

## 1 INTRODUCTION

1. 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 business 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 products or serviceswill face the loss of its reputation, risk the loss of its licence or other regulatory sanctions (where regulated and supervised), damage the integrity of Jersey's finance industry as a whole, and may risk prosecution for criminal offences.
2. Jersey has had in place a framework of anti-money laundering legislation since 1988, and for the countering of terrorism since 1990. This legislation has continued to be updated as new threats have emerged, including legislation to extend the definition of criminal conduct for which a money laundering offence can be committed and to combat international terrorism.
3. Criminals are aware the AML/CFT measures taken by the traditional financial sector over the past decade and may seek 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. Lawyers, trust company businesses and providers of accountancy services have all been used as a conduit for criminal property to enter the financial system and are sometimes referred to as "gatekeepers". Some have also been used to assist terrorists to plan and finance their operations.
4. For example, criminals may try to exploit the services offered by lawyers, through the business of undertaking property and financial transactions, setting up corporate and trust structures and when acting as directors or trustees. In addition, client accounts can provide a money launderer with a route into the banking system.
5. The result has been that international money laundering and the financing of terrorism legislation and standards have been extended beyond the traditional financial sector to specified schedule 2 businesses. This AML/CFT Handbook applies to all supervised persons (throughout this Handbook, where provisions of the Money Laundering Order are quoted, paraphrased or summarised, the text refers to a relevant person to match the language of the Money Laundering Order).
6. Jersey's defences against money laundering and the financing of terrorism rely heavily on the vigilance and co-operation of the finance sector. The Money Laundering Order is therefore also in place covering supervised persons.
7. The primary legislation on money laundering and the financing of terrorism is defined in the glossary above as the Anti-Money Laundering and Counter-Terrorism Legislation.

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Whilst no regulatory requirements are set within this section, there are references to Jersey legislation which may be accessed through the [JFSC website](#).¶

Where terms appear in the Glossary this is highlighted through the use of italic text. The Glossary is available from the [JFSC website](#). ...

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Lawyers are key professionals in the business and financial world, facilitating vital transactions that underpin Jersey's economy. As such, they have a significant role to play in ensuring that their services are not used to further a criminal purpose. As professionals, lawyers must act with integrity and uphold the law, and they must not engage in criminal activity.¶ ...

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8. The international standards require that all Financial Institutions, DNFBPs and virtual asset service providers must be supervised on a risk-based approach by an appropriate anti-money laundering supervisory body. Within Jersey, the JFSC has been designated as the relevant supervisory body under the Supervisory Bodies Law. The JFSC is the AML/CFT supervisor for all supervised persons. 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.
9. Supervised persons may get a visit from the JFSC to carry out an examination. Further information can be found on the JFSC's website. In certain circumstances, the JFSC may also serve a notice on a supervised person which would require, among other things, senior management to attend interviews and to answer questions and/or provide information and documents.
10. Each supervised person in Jersey must recognise the role that it must play in protecting itself, and its employees, from involvement in money laundering and the financing of terrorism, and also in protecting the Island's reputation. This relates not only to business operations within Jersey, but also operations conducted by supervised persons outside the Island.
11. The JFSC strongly believes that the key to the prevention and detection of money laundering and the financing of terrorism lies in the implementation of, and strict adherence to, effective systems and controls, including sound CDD measures based on international standards. The AML/CFT Handbook therefore establishes standards which match international standards issued by the FATF. The AML/CFT Handbook also has regard to the standards promoted by the Basel Committee, IOSCO and the IAIS. The AML/CFT Handbook takes account of the requirements of EU legislation to counter money laundering and the financing of terrorism and its application of standards set by the FATF.
12. The JFSC is also mindful of the importance of financial services being generally available to all Jersey residents and, where necessary, the AML/CFT Handbook incorporates measures to guard against the financial exclusion of Jersey residents from financial services and products.
13. Throughout this AML/CFT Handbook, supervised persons should have regard to the defined terms set out in the Glossary above.

