

# 1 INTRODUCTION

Please Note:

- › This section contains references to Jersey legislation which may be accessed through the [JFSC website](#).
- › Where terms appear in the Glossary this is highlighted by the use of italic text. The Glossary is available from the [JFSC website](#).

1. Criminals have responded to the anti-money laundering and countering the *financing of terrorism* (**AML/CFT**) measures taken by the traditional financial sector over the past decade and have sought other means to convert their proceeds of crime, or to mix them with legitimate income before they enter the banking system, thus making them harder to detect. Estate agents, art and antique dealers, jewellers, and the motor and yacht trade have all been used in some jurisdictions as a conduit for criminal property to enter the financial system. Estate agents and high value dealers in Jersey should be on guard to ensure that they are not used as such a conduit. Some have also been used to assist terrorists to plan and finance their operations.
2. The result has been that international *money laundering* and the *financing of terrorism* legislation and standards have been extended beyond the financial sector to those other vulnerable business areas. To protect Jersey's reputation estate agents and high value dealers are also required to follow those laws and standards.
3. The continuing ability of Jersey's finance industry to attract legitimate customers with funds and assets that are clean and untainted by criminality depends, in large part, upon the Island's reputation as a sound, well-regulated jurisdiction. Any estate agent or high value dealer in Jersey that assists in *money laundering* or the *financing of terrorism*, whether:
  - › with knowledge or suspicion of the connection to crime; or
  - › acting without regard to what it may be facilitating through the provision of its services,will face the loss of its reputation, risk discipline by the Royal Court, damage the integrity of Jersey's professional and finance industry as a whole, and may risk prosecution for criminal offences.
4. Ensuring compliance, and taking action against those that do not comply with the measures to guard against *money laundering* and the *financing of terrorism*, is crucial to the effectiveness of Jersey's preventative regime.
5. International standards drawn up by the Financial Action Task Force (**FATF**), which are also adopted by EU Member States, introduce the requirement that all sectors covered by *money laundering* legislation are supervised and monitored for their compliance.
6. Jersey's defences against the laundering of criminal funds and terrorist financing rely heavily on the vigilance and co-operation of the finance sector. Specific financial sector legislation (the Money Laundering (Jersey) Order 2008 (*the Money Laundering Order*)) is therefore also in place covering a person carrying on a *financial services business* in or from within Jersey, and a

Jersey body corporate or other legal person registered in Jersey carrying on a *financial services business* anywhere in the world (a **relevant person**)<sup>1</sup>.

7. The primary legislation on *money laundering* and the *financing of terrorism* (the **money laundering legislation**) is:
  - › The Proceeds of Crime (Jersey) Law 1999 (as amended) (the **Proceeds of Crime Law**)
  - › The Terrorism (Jersey) Law 2002 (the **Terrorism Law**)
  - › The Money Laundering and Weapons Development (Directions) (Jersey) Law 2012 (the **Directions Law**)
  - › The Sanctions and Asset Freezing (Jersey) Law 2019
  - › Any Regulations or Orders made under the enactment falling within any of the above laws
  - › The EU Legislation (Information Accompanying Transfers of Funds) (Jersey) Regulation 2017.
8. A *relevant person* carrying on a business described in paragraph 3 (estate agency services) or paragraph 4 (services provided by high value dealers) of Part B of Schedule 2 to the *Proceeds of Crime Law* must put in place *systems and controls* to guard against *money laundering* and the *financing of terrorism* in accordance with Jersey requirements and international standards. All '*relevant persons*' fall within the scope of the *Money Laundering Order*.
9. The international standards require that all *relevant persons* must be supervised by an appropriate anti-money laundering supervisory body. Within Jersey, the Jersey Financial Services Commission (the **Commission**) has been designated as the relevant supervisory body under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 (the **Supervisory Bodies Law**). The *Commission* is the supervisor for all regulated and *specified Schedule 2 businesses* (including *relevant persons* carrying on a business described in paragraph 3 (estate agency services) and paragraph 4 (services provided by high value dealers) of Part B of Schedule 2 to the *Proceeds of Crime Law*).
10. Estate agents, and those who register as high value dealers for the purposes of the *Money Laundering Order*, may get a visit from the *Commission* to carry out a routine on-site examination. During, or prior to, the visit the *Commission* routinely requests documents, information and poses a number of questions. These routine visits will also provide an opportunity for senior management of a *relevant person* to ask anything they need to know about the requirements of the *money laundering* legislation, the *Money Laundering Order* and this Handbook.
11. In extreme circumstances, the *Commission* may also serve a notice on a *relevant person* which would require, inter alia, senior management to attend interviews and to answer questions and/or provide information and documents.
12. Throughout this Handbook, references to:
  - › **Customer** includes, where appropriate, a prospective customer (an applicant for business). A customer is a person with whom a business relationship has been formed or one-off transaction conducted.

