

Feedback Paper on Consultation Paper No. 5 2023

A feedback paper relating to a consultation on proposals regarding further enhancements to the AML/ CFT/ CPF Handbook

Issued: September 2023

Glossary of Terms

Defined terms are indicated throughout this document as follows:

AI	Artificial Intelligence
AML/ CFT	Anti-money laundering/ Countering the financing of terrorism
CDD	Client Due Diligence
CP	Consultation Paper
DNFBP	Designated Non-Financial Businesses and Professions
FATF	Financial Action Task Force
FATF Recommendations	The <i>FATF</i> Recommendations adopted into law on 16 February 2012 and as amended from time to time.
FIU	Financial Intelligence Unit
The Handbook	The AML/CFT/CPF Handbook
JFSC	Jersey Financial Services Commission
Order	Money Laundering (Jersey) Order 2008
MVTS	Money or Value Transfer Services
NPO	Non-Profit Organisation
PSP	Payment Service Providers
PEP	Politically Exposed Person
SAR	Suspicious Activity Report
TCB	Trust Company Business
TCSPs	Trust Company Service Providers
The Proceeds of Crime Law	Proceeds of Crime (Jersey) Law 1999
The Terrorism Law	Terrorism (Jersey) Law 2002
VASPs	Virtual Asset Service Providers

Table of Contents

1	Executive Summary	4
1.1	Background	4
1.2	Feedback received.....	4
1.3	Next Steps	4
2	Consultation feedback	5
2.1	Overview	5
2.2	Question 1	5
	Does the addition of DNFBPs at Section 2.7 have a negative impact on your business? ..	5
2.3	Question 2	5
	Do you consider the proposed Code and guidance notes at Section 7.6 to be adequate for the purpose of your business?	5
2.4	Question 3	6
	Do you consider the proposed guidance notes at Section 7.11 to be adequate for the purpose of your business.	6
2.5	Question 4	6
	Is the guidance on additional terms and interpretation in the Wire Transfer Regulations clearly explained in Section 11 of the Handbook?	6
2.6	Question 5	6
	Do you consider the proposed guidance notes at Section 11 in respect of this exemption to be adequate for the purpose of your business?	6
	Do you consider the proposed guidance notes at Sections 3.3.2, 3.3.3, 3.3.6 and 7.3 to be adequate for the purpose of your business?	7
2.7	Question 6	7
2.8	Other Comments.....	8
	Appendix A	9

1 Executive Summary

1.1 Background

1.1.1 On 18 August 2023 we issued a consultation paper, Consultation No 5 2023, (the CP) on proposals to add a range of new and expanded guidance notes across the handbook together with one new AML/CFT/CPF Code of Practice.

1.2 Feedback received

1.2.1 The consultation period for the CP closed on 29 August 2023. We received a total of 14 responses; 6 were received directly and 8 were received via Jersey Finance. It is noted that not all respondents provided responses to all questions raised.

1.2.2 Section 2 of this paper presents a summary of the substantive comments received to the CP and our response.

1.2.3 We are grateful to respondents for taking the time to consider and comment on the proposals. We are also grateful to those who participated in the drop-in sessions. A full list of respondents is provided in Appendix A.

1.3 Next Steps

1.3.1 Following this consultation, the JFSC will publish the enhanced Handbook.

1.3.2 The changes referenced will take place from 1 September 2023.

2 Consultation feedback

2.1 Overview

- 2.1.1 This section summarises the substantive comments received in response to the CP and provides our response to those comments. 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.

2.2 Question 1

Does the addition of DNFBPs at Section 2.7 have a negative impact on your business?

2.2.1. None of the parties who responded to this question advised of any negative impact to their business as a result of the addition of DNFBPs at Section 2.7.

2.2.2 There were however two requests made:

2.2.2.1 One respondent requested paragraphs 115, 116 and 117 be expanded to clarify expectation on DNFBP's; and

2.2.2.2 Another respondent queried whether further guidance could be provided on the definition of "transaction information".