## 1.1 Objectives of the AML/CFT Handbook

14. The objectives of the AML/CFT Handbook are:
  - to outline the relevant requirements of the Anti-Money Laundering and Counter-Terrorism Legislation
  - to set out the JFSC's requirements, expressed as AML/CFT Codes of Practice - to be followed by all supervised persons
  - to assist supervised persons to comply with the requirements of the Anti-Money Laundering and Counter-Terrorism Legislation and the AML/CFT Codes of Practice, through practical interpretation
  - to outline good practice in developing systems and controls to prevent supervised persons from being used to facilitate money laundering and the financing of terrorism

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<#>Throughout this Handbook, references to:¶  
<#>Client (or customer) includes, where appropriate, a prospective client or customer (an applicant for business). A client is a person with whom a business relationship has been formed or one-off transaction conducted.¶  
<#>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 (...)

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- › to provide a base from which supervised persons 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 emphasise the responsibilities of the Board and senior management of a supervised person in preventing and detecting money laundering and the financing of terrorism.
- › to promote the use of a proportionate, risk-based approach to CDD measures, which directs resources towards higher risk customers.
- › to emphasise the particular money laundering and financing of terrorism risks of certain financial services and products.
- › to provide an information resource to be used in training and raising awareness of money laundering and the financing of terrorism.

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15. The AML/CFT 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.

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16. This Handbook is intended to be used by senior management and compliance staff in the development of a supervised person's systems and controls, and detailed policies and procedures. Each supervised 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 also help senior management and staff to comply with their own personal obligations under the Anti-Money Laundering and Counter-Terrorism Legislation. This Handbook is not intended to be used by supervised persons as an internal procedures manual.

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17. Supervised persons are expected to think about how they might be vulnerable to, and exploited by, criminals. The Anti-Money Laundering and Counter-Terrorism Legislation expects supervised persons to manage the risks of being used by criminals or terrorist groups and to document how they are managing those risks.

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## 1.2 Structure of the AML/CFT Handbook

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19. The AML/CFT Handbook describes statutory requirements (defined below), 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).

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20. *Statutory requirements* describe the statutory provisions that must be **complied with** by a **supervised person** (natural or legal) when carrying on a **supervised business**, in particular requirements set out in the *Money Laundering Order*. **Some statutory requirements place obligations on individuals**. Failure to follow a *Statutory Requirement* is a criminal offence and may also attract regulatory sanction.
21. The AML/CFT **Codes of Practice** set out principles and detailed requirements for compliance with *statutory requirements*. **Failure to follow any AML/CFT Codes of Practice may attract regulatory sanction**. The AML/CFT Codes of Practice **comprise a number of individual elements**:
- › to be followed in the area of corporate governance which must be in place in order for a **supervised person** to comply with *statutory requirements* and
  - › explain in more detail how a *Statutory Requirement* is to be complied with.
22. *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 **supervised person** may adopt other 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 **supervised 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 **supervised person** is in compliance with the *statutory requirements* and AML/CFT Codes of Practice.
23. The provisions of the *statutory requirements* and of the AML/CFT Codes of Practice are described using the term **must**, indicating that **these requirements** are mandatory. However, in exceptional circumstances, where strict adherence to any of the AML/CFT Codes of Practice would produce an anomalous result, a **supervised person** may apply in advance in writing to the *JFSC* for a variance from the requirement. Section 1.8 also explains that **an obligation to do something outside Jersey may be met through applying measures that are at least equivalent to the AML/CFT Codes of Practice**.
24. 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.
25. This Handbook also contains **Overview** text which provides **context** relevant to particular sections or sub-sections of **the AML/CFT Handbook**.
26. **The AML/CFT 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 **supervised person** should (where permitted) adopt an appropriate 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 to **engage in money laundering or the financing of terrorism**.
27. The text in *statutory requirements* sections necessarily **paraphrases** provisions contained in the *Anti-Money Laundering and Counter-Terrorism Legislation* and should always be read and understood in conjunction with the full text of each law. *Statutory requirements* are presented **in light blue boxes** and in italics, to distinguish them from other text.