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<sup>1</sup> The term *relevant person* used within this Handbook refers to a person carrying on a business described in paragraph 3 (estate agency services) or paragraph 4 (services provided by high value dealers) of Part B of Schedule 2 to the *Proceeds of Crime Law*.

- › **Financing of terrorism** means:
  - › conduct that is an offence under any provision of Articles 15 (use and possession etc. of property for purposes of terrorism) and 16 (dealing with terrorist property) of the *Terrorism Law*; or
  - › conduct outside Jersey, which, if occurring in Jersey, would be an offence under Articles 15 and 16.
- › **Money laundering** means:
  - › conduct that is an offence under any provision of Articles 30 (dealing with criminal property) and 31 (concealment etc. of criminal property) of the *Proceeds of Crime Law*;
  - › conduct that is an offence under Articles 34A and 34D of the *Proceeds of Crime Law*;
  - › conduct that is an offence under Articles 10 to 14 (failing to freeze terrorist funds and making things available to a terrorist) and 16 (licencing offences) of the Sanctions and Asset-Freezing (Jersey) Law 2019; or
  - › conduct outside Jersey, which, if occurring in Jersey, would be an offence under any of the above.
- › **Schedule 2 business** means:
  - › a business described in paragraph 3 (estate agency services) or 4 (services provided by high value dealers), as applicable, of Part B of Schedule 2 to the *Proceeds of Crime Law*.

## 1.1 Objectives of this Handbook

13. The objectives of this Handbook are as follows:
- › to outline the requirements of the *money laundering* legislation;
  - › to outline the requirements of the *Money Laundering Order* that supplements the *money laundering* legislation by placing more detailed requirements on *relevant persons*;
  - › to assist *relevant persons* to comply with the requirements of the *money laundering* legislation and the *Commission's* requirements, through practical interpretation;
  - › to outline good practice in developing *systems and controls* to prevent *relevant persons* from being used to facilitate *money laundering* and the *financing of terrorism*;
  - › to provide a base from which a *relevant person* can design and implement *systems and controls* and tailor their own *policies and procedures* for the prevention and detection of *money laundering* and the *financing of terrorism* (and which may also help to highlight identity fraud);
  - › to ensure that Jersey matches international standards to prevent and detect *money laundering* and the *financing of terrorism*;
  - › to provide direction on applying the risk-based approach effectively;
  - › to provide more practical guidance on applying *CDD* measures, including finding out identity and obtaining evidence of identity;
  - › to promote the use of a proportionate, risk based approach to customer due diligence measures, which directs resources towards higher risk customers;
  - › to emphasise the particular *money laundering* and the *financing of terrorism* risks of certain financial services and products; and

- › to provide an information resource to be used in training and raising awareness of *money laundering* and the *financing of terrorism*.
- 14. This Handbook will be reviewed on a regular basis and, where necessary following consultation, amended in light of experience, changes in legislation, and the development of international standards.
- 15. This Handbook is intended to be used by senior management and compliance staff in the development of a *relevant person's systems and controls*, and detailed *policies and procedures*. Each *relevant person* is expected to draw up its own *policies and procedures* based on the guidance set out in the Handbook. These *policies and procedures* will then help senior management and staff to comply with their own personal obligations under the *money laundering* legislation and the *Money Laundering Order*. This Handbook is not intended to be used by *relevant persons* as an internal procedures manual.
- 16. *Relevant persons* are expected to think about how they might be used by criminals. The *money laundering* legislation expects *relevant persons* to manage the risks of being used by criminals or terrorist groups and to document how they are managing those risks.

