

# Feedback Paper on Consultation Paper No. 3 2020

## Revision to the AML/CFT Handbooks

A feedback paper relating to a consultation on proposals regarding revisions to the AML/CFT Handbooks in order to implement the 2012 Financial Action Task Force (**FATF**) Recommendations

Issued: 1 March 2021

## Consultation Feedback

This paper reports on responses received by the Jersey Financial Services Commission (the **JFSC**) in respect of Consultation Paper No. 3 2020. Further enquiries regarding the consultation and this feedback paper may be directed to the following contact:

Hamish Armstrong  
Chief Adviser, Financial Crime Policy  
Jersey Financial Services Commission  
PO Box 267  
14-18 Castle Street  
St Helier  
Jersey  
JE4 8TP  
Email: [h.armstrong@jerseyfsc.org](mailto:h.armstrong@jerseyfsc.org)

## Glossary of Terms

Defined terms are indicated throughout this document as follows:

AML/CFT Handbooks	Comprises: <ul style="list-style-type: none"> <li>› The AML/CFT Handbook for Regulated Financial Services Businesses [<i>the Main Handbook</i>]</li> <li>› The AML/CFT Handbook for the Accountancy Sector</li> <li>› The AML/CFT Handbook for the Legal Sector</li> <li>› The AML/CFT Handbook for Estate Agents and High Value Dealers</li> </ul>
BRA	Business risk assessment
CDD	Customer due diligence
Consultation Paper	Consultation Paper No. 3 2020 on proposals to make amendments to the AML/CFT Handbooks published in May 2020
DNFBPs	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
Feedback Paper	Refers to this document, created to provide feedback on the responses received to the Consultation Paper No. 3 2020 on proposals to make amendments to the AML/CFT Handbooks [ <i>the Consultation Paper</i> ]
JFSC	Jersey Financial Services Commission
Main Handbook	The AML/CFT Handbook for Regulated Financial Services Businesses
Money Laundering Order	Money Laundering (Jersey) Order 2008
Proceeds of Crime Law	Proceeds of Crime (Jersey) Law 1999
relevant person	A person carrying on a financial services business (as described in Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 [ <i>the Proceeds of Crime Law</i> ] and which is carrying on that business in or from within Jersey, or, if a Jersey legal person, carrying on that business in any part of the world

## Contents

<b>Consultation Feedback.....</b>	<b>2</b>
<b>1 Executive Summary .....</b>	<b>5</b>
1.1 Overview .....	5
1.2 Feedback received.....	5
1.3 Next Steps .....	5
<b>2 Consultation feedback .....</b>	<b>6</b>
2.1 Feedback received.....	6
FATF Recommendation 1 - Assessing risks and applying a risk-based approach .....	6
2.2 Question 1 at Paragraph 4.1.3 of the Consultation Paper .....	6
FATF Recommendation 10 – Customer due diligence (CDD).....	7
2.3 Question 2 at Paragraphs 4.2.11 of the Consultation Paper .....	7
FATF Recommendation 17 – Reliance on third parties .....	8
2.4 Question 3 at Paragraphs 4.3.5 of the Consultation Paper .....	8
FATF Recommendation 17 – Reliance on third parties .....	10
2.5 Question 4 at Paragraphs 4.3.9 of the Consultation Paper .....	10
Appendix B of the AML/CFT Handbooks – Equivalent countries and territories.....	10
2.6 Question 5 at Paragraph 4.4.6 of the Consultation Paper .....	10
Longer term proposal – to merge the AML/CFT Handbooks.....	12
2.7 Question 6 at Paragraph 5.4.6 of the Consultation Paper .....	12
<b>Appendix A .....</b>	<b>13</b>
List of Respondents .....	13

# 1 Executive Summary

## 1.1 Overview

- 1.1.1 In May 2020 the JFSC issued Consultation Paper No. 3 2020 on proposals to make amendments to the AML/CFT Handbooks (the **Consultation Paper**), which sought views from members of the public and industry in order to implement the requirements of the 2012 FATF Recommendations, specifically in relation to:
  - 1.1.1.1 Business risk assessment (**BRA**)
  - 1.1.1.2 Customer due diligence (**CDD**)
  - 1.1.1.3 Reliance
  - 1.1.1.4 Equivalent countries and territories
  - 1.1.1.5 Merging the AML/CFT Handbooks.
- 1.1.2 The purpose of this paper (the **Feedback Paper**) is to provide feedback on the responses received to the Consultation Paper.