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## 1.3 Legal Status and Sanctions for Non-Compliance

### 1.3.1 AML/CFT Handbook

28. The AML/CFT Handbook is issued by the JFSC:
- › pursuant to its powers under Article 8 of the Commission Law
  - › in accordance with Article 22 of the Supervisory Bodies Law, which provides for AML/CFT Codes of Practice to be prepared and issued for the purpose of setting out principles and detailed requirements
  - › in light of Article 37(1)(a) of the Proceeds of Crime Law, which provides for the Money Laundering Order which prescribes measures to be taken (or not to be taken) by persons who carry on financial services business.
29. The AML/CFT Codes of Practice in this Handbook are applicable to all supervised persons.
30. Sector-specific sections for supervised Persons subject to the Wire Transfers Regulations, Trust Company Business, Funds and Fund Operators, Estate Agents and High Value Dealers, Lawyers and Accountants are set out at Sections 11-16 of this Handbook and provide some additional AML/CFT Codes of Practice and guidance notes for supervised persons carrying on those types of business.

### 1.3.2 Money Laundering Order

31. The Money Laundering Order is made by the Minister for External Relations and Financial Services under Article 37(1)(a) of the Proceeds of Crime Law. The Order prescribes measures to be taken (including measures not to be taken) by a relevant person 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 supervised 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 the AML/CFT Code of Practice and guidance notes issued by the JFSC, 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.
34. Under Article 37(5) of the Proceeds of Crime Law, where a breach of the Money Laundering Order by a body corporate is proved to have been committed with the consent of, or proved to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer, that individual, as well as the body corporate shall be guilty of the offence and subject to criminal sanctions.
35. Under Article 37(6) of the Proceeds of Crime Law, where a breach of the Money Laundering Order by an unincorporated association is proved to have been committed with the consent or connivance of, or proved to be attributable to any neglect on the part of, a person concerned in the management or control of the association, the person, as well as the association, shall be guilty of the offence and subject to criminal sanctions.

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<#>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 with the Statutory Requirements and AML/CFT Codes of Practice. ¶  
<#>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. ¶

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36. 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, pursuant to Article 21(6) of the *Terrorism Law*, required to take account of the 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. 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.
37. It should be emphasised that the AML/CFT Handbook is not a substitute for the law and compliance with it is not of itself a defence to offences under the various legislation referenced above. However, the AML/CFT Handbook shall be taken in to account by the courts when considering the standards of a supervised 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.
38. Under Article 21A of the *Commission Law* the JFSC may impose a civil financial penalty on a supervised person (except where that person is a fund) where the JFSC is satisfied that the supervised person has, to a significant and material extent, contravened the *Money Laundering Order*.
39. Article 21A of the *Commission Law* also permits the JFSC to impose a civil financial penalty on a principal person, a key person or a person who performs a significant management function (all as defined in Article 1 of the *Commission Law*) where the JFSC is satisfied that the contravention of the *Money Laundering Order* by the supervised person was:
- › committed with the consent or connivance of, or is attributable to neglect on the part of, the principal person, key person or the person who performs a significant management function or
  - › aided, abetted, counselled or procured by such a person.

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<#>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.¶  
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### 1.3.3 AML/CFT Codes of Practice

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40. An AML/CFT Code of Practice is prepared and issued by the JFSC under Article 22 of the *Supervisory Bodies Law*. The AML/CFT Codes of Practice set out the principles and detailed requirements that must be complied with in order to meet certain statutory provisions of the *Supervisory Bodies Law* and the anti-money laundering and counter-terrorism legislation (*Proceeds of Crime Law, Terrorism Law, Directions Law, Terrorist Sanctions Measures, Wire Transfers Regulations, and the Money Laundering Order*) by supervised persons. The AML/CFT Codes of Practice comprise a number of individual AML/CFT Codes of Practice.
41. Article 5 of the *Supervisory Bodies Law* states that the JFSC shall be the supervisory body to exercise supervisory functions in respect of a regulated person (as defined Article 1 of the *Supervisory Bodies Law*). The JFSC 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. The effect of these provisions is to give the JFSC supervisory functions in respect of all supervised persons.
42. Article 8A of the *Supervisory Bodies Law* requires a supervisory body (the JFSC) to use a risk-based approach when performing its obligations under said law, which means determining the scrutiny that a supervised person requires on the basis of:

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- › the money laundering and terrorist financing risks associated with the supervised person, as identified by the supervisory body's assessment of the supervised person's risk profile
- › the policies, internal controls and procedures associated with the supervised person, as identified by the supervisory body's assessment of the supervised person's risk profile
- › the money laundering or terrorist financing risks present in the jurisdiction in which the supervised person is based
- › any other characteristic of the supervised person that the supervisory body reasonably considers to be relevant.

43. Article 8A(3) requires the supervisory body (the JFSC) to take account of FATF standards when devising a risk profile for a supervised person.

44. Compliance with the AML/CFT Codes of Practice will be considered by the JFSC in the conduct of its supervisory programme, including on-site examinations.

45. The consequences of non-compliance with any AML/CFT Codes of Practice could include an investigation by or on behalf of the JFSC and the imposition of regulatory sanctions. Regulatory sanctions available to the JFSC under the Supervisory Bodies Law and the Regulatory Laws (where applicable) include:

- › issuing a public statement
- › imposing a registration condition
- › objecting to the appointment, or continued appointment, of a principal person (or equivalent controller or manager of a regulated person) or key person
- › imposing a direction and making this public, including preventing an individual from working in a supervised person and where already appointed requiring their removal and
- › revoking a supervised person's registration.

46. In addition, under Article 21A of the Commission Law the JFSC may impose a civil financial penalty on a supervised person (except where that person is a fund) where the JFSC is satisfied that the supervised person has, to a significant and material extent, contravened an AML/CFT Code of Practice.

47. Article 21A of the Commission Law also permits the JFSC to impose a civil financial penalty on a principal person, a key person or a person who performs a significant management function (all as defined in Article 1 of the Commission Law) where the JFSC is satisfied that the contravention of the AML/CFT Code of Practice by the supervised person was:

- › committed with the consent or connivance of, or is attributable to neglect on the part of, the principal person, key person or the person who performs a significant management function; or
- › aided, abetted, counselled or procured by such a person.

48. The ability of a supervised person to demonstrate compliance with AML/CFT Codes of Practice will also be directly relevant to its regulated status and any assessment of fitness and propriety of its principal persons and key persons. Non-compliance with any AML/CFT Code of Practice may be regarded by the JFSC as an indication of:

- › a lack of fitness and propriety under Articles 7 or 8B of the CIF(J) Law, Article 10 of the BB(J) Law, Article 7 of the IB(J) Law, and Article 9 of the FS(J) Law and/or

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➤ a failure to follow certain fundamental principles within a Code of Practice issued under each of the regulatory laws.

49. Where a breach of an AML/CFT Code of Practice results in contravention of the Money Laundering Order, a supervised person and its employees can be criminally prosecuted.

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

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### 1.4.1 Application of the Money Laundering Order and AML/CFT Codes of Practice to supervised persons carrying on business in Jersey

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50. By virtue of the definition of *relevant person* in Article 1(1), the *Money Laundering Order* applies to **any supervised person** who is carrying on a supervised business in or from within Jersey. This will include Jersey-based branches of companies incorporated outside Jersey conducting supervised business in Jersey.
51. By virtue of Articles 5, 6 and 22 of the Supervisory Bodies Law, the AML/CFT Codes of Practice apply to **any supervised person** who is carrying on a supervised business in or from within Jersey. This will include Jersey-based branches of companies incorporated outside Jersey conducting supervised business in Jersey.
52. The AML/CFT Codes of Practice in Sections 2 to 10 of this Handbook must be complied with by all supervised persons. The sector-specific sections within this Handbook only provide additional AML/CFT Codes of Practice for particular business types in very limited circumstances.