## 1.2 Structure of this Handbook

- 17. This Handbook describes Statutory Requirements, sets out principles and detailed requirements (**AML/CFT Codes of Practice**), and presents ways of complying with Statutory Requirements and the AML/CFT Codes of Practice (**Guidance Notes**).
- 18. **Statutory Requirements** describe the statutory provisions that must be adhered to by a *relevant person* (natural or legal) when carrying on a *financial services business*, in particular requirements set out in the *Money Laundering Order*. Failure to follow a Statutory Requirement is a criminal offence and may also attract regulatory sanction.
- 19. The AML/CFT Code of Practice sets out principles and detailed requirements for compliance with Statutory Requirements. In particular, the AML/CFT Code of Practice comprises a number of individual AML/CFT Codes of Practice: (i) to be followed in the area of corporate governance which it is considered must be in place in order for a *relevant person* to comply with Statutory Requirements; and (ii) that explain in more detail how a Statutory Requirement is to be complied with. Failure to follow any AML/CFT Codes of Practice may attract regulatory sanction<sup>2</sup>.
- 20. **Guidance Notes** present ways of complying with the Statutory Requirements and AML/CFT Codes of Practice and must always be read in conjunction with these. A *relevant person* may adopt other appropriate measures to those set out in the Guidance Notes, including *policies and procedures* established by a group that it is part of, so long as it can demonstrate that such measures also achieve compliance with the Statutory Requirements and AML/CFT Codes of Practice. This allows a *relevant person* discretion as to how to apply requirements in the particular circumstances of its business, products, services, transactions and customers. The soundly reasoned application of the provisions contained within the Guidance Notes will provide a good indication that a *relevant person* is in compliance with the Statutory Requirements and AML/CFT Codes of Practice.
- 21. The provisions of the Statutory Requirements and of the AML/CFT Codes of Practice are described using the term **must**, indicating that they are mandatory. However, in exceptional

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<sup>2</sup> AML/CFT Codes of Practice and the Guidance Notes shall also be relevant in determining whether or not requirements contained in the *Money Laundering Order* or in Article 21 of the *Terrorism Law* have been complied with.

circumstances, where strict adherence to any of the *AML/CFT Codes of Practice* would produce an anomalous result, a *relevant person* may apply in advance in writing to the *Commission* for a variance from the requirement. For further information refer to Part 3, Section 1.3 of the *AML/CFT Handbook*.

22. In contrast, the Guidance Notes use the term **may**, indicating ways in which the requirements may be satisfied, but allowing for alternative means of meeting the Statutory Requirements or *AML/CFT Codes of Practice*. References to must and may elsewhere in this Handbook should be similarly construed.
23. This Handbook also contains **Overview** text which provides some background information relevant to particular sections or sub-sections of this Handbook.
24. This Handbook is not intended to provide an exhaustive list of *systems and controls* to counter *money laundering* and the *financing of terrorism*. In complying with the Statutory Requirements and *AML/CFT Codes of Practice*, and in applying the Guidance Notes, a *relevant person* should (where permitted) adopt an appropriate and intelligent risk based approach and should always consider what additional measures might be necessary to prevent its exploitation, and that of its products and services, by persons seeking either to launder money or to finance terrorism.
25. The Statutory Requirements text necessarily paraphrase provisions contained in the *money laundering* legislation and the *Money Laundering Order* and should always be read and understood in conjunction with the full text of each law. Statutory Requirements are presented “boxed” and in italics, to distinguish them from other text.
26. Part 2 of the *AML/CFT Handbook* contains an information resource to be used in training and raising awareness of *money laundering* and the *financing of terrorism*.
27. Part 3 of the *AML/CFT Handbook* sets out the *Commission’s* policy for the supervision of compliance by a *relevant person* carrying on Schedule 2 business.
28. All references within this Handbook to any Parts or Appendices of the *AML/CFT Handbook* are adopted as if a Part or Appendix to this Handbook.

