schedule 3 in full. It may also assist to take active, documented steps to show that the changes have been considered and suitable changes made to ensure compliance with the evolving regime. In the event that a firm is unclear as to what is required of it, or would like guidance regarding how it may best meet the standards in the Revised Handbook, then we would recommend that they obtain advice.

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