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### 1.4.2 Application of the Money Laundering Order to supervised persons carrying on business outside Jersey (overseas)

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53. Article 10A of the *Money Laundering Order* explains and regulates the application of the *Money Laundering Order* to supervised business carried on outside Jersey.
54. Article 10A(2)(a) of the Money Laundering Order explains that a Jersey body corporate or other legal person registered in Jersey (supervised person) that carries on a supervised business through an overseas branch must comply with the Money Laundering Order in respect of that business, irrespective of whether it also carries on supervised business in or from within Jersey.
55. However, Article 10A(9) of the *Money Laundering Order* explains that a supervised person carrying on any of the business activities described in paragraphs 1-5 of Part B of Schedule 2 to the Proceeds of Crime Law need not comply with paragraphs (2), (3) and (4) in a country or territory outside Jersey in respect of their Schedule 2 business.
56. Notwithstanding the above paragraph, all of the provisions of the *Money Laundering Order* apply to a supervised person that is a legal person carrying on supervised business anywhere in the world. However, in practice this may not apply to all supervised persons carrying on Schedule 2 business on the basis that some businesses currently registered under the *Supervisory Bodies Law* are either sole practitioners or Jersey customary law partnerships.

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57. Article 10A(3) of the *Money Laundering Order* requires a *supervised person* (subject to Article 10A(9) see above) who: (i) is registered, incorporated or otherwise established under Jersey law<sup>5</sup>, but who is not a legal person; and (ii) carries on a *supervised business* in or from within Jersey, to apply measures that are at least equivalent to the requirements of the *Money Laundering Order* in respect of any *supervised business* carried on by that person through an overseas branch. This requirement will apply to a limited partnerships registered under the [Limited Partnerships \(Jersey\) Law 1994](#) and general partnership established under Jersey customary law.
58. Article 10A(2)(b) of the *Money Laundering Order* requires a Jersey body corporate or other legal person (*supervised person*) registered in Jersey (subject to Article 10A(9) see above) to ensure that any legal person that is majority owned or controlled by that person (referred to in the *Money Laundering Order* as a “subsidiary”) applies measures that are at least equivalent to the requirements of the *Money Laundering Order* in respect of any *supervised business* carried on outside Jersey by that subsidiary.
59. Article 10A(4) of the *Money Laundering Order* requires a *supervised person* (subject to Article 10A(9) see above) who: (i) is registered, incorporated or otherwise established under Jersey law, but who is not a legal person; and (ii) carries on a *supervised business* in or from within Jersey, to ensure that any subsidiary applies measures that are at least equivalent to the requirements of the *Money Laundering Order* in respect of any *supervised business* carried on outside Jersey by that subsidiary. This requirement will apply to a limited partnership registered under the [Limited Partnerships \(Jersey\) Law 1994](#) and general partnership established under Jersey customary law.
60. In summary, Jersey companies and other legal persons registered in Jersey (subject to Article 10A(9) see above) are covered by Article 10A(2) in relation to their overseas branches and subsidiaries. Other types of entity who do not have legal personality but who are constituted under Jersey law fall into Article 10A(3) and (4) in relation to their overseas branches and subsidiaries.
61. Article 10A(6) of the *Money Laundering Order* requires a *supervised person* (subject to Article 10A(9) see above) to take reasonable steps to comply with paragraphs (2), (3) and (4) to the extent that the law of the country or territory in which that person carries on a *supervised business*, or has a subsidiary carrying on such a business, does not have the effect of prohibiting or preventing the *supervised person* from taking such steps. If the *supervised person* does not comply with paragraphs (2), (3) and (4), the following steps must be taken by the *supervised person*: (i) the JFSC must be informed that this is the case; (ii) other reasonable steps to deal effectively with the risk of money laundering and the financing of terrorism must be taken.
62. If a *supervised person* carries on a *supervised business* or has a subsidiary carrying on such a business overseas that has more stringent requirements than those set out in the *Money Laundering Order*, Article 10A(10) of the *Money Laundering Order* requires that the *supervised person* ensure that the more stringent requirements are complied with.