## 1.3 Legal Status of this Handbook and Sanctions for Non-Compliance

### 1.3.1 This Handbook

29. This Handbook is issued by the *Commission*:
  - › in accordance with Article 22 of the *Supervisory Bodies Law* (which provides for an *AML/CFT Code of Practice* to be prepared and issued for the purpose of setting out principles and detailed requirements); and
  - › in light of Article 37 of the *Proceeds of Crime Law* (which provides for the *Money Laundering Order* to prescribe measures to be taken).
30. The *AML/CFT Codes of Practice* in this Handbook cover *relevant persons* carrying on Schedule 2 business.

### 1.3.2 Money Laundering Order

31. The *Money Laundering Order* is made by the Chief Minister under Article 37 of the *Proceeds of Crime Law*. The *Money Laundering Order* prescribes measures to be taken (including measures not to be taken) by persons who carry on *financial services business* (a term that is defined in Article 36 of the *Proceeds of Crime Law*), for the purposes of preventing and detecting *money laundering* and the *financing of terrorism*.

32. Failure to comply with the *Money Laundering Order* is a criminal offence under Article 37(4) of the *Proceeds of Crime Law*. In determining whether a *relevant person* has complied with any of the requirements of the *Money Laundering Order*, the Royal Court is, pursuant to Article 37(8) of the *Proceeds of Crime Law*, required to take account of any guidance provided (for this purpose guidance will include the *AML/CFT Code of Practice* read in conjunction with Overview text and the Guidance Notes), as amended from time to time.
33. The sanction for failing to comply with the *Money Laundering Order* may be an unlimited fine or up to two years imprisonment, or both. Where a breach of the *Money Laundering Order* by a body corporate is proved to have been committed with the consent of, or to be attributable to any neglect on the part of, a director, manager or other similar officer, that individual, as well as the body corporate shall be guilty of the offence and subject to criminal sanctions.
34. Similarly, in determining whether a person has committed an offence under Article 21 of the *Terrorism Law* (the offence of failing to report), the Royal Court is required to take account of the contents of this Handbook. The sanction for failing to comply with Article 21 of the *Terrorism Law* may be an unlimited fine or up to five years imprisonment, or both.
35. Nevertheless, this Handbook is not a substitute for the law and compliance with it is not of itself a defence to offences under the principal laws. However, courts will generally have regard to regulatory guidance when considering the standards of a professional person's conduct and whether they acted reasonably, honestly, and appropriately, and took all reasonable steps and exercised necessary due diligence to avoid committing the offence.

#### AML/CFT Code of Practice

36. A Code of Practice is prepared and issued by the *Commission* under Article 22 of the *Supervisory Bodies Law*. The Code of Practice sets out the principles and detailed requirements that must be complied with in order to meet certain requirements of the *Supervisory Bodies Law*, the *Money Laundering Order* and the *money laundering* legislation by persons in relation to whom the *Commission* has supervisory functions. The *AML/CFT Code of Practice* comprises a number of individual *AML/CFT Codes of Practice*.
37. Article 5 of the *Supervisory Bodies Law* states that the *Commission* shall be the supervisory body to exercise supervisory functions in respect of a **regulated person** (a term that is defined in Article 1 of the *Supervisory Bodies Law*). The *Commission* is also designated under Article 6 of the *Supervisory Bodies Law* to exercise supervisory functions in respect of any other person carrying on a **specified Schedule 2 business** (a term that is defined in Article 1 of the *Supervisory Bodies Law*). The effect of these provisions is to give the *Commission* supervisory functions in respect of every *relevant person*.
38. Compliance with the *AML/CFT Code of Practice* will be considered by the *Commission* in the conduct of its supervisory programme, including on-site examinations.
39. The consequences of non-compliance with any *AML/CFT Codes of Practice* could include an investigation by or on behalf of the *Commission*, the imposition of regulatory sanctions, and criminal prosecution of the *relevant person* and its employees. Regulatory sanctions available under the *Supervisory Bodies Law* include:
  - › issuing a public statement;
  - › imposing a registration condition;
  - › imposing a direction and making this public, including preventing an individual from working in a *relevant person*; and
  - › revocation of a registration.