## 1.2 Feedback received

- 1.2.1 The consultation period for the Consultation Paper closed on 31 August 2020. The JFSC received 12 responses directly and Jersey Finance received seven responses. In total 19 responses were received.
- 1.2.2 Section 2 of this Feedback Paper presents a summary of the substantive comments received and the JFSC's response, as appropriate, to each.
- 1.2.3 The JFSC is grateful to respondents for taking the time to consider and comment on the proposals. A full list of respondents is provided in **Appendix A**.

## 1.3 Next Steps

- 1.3.1 In light of the feedback received, the JFSC will be making amendments to the AML/CFT Handbooks consulted on, to comply with FATF Recommendations 2012, with the new wording becoming effective on 31 May 2021. The JFSC will aim to publish the final wording of the AML Handbooks on 1 April 2021.
- 1.3.2 The Consultation Paper may be accessed here:  
<https://www.jerseyfsc.org/industry/consultations/consultation-aml-cft-handbook-revisions-no3-2020/>

## 2 Consultation feedback

### 2.1 Feedback received

- 2.1.1 This section summarises the substantive comments received in response to the Consultation Paper. Whilst not every comment received is individually listed, this section contains summaries of the most commonly made and pertinent comments in relation to each question posed and, as appropriate, the JFSC's response to those comments.
- 2.1.2 Respondents to the Consultation Paper, in the main, raised no significant concerns with the overall objective of enhancing the AML/CFT regime in line with FATF standards.
- 2.1.3 Paragraph references in this section are to the Main Handbook as published, for ease of understanding.

### FATF Recommendation 1 - Assessing risks and applying a risk-based approach

#### 2.2 Question 1 at Paragraph 4.1.3 of the Consultation Paper

Do you consider the addition of a new Code of Practice at Section 2.3 of the AML/CFT Handbooks (Board/Senior Management Responsibilities) which will read as follows:

“A relevant person must maintain appropriate policies and procedures to enable it, when requested by the JFSC, to make available to that authority a copy of its business risk assessment”, -

is effective and proportionate? If NO; please state in detail what your observation or concern is and the reason for it.

- 2.2.1 The majority of respondents considered the above proposal effective and proportionate.



- 2.2.2 Two respondents suggested that the AML/CFT Handbooks should require policies and procedures to be maintained for the creation and ongoing management and updating of a BRA, and to provide further guidance to the content and periodic timing of frequency of updating the BRA, depending on the size of organisation.
- 2.2.3 One suggestion was made to consider whether another code requirement be introduced instead, for all relevant persons, so that the BRA is provided to the JFSC, or competent authority upon request.

#### **JFSC Response**

- 2.2.4 For the reason set out in the Consultation Paper, the JFSC will introduce a new Code of Practice at Section 2.3 of the AML/CFT Handbooks, which will read as follows:

“A relevant person must maintain appropriate policies and procedures to enable it, when requested by the JFSC, to make available to that authority a copy of its business risk assessment”.

## FATF Recommendation 10 – Customer due diligence (CDD)

### 2.3 Question 2 at Paragraphs 4.2.11 of the Consultation Paper

Do you consider the amendment of the guidance in Section 4, in particular Sections 4.4.2; 4.4.3; 4.4.4; 4.5.1; 4.5.2; 4.5.4; 4.5.5 and 4.5.6, of the AML/CFT Handbooks, to identify the customer and verify its identity through the following information....

(b) the powers that regulate and bind the legal person or arrangement, as well as the names of the persons having a senior management position in the legal person or arrangement, -

is effective and proportionate? If NO; please state in detail what your observation or concern is and the reason for it.