<sup>5</sup> Note that the term “registered, incorporated or otherwise established” in Article 10A(5) of the *Money Laundering Order* is intended to be understood only to refer to the creation of a 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.



### 1.4.3 Application of AML/CFT Codes of Practice to ~~supervised persons~~ carrying on ~~business outside Jersey (overseas)~~

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63. By virtue of Articles 5, 6 and 22 of the *Supervisory Bodies Law*, a ~~supervised person (subject to Article 10A(9) see above) that is~~ a company incorporated in Jersey that carries on a ~~supervised 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 ~~supervised business~~ in or from within Jersey.
64. 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*.
65. ~~A supervised person (subject to Article 10A(9) see above) who (i) is registered, incorporated or otherwise established under Jersey law<sup>6</sup>, but who is not a Jersey incorporated company; and (ii) carries on a supervised business in or from within Jersey, must apply measures that are at least equivalent to AML/CFT Codes of Practice in respect of any supervised business carried on by that person through an overseas branch. This requirement will apply to a foundation or partnership established under Jersey law.~~
66. ~~A supervised person (subject to Article 10A(9) see above) that is a Jersey incorporated company must ensure that any subsidiary applies measures that are at least equivalent to AML/CFT Codes of Practice in respect of any supervised business carried on outside Jersey by that subsidiary.~~
67. ~~A supervised person (subject to Article 10A(9) see above) who (i) is registered, incorporated or otherwise established under Jersey law, but who is not a Jersey incorporated company; and (ii) carries on a supervised business in or from within Jersey, must ensure that any subsidiary applies measures that are at least equivalent to AML/CFT Codes of Practice in respect of any supervised business carried on outside Jersey by that subsidiary. This requirement will apply to a foundation or partnership established under Jersey law.~~
68. Where overseas provisions prohibit compliance with one or more of the *AML/CFT Codes of Practice* (or measures that are at least equivalent), ~~the requirements do not apply and the JFSC~~ must be informed that this is the case. In such circumstances, the *AML/CFT Codes of Practice* require a ~~supervised person~~ to take other reasonable steps to effectively deal with the risk of ~~money laundering and the financing of terrorism~~.

## 1.5 Definition of ~~Supervised Business~~

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69. ~~Supervised business is defined in Article 1 of the Supervisory Bodies Law. This reflects the definition of financial services business as provided by Article 36 of the Proceeds of Crime Law (which in turn refers to Schedule 2 of the Proceeds of Crime Law).~~
70. ~~In practice, this means that all activities listed in Schedule 2 of the Proceeds of Crime Law are covered by the term supervised business.~~

<sup>6</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.

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The business of providing services by independent legal professionals; and¶  
Independent legal professionals means those who by way of business provide legal or notarial services to third parties when participating in financial or immovable property transactions concerning any of the following:¶  
the buying and selling of immovable property or business entities;¶  
the buying and selling of shares the ownership of which entitles the owner to occupy immovable property;¶  
the managing of client money, securities or other assets;¶  
the opening or management of bank, savings or securities accounts; ¶  
the organisation of contributions necessary for the creation, operation or management of companies; or¶  
the creation, operation or management of trusts, companies or similar structures. ¶  
Legal professionals employed by public authorities or undertakings which do not provide services to third parties

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A person is defined as participating in a transaction by assisting in the planning or execution of the transaction, or otherwise acting for or on behalf of a third party in a transaction.¶  
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71. The sector specific sections of this Handbook (sections 11 – 16) include specific information regarding the activities of supervised persons that are: Estate Agents, High Value Dealers, Lawyers, Accountants, Trust Company Businesses, and Funds and Fund Operators.