## 1.4 Jurisdictional Scope of the Money Laundering Order and AML/CFT Codes of Practice

### 1.4.1 Application of the Money Laundering Order and AML/CFT Codes of Practice to Schedule 2 Business Carried on in Jersey

40. By virtue of the definition of *relevant person* in Article 1(1), the *Money Laundering Order* applies to any person who is carrying on a *financial services business* (including Schedule 2 business) in, or from within, Jersey. This will include Jersey-based branches of companies incorporated outside Jersey conducting Schedule 2 business in Jersey.
41. By virtue of Articles 5, 6 and 22 of the *Supervisory Bodies Law*, *AML/CFT Codes of Practice* apply to any person who is carrying on *financial services business* in or from within Jersey. This will include Jersey-based branches of companies incorporated outside Jersey conducting Schedule 2 business in Jersey.

### 1.4.2 Application of the Money Laundering Order to Estate Agents and High Value Dealers Carrying on Schedule 2 Business outside Jersey (Overseas)

42. Article 10A of the *Money Laundering Order* explains and regulates the application of the *Money Laundering Order* to *financial services business* carried on outside Jersey.
43. However, Article 10A(9) of the *Money Laundering Order* explains that a *relevant person* need not comply with paragraphs (2), (3) and (4) in a country or territory outside Jersey in respect of any Schedule 2 business.
44. Notwithstanding the above, all of the provisions of the *Money Laundering Order* apply to a *relevant person* that is a legal person carrying out *financial services business* anywhere in the world.

### 1.4.3 Application of AML/CFT Codes of Practice to Estate Agents and High Value Dealers Carrying on Schedule 2 Business outside Jersey (Overseas)

45. By virtue of Articles 5, 6 and 22 of the *Supervisory Bodies Law*, a company incorporated in Jersey that carries on a *financial services business* through an overseas branch must comply with the *AML/CFT Code of Practice* in respect of that business, irrespective of whether it also carries on *financial services business* in or from within Jersey.
46. By concession, measures that are at least equivalent to *AML/CFT Codes of Practice* may be applied as an alternative to complying with the *AML/CFT Codes of Practice*.
47. By virtue of the *AML/CFT Codes of Practice* set in Section 2.7, a person who (i) is a legal person registered, incorporated or otherwise established under Jersey law<sup>3</sup>, but who is not a Jersey incorporated company; and (ii) carries on a *financial services business* in or from within Jersey, must apply measures that are at least equivalent to *AML/CFT Codes of Practice* in respect of any *financial services business* carried on by that person through an overseas branch. This requirement will apply to a foundation or partnership established under Jersey law.
48. Where overseas provisions prohibit compliance with one or more of the *AML/CFT Codes of Practice* (or measures that are at least equivalent), then by virtue of the *AML/CFT Codes of Practice*

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<sup>3</sup> Note that the term “registered, incorporated or otherwise established” is intended to be understood only to refer to the creation of a legal person or legal arrangement. In particular, it is not intended that “registered” be understood in the more general sense of registering under commercial or other legislation, or that “established” be understood in the more general sense of establishing a branch or representative office.

*Practice* set in section 2.7, requirements do not apply and the *Commission* must be informed that this is the case. In such circumstances, the *AML/CFT Codes of Practice* require a person to take other reasonable steps to effectively deal with the risk of *money laundering* and the *financing of terrorism*.

## 1.5 Definition of Estate Agents and High Value Dealers Undertaking Schedule 2 Business

49. Article 36 of the *Proceeds of Crime Law* defines **financial services business** through Schedule 2 to the *Proceeds of Crime Law*.