JFSC response

2.2.3 Paragraphs 115, 116 and 117 contain paraphrased wording of the statutory requirements as set out in the Order. For this reason, we are unable to amend these paragraphs. Further guidance as to expectations is set out in the 'guidance notes' section which begins at paragraph 123.

2.2.4 The term "transaction information" is not a new term being introduced because of the proposed amendments at this time. The feedback from the respondent is noted but as this is an existing and familiar term to industry, there is no proposal to amend at this time.

2.3 Question 2

Do you consider the proposed Code and guidance notes at Section 7.6 to be adequate for the purpose of your business?

2.3.1 All parties who responded to this question welcomed the ability to declassify PEPs.

2.3.2 Our thanks go to those respondents who informed us of a typographical error at paragraphs 60 and 62 which saw the exclusion of the letter 'A' in reference to Article 15A(2B) and 15A(2C) respectively. This has now been corrected.

2.3.2 There were some additional comments raised:

2.3.2.1 One respondent felt that the proposed amendments went further than the Order, placing an onus on Supervised Persons to proactively consider the declassification of PEPs immediately following expiration of the relevant period.

2.3.2.2 Four respondents requested additional guidance be provided in respect of expectations when declassifying PEPs and/or Prominent People. One of those respondents helpfully suggested that consideration be given to the guidance provided by the Wolfsberg Group; and

2.3.2.3 One respondent requested that clarification as to what constitutes a ‘prominent person’ would be beneficial.

JFSC response

2.3.3 We wish to clarify that the introduction of the ability to declassify PEPs and prominent persons does not mean that a Supervised Person must automatically declassify such persons after the relevant passage of time. The ability to declassify a PEP or prominent person, provided the relevant criteria has been met (namely completion of a risk assessment, determination that the individual does not pose a higher risk to money laundering and that there are no reasons to continue to treat the person as a PEP/prominent person) is at the discretion of a Supervised Person on a case-by-case basis. The Codes of Practice and guidance notes in Section 7.6.2 have been amended to better draw this out.

2.3.4 In light of the feedback received, we have included additional guidance that may assist Supervised Persons in determining when and how it is appropriate to declassify foreign, and domestic PEPs; prominent persons; and their immediate family members and close associates. This includes reference to additional sources and links for guidance in Section 7.6.2. Said sources and links include the Wolfsberg Group Guidance and the FATF Guidance on Recommendation 12 and 22.

2.3.5 The term “prominent person” is not a new term being introduced as a result of the proposed amendments at this time. The feedback from the respondent is noted but as this is an existing and familiar term to industry, we will not add an additional section in this amendment.

2.4 Question 3

Do you consider the proposed guidance notes at Section 7.11 to be adequate for the purpose of your business.

2.4.1 All parties who responded to this question confirmed that the guidance was adequate for the purpose of their business and that the changes were welcomed.

2.5 Question 4

Is the guidance on additional terms and interpretation in the Wire Transfer Regulations clearly explained in Section 11 of the Handbook?

2.5.1 All parties who responded to this question confirmed that the guidance on additional terms and interpretation were clearly explained in Section 11 of the Handbook.

2.6 Question 5

Do you consider the proposed guidance notes at Section 11 in respect of this exemption to be adequate for the purpose of your business?

2.6.1 All parties who responded to this question confirmed the proposed guidance notes at Section 11 were adequate for the purpose of their business.

2.6.2 A general request was made from two respondents who wished to understand the timeline as to when additional guidance will be issued pertaining to Wire Transfers and the inclusion of VASPs.

JFSC Response

2.6.3. We are currently working to produce the additional guidance pertaining to Wire Transfers and the inclusion of VASPs. This work is being undertaken in conjunction with the relevant Industry sectors and we anticipate publication of our additional guidance late Q3/early Q4.