## 1.6 Business relationships and one-off transactions

72. The terms business relationship and one-off transaction are defined in the Glossary above.

### Guidance notes

73. A supervised person may demonstrate that the basis upon which it has determined the value of a transaction for the purposes of Article 4 of the Money Laundering Order (e.g. in order to determine whether a transaction falls within the definition of a one-off transaction described in that article) is appropriate where it applies the value of the underlying asset(s) to which the instruction relates. For example, with regard to services provided in respect of a trust, a supervised person may apply the value of the trust assets.
74. Where a value to the underlying assets cannot be determined or no value for the underlying assets is readily available or ascertainable, the supervised person should assume the value of the transaction to be 15,000 euro or more<sup>7</sup>.
75. With reference to paragraph 74 above, persons carrying on money services business, virtual currency exchange business or operating a casino should apply their specific transaction thresholds set out in Article 4 of the Money Laundering Order.
76. Further sector-specific guidance on determining the value of transactions is provided, where appropriate, in the relevant sector-specific sections.
77. Where a transaction is likely to become a one-off transaction or develop into a business relationship, the supervised person should consider undertaking identification measures at the outset.
78. Where the supervised person suspects money laundering or the financing of terrorism whilst undertaking the above, they should refer to Section 8 of this Handbook (reporting money laundering and the financing of terrorism).

## 1.7 Risk-based approach

### Overview

79. To assist the overall objective of detecting and preventing money laundering and the financing of terrorism, the AML/CFT Handbook adopts a risk-based approach. Such an approach:

<sup>7</sup> Noting the lower thresholds for money service business, virtual currency exchange business or operating a casino

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<#>managing client money is narrower than handling it; and¶  
<#>operating or managing a bank account is wider than simply opening a client account. It would be likely to cover lawyers acting as a trustee, attorney or receiver.¶  
<#>The Attorney General has confirmed that the following would not generally be regarded as participating in Schedule 2 business:¶  
<#>Payment on account of costs to a legal professional or payment of a lawyer's bill.¶  
<#>In respect of payments on account of costs, law firms should ensure that the payment is proportionate to the issue in respect of which the firm is asked to advise.¶  
<#>In respect of payment of a lawyer's bill, if payment is made out of criminal property, this would constitute an offence under Article 30 of the Proceeds of Crime Law.¶  
<#>Provision of legal advice¶  
<#>In relation to the provision of legal advice, a lawyer needs to consider whether they are providing legal advice or whether they are a lawyer participating in a transaction by assisting in its planning or its execution. Ultimately, each case will have to be decided on its own facts and it is a matter for each firm to form a view.¶

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- › recognises that the *money laundering and financing of terrorism* threat to a *supervised person* varies across *customers*, countries and territories, products and delivery channels
- › allows a *supervised person* to differentiate between *customers* in a way that matches risk in a particular *supervised person*
- › while establishing minimum standards, allows a *supervised person* to apply its own approach to *systems and controls*, and arrangements in particular circumstances
- › helps to produce a more cost effective system.

**Moved (insertion) [4]**

80. A risk-based approach requires steps to be taken to identify how a *supervised 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 in the same way as for all business risks faced by a *supervised person*.

81. The possibility of being used to assist with *money laundering* and the *financing of terrorism* poses many risks for *supervised persons* including:

- › criminal and disciplinary sanctions for *the supervised person* and for *key and principal persons*
- › civil action against the *supervised person* as a whole and against individual *staff*
- › damage to reputation leading to loss of business.

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**Deleted:** <#>These risks must be identified, assessed and mitigated in the same way as for all business risks faced by a firm.¶  
<#>To assist the overall objective to prevent money laundering and the financing of terrorism, the and this Handbook adopt a risk-based approach.

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82. *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 *supervised person* and on its *customers* with a realistic assessment of the threat of it being used in connection with *money laundering* or the *financing of terrorism* by focusing effort where it is needed and has most impact.

**Deleted:** <#>recognises that the money laundering and the financing of terrorism threats to a firm vary across clients, countries and territories, services and delivery channels;¶  
<#>allows a firm to differentiate between clients in a way that matches risk in a particular firm;¶  
<#>while establishing minimum standards, allows a firm to apply its own approach to *systems and controls*, and other arrangements in particular circumstances; and¶

83. How a risk-based approach is applied will also depend on the structure of the *supervised person's* business, its size and the nature of its products and services.