### 1.5.1 Estate Agents

50. Paragraph 3 of Part B of Schedule 2 to the *Proceeds of Crime Law* defines the relevant transactions and activity of estate agents for the purposes of complying with anti-money laundering requirements in the *Money Laundering Order* as:
- › The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of freehold (including flying freehold) or leasehold property (including commercial and agricultural property), whether the property is situated in Jersey or overseas.
  - › The business of providing estate agency service for or on behalf of third parties concerning the buying or selling of shares the ownership of which entitles the owner to occupy immovable property, whether the property is situated in Jersey or overseas.
51. International standards require estate agents, when they are involved in transactions for their customers concerning the buying and selling of real estate, to be subject to *AML/CFT* requirements. Consequently, unlike dealers in high value goods, estate agents are automatically included within the scope of the *Money Laundering Order*, regardless of whether they accept cash. This is irrespective of the fact that a lawyer or advocate is always involved in a property transaction and no capital movements are overseen by estate agents.
52. The main activities conducted by Jersey estate agents concern local and overseas property transactions, and lettings. Jersey has adopted the definition of real estate agents within the *FATF Recommendations*, which covers both local and overseas property transactions, but excludes activities as letting agents.
53. Guidance provided by the Association of Residential Letting Agents provides the following two exceptions:
- › where a letting agent creates a lease/tenancy “which by reason of the level of the rent, the length of the term, or both, has a capital value which may be lawfully realised in the open market” then this transaction does fall within the scope of the *Money Laundering Order*. The reason given is that the lease can be reconverted into money. This would almost certainly include situations where a Premium Lease or tenancy agreement at a high value rent is created;
  - › it is not uncommon for letting agents to become involved in negotiating / arranging / facilitating the purchase of a property by an existing tenant from the landlord customer. At that point, the letting agent becomes involved in estate agency work.

### 1.5.2 High Value Dealers

54. Paragraph 4 of Part B of Schedule 2 to the *Proceeds of Crime Law* defines high value dealers, for the purposes of complying with anti-money laundering requirements in the *Money Laundering Order*, as being:



- › persons who, by way of business, trade in goods when they receive, in respect of any transaction, a payment or payments in cash of at least 15,000 Euros (or sterling equivalent) in total, whether the transaction is executed in a single operation or in several operations which appear to be linked.
  - › **cash** meaning any of the following in any currency – notes, coins, travellers' cheques, bearer negotiable instruments;
  - › **payment** refers to payment in or by means of
    - › cash;
    - › virtual currency;
  - › **virtual currency** means any currency which (whilst not itself being issued by, or legal tender in, any jurisdiction) –
    - › digitally represents value;
    - › is a unit of account;
    - › functions as a medium of exchange; and
    - › is capable of being digitally exchanged for money in any form.
55. In respect of high value dealers the requirements also apply to all dealers in high value goods who wish to be able to accept payment in cash of €15,000 or more for one or more transactions from the same customer.
56. It is important to note that the requirement to register as a high value dealer for the purposes of the *Money Laundering Order* includes businesses that only occasionally accept such payments. Businesses that do register must then apply the requirements to all of their transactions and activity, not only those over €15,000.
57. High value dealers can make a policy decision that they will not accept any payments in cash of €15,000 or more and therefore avoid falling within the scope of the *Money Laundering Order* and this Handbook. However, such businesses will need to have procedures in place to ensure that such cash payments are never taken. They will also need to have monitoring procedures that identify any linked transactions from the same customer that would take the total amount payable to the threshold amount.
58. Although the high value dealer population is varied, it mainly consists of retailers and wholesalers of goods who accept cash payments of €15,000 or more. For example, jewellers, art and antique dealers, car and yacht dealers and agricultural auctioneers who elect to receive such cash payments will all come within the scope of the *Money Laundering Order*.
59. Cash includes notes, coins and travellers cheques. It does not include cheques or bankers drafts. The €15,000 threshold may be reached in respect of a single transaction or there may be several linked transactions for the same customer that together total €15,000 or more.