2.3.1 The majority of respondents considered the above proposal effective and proportionate.



■ Support ■ No View ■ Against

2.3.2 Clarification was sought by a number of respondents regarding particular proposals concerning amending CDD guidance in Section 4 of the AML/CFT Handbooks for certain legal persons and arrangements:

Consultation Paper proposal	AML/CFT Handbook Section to amend	Legal person or arrangement	Number of respondents' questions/ comments
4.2.3	4.4.2	Trust	0
4.2.4 and 4.2.5	4.4.3 and 4.4.4	Limited Partnership	1
4.2.6 and 4.2.7	4.5.1 and 4.5.2	Company	3
4.2.8	4.5.4	Foundation	1
4.2.9 and 4.2.10	4.5.5 and 4.5.6	Partnership	1
		Not relevant to proposal	1

2.3.3 Two respondents expressed concern that the proposal dilutes the risk-based approach to CDD as it effectively introduces an objective pass/fail test and suggested

that, consequently, Jersey is becoming increasingly uncompetitive with other jurisdictions due to overly stringent CDD requirements.

- 2.3.4 Three respondents highlighted some possible operational complications of the implementation of proposed changes:
- › generic nature of some constitutional documents which may defeat the purpose of the change, such as Memorandum and Articles; or
  - › customer's reluctance to provide the documents for privacy reasons unrelated to money laundering/terrorism financing concerns, such as full and complete Partnership Agreement; or
  - › flexibility of on-boarding customers/ investors through obtaining other documents, including online registries, in line with a risk-based approach.
- 2.3.5 One respondent pointed out an apparent inconsistency between the treatment of companies and partnerships. In order to consider the risk posed by 'silent' or 'sleeping' partners, it was suggested to identify all partners, and verify them thereafter on a risk and control basis.
- 2.3.6 Few respondents were seeking clarification on particular structures beyond the consultation proposals.
- 2.3.7 Respondents were overall in favour of the proposals, stating that it ensures much more clarity on the CDD requirements and removes doubt over what evidence is required and when.

#### **JFSC Response**

- 2.3.8 In relation to the point made at Paragraph 2.3.3 above, the JFSCs view is that the proposals are necessary to demonstrate full implementation of international standards.
- 2.3.9 In relation to the comments at Paragraphs 2.3.4 and 2.3.5, the more complex the structure, the more information may need to be gathered in order to fully understand the money laundering and/or terrorism financing risk. The JFSC acknowledges that this may be complicated, but each relevant person is expected to take a risk-based approach to assess the powers that regulate and bind the legal person or arrangement, as well as the names of its senior management persons.
- 2.3.10 Respondents were overall in favour of the proposal. As such, the JFSC will amend its guidance in Section 4 of the AML/CFT Handbooks to reflect the Interpretive Note to FATF Recommendation 10 to identify the customer and verify its identity through the "powers that regulate and bind the legal person or arrangement, as well as the names of the persons having a senior management position in the legal person or arrangement", as set out in the Consultation Paper.

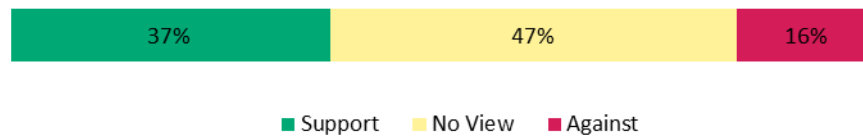
## **FATF Recommendation 17 – Reliance on third parties**

### **2.4 Question 3 at Paragraphs 4.3.5 of the Consultation Paper**

Do you consider the proposal to amend the guidance at Section 5.1, Paragraph 39 of the AML/CFT Handbooks to require reliance evidence to be made available within two working days of a request instead of five working days, is effective and proportionate? If NO; please state in detail what your observation or concern is and the reason for it.



- 2.4.1 The majority of respondents gave no clear view of how effective and proportionate the above proposal is. Of those that expressed a view, 70% were supportive of the proposals.



- 2.4.2 According to submissions, not all of the 19 respondents place reliance on third parties under their CDD policies and procedures, and therefore, a number of respondents had no view or comments on the proposals.
- 2.4.3 The majority of the remaining respondents acknowledged that this proposal was driven by MONEYVAL Recommendations and supported it, however, even supporters emphasised possible operational challenges following the shortening of the timeframe, such as additional pressure and demands on staff, reissuing the terms of business, compliance function resource challenges, facing loss of customers moving away from the reliance regime, especially for smaller firms with limited resources and particularly where evidence is requested on a large number of introduced relationships.
- 2.4.4 Two respondents suggested a change of wording to find a compromise between five and two working days, such as “within 2 days or as reasonably practicable” or “within 2 days but no more than 5 working days”, in a case of various time zones, when there are multiple jurisdictions or complex structures involved in requests.
- 2.4.5 Three respondents considered the proposal not to be proportionate and suggested a turn-around time of two working days was “unreasonable”.