**Moved up [4]:** <#>helps to produce a more cost effective system.¶

84. The *policies and procedures* put in place should be proportionate to the size of the business and the identified risks.

**Deleted:** <#>Nevertheless, it must be accepted that applying the risk-based approach will vary between firms and may not provide a level playing field.¶  
<#>System

85. *Policies and procedures* may be more straightforward for smaller businesses. Such businesses may offer a smaller range of products or services, with most *customers* falling into similar categories. In these circumstances, a simpler approach may be appropriate for most *customers*, with the focus being on those *customers* that fall outside the usual categories. Larger businesses with a small range of products or services can put standard AML/CFT *policies and procedures* in place based on generic profiles of *customers*.

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86. In more complex business relationships, risk assessment, mitigation, and ongoing monitoring will be more sophisticated and will take into account additional information held and knowledge of the *customer's* business activities.

**Deleted:** <#>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.¶

87. An effective and documented risk-based approach will enable a *supervised person* to justify its position on managing *money laundering* and *financing of terrorism* risks to law enforcement, the courts, regulators and supervisory bodies.

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Article 11(2) of the 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. ¶

## 1.8 Equivalence of requirements in other countries and territories

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### 1.8.1 Equivalent business

88. Articles 16 and Part 3A of the *Money Laundering Order* respectively permit reliance to be placed on an *obliged person* and exemptions from *CDD* requirements to be applied to a *customer* carrying on a *supervised 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 also provide concessions from AML/CFT Codes of Practice on a similar basis.
89. *Equivalent business* is defined in Article 5 of the *Money Laundering Order*.
90. The condition set out in Article 5 requiring that the 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, among other things, where a person is located in an equivalent country or territory.

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<#> 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 forestall and prevent 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.¶

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### 1.8.2 Equivalent countries and territories

91. With effect from 31 May 2021 the JFSC no longer maintains a list of Equivalent Countries and Territories within this Handbook. Guidance to assist supervised persons to determine equivalence is set out in Section 1.8.3 below.
92. A country or territory may be considered to be equivalent where:
- Financial institutions and DNFBPs are required to take measures to detect and prevent money laundering and the financing of terrorism that are consistent with those in the FATF Recommendations.
  - Financial institutions and DNFBPs are supervised for compliance with those requirements by a regulatory or supervisory authority.

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### 1.8.3 Determining equivalence

93. 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.
94. In determining whether or not the requirements for measures to be taken in a country or territory are consistent with the FATF Recommendations, a *supervised 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, or a member of the FEA.
  - 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 DNFBP (a term that is defined by the FATF), then Recommendations 22, 23 and 28 will be relevant.

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- › 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:

- a) the laws and instruments that set requirements in place in that country or territory.
- b) 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*, *FSRBs*, the *IMF* and the World Bank (and published remediation plans).
- c) other publicly available information concerning the effectiveness of a country's or territory's framework.

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95. Where a *supervised person* assesses whether a country or territory is an equivalent country or territory, *the supervised 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.

96. ~~Links to potential sources of additional information are included in Appendix B.~~ 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.

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Financial Action Task Force ratings table: ¶  
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Financial Action Task Force – Mutual Evaluation Reports: ¶  
*Financial Action Task Force*–style summary evaluations are published in FATF Annual Reports: ¶  
International Monetary Fund: ¶  
The World Bank: ¶  
MONEYVAL: ¶  
The Offshore Group of Banking Supervisors (OGBS): ¶  
The Caribbean Financial Action Task force (CFATF): ¶  
**The Asia/Pacific Group on Money laundering (APG):** ¶  
The Intergovernmental Action Group against Money-Laundering in Africa (GIABA): ¶  
The Middle East and North Africa Financial Action Task Force (MENAFATF): ¶  
The Financial Action Task Force in South America: ¶  
The Eastern and Southern Africa Anti-Money Laundering Group (EASSMLG): ¶  
The Eurasian Group (EAG):

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