## 1.6 Risk-Based Approach

### Overview

60. To assist the overall objective to prevent *money laundering* and the *financing of terrorism*, this Handbook adopts a risk based approach. Such an approach:
- › recognises that the *money laundering* and the *financing of terrorism* threats to a *relevant person* vary across customers, countries and territories, services and delivery channels;

- › allows a *relevant person* to differentiate between customers in a way that matches risk in a particular *relevant person*;
  - › while establishing minimum standards, allows a *relevant person* to apply its own approach to *systems and controls*, and other arrangements in particular circumstances; and
  - › helps to produce a more cost effective system.
61. A risk-based approach requires steps to be taken to identify how a *relevant person* could be used for *money laundering* or the *financing of terrorism* and establishing the most effective and proportionate way to manage and mitigate the risks.
62. *Systems and controls* will not detect and prevent all *money laundering* or the *financing of terrorism*. A risk-based approach will, however, serve to balance the cost burden placed on a *relevant person* and on its customers with a realistic assessment of the threat of the *relevant person* being used in connection with *money laundering* or the *financing of terrorism* by focussing effort where it is needed and has most impact.
63. How a risk-based approach is applied will also depend on the structure of the *relevant person's* business, its size and the nature of its products and services.
64. There is no requirement that a risk-based approach must involve a complex set of procedures. The procedures put in place should be proportionate to the size of the business and the identified risks.
65. The necessary procedures will be straightforward for many smaller businesses. Such businesses will offer a small range of products or services, with most customers falling into similar categories. In these circumstances, a simple approach may be appropriate for most customers, with the focus being on those customers that fall outside the norm. Larger retail businesses will be able to put standard AML/CFT procedures in place based on generic profiles of customers.
66. In more complex business relationships, risk assessment mitigation and ongoing monitoring will be more involved and will take into account additional information held and knowledge of the customer's business activities.
67. Inter alia, Part 3 of the AML/CFT Handbook sets out in further detail the Commission's expectations of a soundly reasoned risk based approach.

#### Statutory Requirements

68. Article 11(2) of the Money Laundering Order requires that policies and procedures established and maintained under Article 11(1) are appropriate and consistent having regard to the degree of risk of money laundering and the financing of terrorism, taking into account: (i) the level of risk identified in a national or sector-specific risk assessment in relation to money laundering carried out in respect of Jersey; and (ii) the type of customers, business relationships, products and transactions with which the *relevant person's* business is concerned.

## 1.7 Equivalence of Requirements in Other Countries and Territories

### 1.7.1 Equivalent Business

69. Articles 16 and Part 3A of the Money Laundering Order respectively permit reliance to be placed on an *obliged person* (a term that is defined in Article 1(1)) and exemptions from customer due diligence requirements to be applied to a customer carrying on a *financial services business* that is overseen for AML/CFT compliance in Jersey or carrying on business that is **equivalent business**. Sections dealing with the acquisition of a business or block of

customers and verification of identity concession also provide concessions from *AML/CFT Codes of Practice* on a similar basis.

70. Article 5 of the *Money Laundering Order* defines *equivalent business* as being overseas business that:
- › if carried on in Jersey would be *financial services business*;
  - › may only be carried on in the country or territory by a person registered or otherwise authorised under the law of that country or territory to carry on that business;
  - › is subject to requirements to prevent and detect *money laundering* and the *financing of terrorism* consistent with those in the *FATF Recommendations* in respect of that business; and
  - › is supervised for compliance with those requirements by an overseas regulatory authority.
71. The condition requiring that the overseas business must be subject to requirements to combat *money laundering* and the *financing of terrorism* consistent with those in the *FATF Recommendations* will be satisfied, inter alia, where a person is located in an equivalent country or territory.

### 1.7.2 Equivalent Countries and Territories

72. With effect from 31 May 2021 the Commission no longer maintains a list of Equivalent Countries and Territories in Appendix B. Guidance to assist relevant persons to determine equivalence is set out in Section 1.7.3.
73. A country or territory may be considered to be equivalent where:
- (a) financial institutions and designated non-financial businesses and professions are required to take measures to forestall and prevent money laundering and the financing of terrorism that are consistent with those in the *FATF Recommendations*.
  - (b) financial institutions and designated non-financial businesses and professions are supervised for compliance with those requirements by a regulatory or supervisory authority.