#### JFSC Response

- 2.4.6 At Paragraphs 4.3.1 to 4.3.4 the Consultation Paper explained that one of the recommendations made in the 2015 MONEYVAL’s Report on Jersey is:
- “In light of the effectiveness concerns identified by the assessment team, the authorities should amend the AML/CFT Handbooks to require relevant persons to obtain CDD evidence from obliged persons within at least 2 working days.”
- It was, therefore, proposed to amend the guidance at Section 5.1, Paragraph 39 of the AML/CFT Handbooks to require evidence to be made available within two working days of a request instead of five working days.
- Question at Paragraph 4.3.5 of the Consultation Paper asked whether respondents consider that the proposal is effective and proportionate.
- 2.4.7 The position of the Policy and Legislative Sub-Group of the Jersey Financial Crime Strategy Group is that the AML/CFT Handbooks guidance at Paragraph 39, Section 5.1 shall be amended to address the clear MONEYVAL Recommendation taking five working days delivery of identity evidence down to two working days.
- 2.4.8 However, in relation to the comments received in Paragraphs 2.4.2 to 2.4.5 above, the JFSC will amend the wording at Paragraph 39 to address Industry’s concerns about the significant timeframe change from five working days to two working

days, with a compromise timeframe, i.e. between two and five working days, which will read as follows:

“A relevant person will have demonstrated that an obliged person is providing evidence of identity without delay if it is provided within two working days. If it is provided later than five working days, it is not provided without delay. If it is provided between two and five working days, the entity must be able to show why this constitutes provision without delay based on the nature of its client base.”

Noting the wording above, the JFSC will also include guidance for the need for a relevant person to hold data on the number of instances where it would take longer than two working days (and in any case no longer than five working days).

- 2.4.9 These changes are to be effective from 31 May 2021, to allow Industry time to update their procedures/processes.

## FATF Recommendation 17 – Reliance on third parties

### 2.5 Question 4 at Paragraphs 4.3.9 of the Consultation Paper

Do you consider the proposal to amend the guidance at Section 5.1.1, Paragraph 46 of the AML/CFT Handbooks to add a further bullet point:

“The risks posed by the country or territory in which the obliged person is based. Factors to consider include those found at Section 3.3.4.1 of the Handbook”,

is effective and proportionate? If NO; please state in detail what your observation or concern is and the reason for it.

- 2.5.1 The majority of respondents considered the above proposal effective and proportionate.



- 2.5.2 Overall, respondents were in favour of the proposal with no comments against it.

#### **JFSC Response**

- 2.5.3 Respondents were overall in favour of the proposal. As such, the JFSC will reflect FATF Recommendation 17 by adding a further bullet point to the guidance in Paragraph 46 (to come second in the list) which will read:

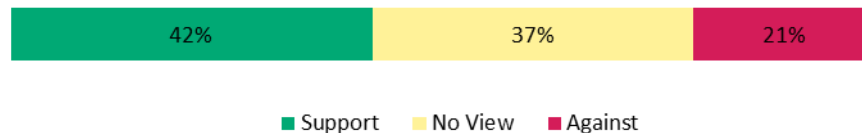
“The risks posed by the country or territory in which the obliged person is based. Factors to consider include those found at section 3.3.4.1 of the Handbook”.

## Appendix B of the AML/CFT Handbooks – Equivalent countries and territories

### 2.6 Question 5 at Paragraph 4.4.6 of the Consultation Paper

Do you consider the proposal to amend Appendix B of the AML/CFT Handbooks so that the list of jurisdictions will be removed, to be replaced with further guidance and links to appropriate information sources to assist Financial Institutions and Designated Non-Financial Businesses and Professions (**DNFBPs**) to conduct their own assessments of equivalence, is effective and proportionate? If NO; please state in detail what your observation or concern is and the reason for it.