Do you consider the proposed guidance notes at Sections 3.3.2, 3.3.3, 3.3.6 and 7.3 to be adequate for the purpose of your business?

2.7 Question 6

- 2.7.1 A total of four responses were received for this question.
- 2.7.2 In respect of Section 3.3.2:
 - 2.7.2.1 One respondent helpfully suggested moving the amendment at Section 3.3.2 from the overview section into guidance. This has been done and the wording slightly amended to read more concisely; and
 - 2.7.2.2 One respondent requested further detail be provided in respect of this proposed guidance.
- 2.7.3 In respect of Section 3.3.3:
 - 2.7.3.1 Two respondents felt that the proposed guidance at section 3.3.3 appeared contradictory to the guidance contained in Section 12 and sought clarification on this point.
- 2.7.4 In respect of Section 3.3.6:
 - 2.7.4.1 Only one respondent requested additional information be provided in the respect of this proposed guidance; and
 - 2.7.4.2 One respondent queried whether the guidance would be better placed in Section 7 of the Handbook and suggested that it should only apply where there is a higher risk of ML/TF/PF.
- 2.7.5 In respect of Section 7.3:
 - 2.7.5.1 One respondent helpfully suggested that the guidance could be expanded to consider the use of AI and fraudulent use.
- 2.7.6 General response on the source of origin of information/documentation:
 - 2.7.6.1 One respondent enquired whether the revisions implied that documentation received from third party sources such as suitable certifiers or TCSPs regulated by the JFSC were less reliable.

JFSC response

2.7.7 We thank the respondent for their recommendation, Section 3.3.2 has now been moved from the overview section into guidance. We have also taken the opportunity to amend the wording of the paragraph to provide clarity.

2.7.8 We wish to clarify that the introduction of the proposed guidance at Section 3.3.3 was not intended to contradict any other section of the Handbook. We have added the following wording at the start of the sentence to clarify the intention of this guidance “Where there is reason to doubt the accuracy or veracity of the statement or where higher risk factors are present...”.

2.7.9 We have reflected on the suggestion that the proposed guidance at Section 3.3.6 would be better placed in Section 7 and apply only where there is a higher risk of ML/TF/PF. The JFSC expects Supervised Persons to consider the source from which they obtain CDD of their customers as part of their ongoing risk assessments regardless as to whether there is a higher risk of ML/TF/PF. For this reason, no amendment has been made to this section.

2.7.10 Our thanks to the respondent who has suggested we expand the guidance at Section 7.3 in respect of AI and fraudulent use. The JFSC is currently considering AI and will provide guidance in future amendments.

2.7.11 Where a third party collates CDD of a customer the risks should be assessed of not obtaining it directly from the customer. This is expanded in section 4.5.7 which also requires a risk assessment.

2.8 Other Comments

2.8.1 One respondent enquired if the exemptions noted in 4.1.1.5 of the CP referred to whether a relevant person can now apply identification exemptions on third parties where the customer is a person in respect of whom Article 15B(1) applies.

2.8.2 A respondent advised that the amendment in Section 2.4 of the Handbook appeared to narrow down the due diligence requirements in relation to life insurance.

JFSC response

2.8.3 We appreciate the respondent's recognition of the ambiguity of that clause in the CP. The exemption referred to in this section concerns the amendment of Article 17A of the Order pertaining to instances where exemptions in Part 3A of the Order do not apply. This is explained in the Handbook amendment of the table in Section 7.13 of the Handbook.

2.8.4 In appreciating the respondent's recognition of this change, the JFSC advises that the amendment is not limited to beneficiaries under a life policy. For clarity we have accordingly amended Section 2.4.

Appendix A

List of Respondents

- › TCB license holders x 3
- › Banking license holder x 2
- › Consultancy Company
- › FSB and TCB license holder x 4
- › Jersey Association of Trust Companies
- › IB licence holder
- › Law firm, TCB and FSB licence holder
- › Banking, GIMB, MSB license holder