### 1.7.3 Determining Equivalence

74. Requirements for measures to be taken by an *obliged person* or customer will be considered to be consistent with the *FATF Recommendations* only where those requirements are established by law, regulation, or other enforceable means.
75. In determining whether or not the requirements for measures to be taken in a country or territory are consistent with the *FATF Recommendations*, the *relevant person* should have regard for the following:
- › Generally - whether or not the country or territory is a member of the *FATF*, a member of a *FATF Style Regional Body (FSRB)* or subject to its assessment and follow up process, a Member State of the *EU* (including Gibraltar), or a member of the European Economic Area (*EEA*).
  - › Specifically - whether a country or territory is compliant or largely compliant with those *FATF Recommendations* that are directly relevant to the application of available concessions. These are Recommendations 10 – 13, 15 – 21 and 26. Where a person with a specific connection to a customer is a designated non-financial business or profession (a term that is defined by the *FATF*), then Recommendations 22, 23 and 28 will be relevant.

- › Specifically – the extent to which a country or territory is achieving the Immediate Outcomes that are directly relevant to the application of available concessions, namely whether Immediate Outcomes 3 and 4 are assessed at a high or substantial level of effectiveness.
  - › The following sources may be used to determine whether a country or territory is compliant or largely compliant or achieving the Immediate Outcomes:
    - › the laws and instruments that set requirements in place in that country or territory;
    - › recent independent assessments of that country's or territory's framework to combat *money laundering* and the *financing of terrorism*, such as those conducted by the *FATF*, an *FSRB*, the International Monetary Fund (the *IMF*) and the World Bank (and published remediation plans); and
    - › other publicly available information concerning the effectiveness of a country's or territory's framework.
76. Where a *relevant person* assesses whether a country or territory not listed by the *Commission* is an equivalent country or territory, the *relevant person* must conduct an assessment process comparable to that described above, and must be able to demonstrate on request the process undertaken and the basis for its conclusion.
77. Hyperlinks to where additional information may be located are included below. These are not intended to be exhaustive, nor are they placed in any order of priority. Independent research and judgement will be expected in order to cater for the requirements in the individual case.
- › Financial Action Task Force ratings table: <http://www.fatf-gafi.org/media/fatf/documents/4th-Round-Ratings.pdf>
  - › Financial Action Task Force – High jurisdictions and other monitored jurisdictions: [http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/?hf=10&b=0&s=desc(fatf_releasedate))
  - › Financial Action Task Force - Mutual Evaluation Reports: [http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc\(fatf\\_releasedate\)](http://www.fatf-gafi.org/publications/mutualevaluations/?hf=10&b=0&s=desc(fatf_releasedate))
  - › *Financial Action Task Force*–style summary evaluations are published in FATF Annual Reports: [www.fatf-gafi.org](http://www.fatf-gafi.org)
  - › International Monetary Fund: [www.imf.org](http://www.imf.org)
  - › The World Bank: [www.worldbank.org](http://www.worldbank.org)
  - › MONEYVAL: [www.coe.int/Moneyval](http://www.coe.int/Moneyval)
  - › The Offshore Group of Banking Supervisors (OGBS): [www.ogbs.net](http://www.ogbs.net)
  - › The Caribbean Financial Action Task force (CFATF): [www.cfatf.org](http://www.cfatf.org)
  - › The Asia/Pacific Group on Money laundering (APG): [www.apgml.org](http://www.apgml.org)
  - › The Intergovernmental Action Group against Money-Laundering in Africa (GIABA): [www.giabasn.org](http://www.giabasn.org)
  - › The Middle East and North Africa Financial Action Task Force (MENAFATF): [www.menafatf.org](http://www.menafatf.org)
  - › The Financial Action Task Force in South America: [www.gafisud.org](http://www.gafisud.org)
  - › The Eastern and Southern Africa Anti-Money Laundering Group (EASSMLG): [www.esaamlg.org](http://www.esaamlg.org)
  - › The Eurasian Group (EAG): [www.euroasiangroup.org](http://www.euroasiangroup.org)