- 2.6.1 The majority of respondents who provided their view considered the above proposal effective and proportionate.



- 2.6.2 Several respondents raised concern regarding an inconsistent approach taken to assessment of equivalent jurisdictions between Crown Dependencies, with one respondent suggesting a coordinated Crown Dependencies approach to be a more appropriate solution.
- 2.6.3 Two respondents noted that the list is helpful to avoid misinterpretation and suggested that its removal may detrimentally affect existing and new business relationships.

#### JFSC Response

- 2.6.4 At Paragraphs 4.4.1 to 4.4.4 in the Consultation Paper it explained that the list of countries and territories in Appendix B was never intended to be an exhaustive list of equivalent jurisdictions, because it does not reflect the analysis of those countries' anti-money laundering regimes, but rather names FATF members, EU/EEA members and Crown Dependencies. The AML/CFT Handbooks further explain the responsibility of the relevant person to conduct its own assessment process to determine whether a country or territory is compliant or largely compliant with those FATF Recommendations that are directly relevant to the application of available concessions, i.e. reliance (Article 16 of Money Laundering (Jersey) Order 2008 (the **Money Laundering Order**)) and CDD exemptions (Articles 17 and 18 of the Money Laundering Order).
- 2.6.5 The Consultation Paper at Paragraph 4.4.5 further emphasises that general and specific guidance on determining whether a country or territory is equivalent and compliant or largely compliant with the FATF Recommendations is already available at Section 1.7.3 of the AML/CFT Handbooks at Paragraph 62. The JFSC's position is very clear and requires that the relevant person must conduct an assessment process comparable to that which is described, and must be able to demonstrate on request the process undertaken and the basis for its conclusion.
- 1.1.1 In relation to the comments in Paragraphs 2.6.2 to 2.6.3 above, the JFSC notes the divergence across other jurisdictions as to how much guidance is provided to Financial Institutions and DNFBPs in respect of determining equivalence. For example, the UK does not publish a list of equivalent jurisdictions, but instead publishes guidance on assessing the level of money laundering and/or terrorism financing risk in different jurisdictions. Respondents were overall in favour of the proposal. As such, the JFSC will amend Appendix B so that the list of jurisdictions

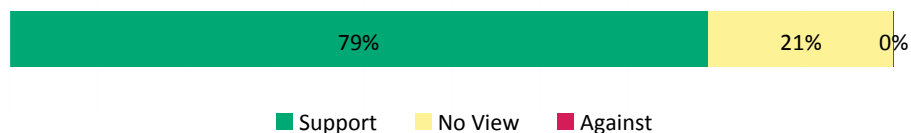
will be removed, to be replaced with further guidance and links to appropriate information sources to assist financial institutions and DNFBPs to conduct their own assessments of equivalence. Section 1.7.2 will be amended to reflect the changes to Appendix B.

## Longer term proposal – to merge the AML/CFT Handbooks

### 2.7 Question 6 at Paragraph 5.4.6 of the Consultation Paper

Do you agree with the proposal to merge the four AML/CFT Handbooks into one handbook using the existing model of the Main Handbook, so that requirements that are common across sectors will form the main body of the consolidated Handbook, and sector specific requirements and guidance will form their own chapters?

- 2.7.1 The majority of respondents agreed with the above proposal with none were against it.



#### JFSC Response

- 2.7.2 Overall, respondents were in favour of the proposal. As such, the existing sector specific sections of each sector's AML Handbook will be reviewed, updated where necessary and added to the *Main Handbook* as a separate chapter *at a future date*.

## Appendix A

### List of Respondents

**A total of 19 responses were received of which 12 were received directly by the JFSC:**

- › Of the direct respondents, five either wished not to be identified or did not give consent to be identified, these were:
  - › One law firm
  - › One investment business/ fund services business
  - › One trust company business
  - › Two banks.
- › The seven other direct respondents were:
  - › Affinity Trust Limited
  - › Investec Bank (Channel Islands) Limited
  - › JATCO
  - › PwC
  - › Praemium International Limited
  - › Standard Bank
  - › TMF Group Jersey.

**Jersey Finance provided seven anonymous responses from:**

- › Three banks
- › One investment manager
- › One fund administrator
- › One fund manager
- › One consultancy firm.