

# Chapter 1

## Introduction

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## 1.1. Introduction

1. The laundering of criminal *proceeds*, the financing of terrorism and the financing of the proliferation of weapons of mass destruction (henceforth referred to collectively as “ML and FT”) through the financial and business systems of the world is vital to the success of criminal and terrorist operations. To this end, criminals and terrorists seek to exploit the facilities of the world’s businesses in order to benefit from such *proceeds* or financing.
2. Increased integration of the world’s financial systems and the removal of barriers to the free movement of capital have enhanced the ease with which criminal *proceeds* can be laundered or terrorist funds transferred and have added to the complexity of audit trails. The future of the Bailiwick of Guernsey (“*the Bailiwick*”) as a well-respected international financial centre depends on its ability to prevent the abuse of its financial services business (“*FSB*”) and prescribed business (“*PB*”) sectors by criminals and terrorists.

## 1.2. Background and Scope

3. *The Bailiwick* authorities are committed to ensuring that criminals, including money launderers, terrorists and those financing terrorism or the proliferation of weapons of mass destruction, cannot launder the *proceeds* of crime through *the Bailiwick* or otherwise use *the Bailiwick’s* finance and business sectors. The Guernsey Financial Services Commission (“*the Commission*”) endorses the International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation issued by the Financial Action Task Force (“*FATF*” and “*the FATF Recommendations*”). This *Handbook* is a statement of the standards expected by *the Commission* of all *specified businesses* in *the Bailiwick* to ensure *the Bailiwick’s* compliance with *the FATF Recommendations*.
4. Should a *specified business* assist in laundering the *proceeds* of crime or in the financing of a terrorist act or organisation, it could face regulatory investigation, the loss of its reputation, and law enforcement investigation. The involvement of a *specified business* with criminal *proceeds* or terrorist funds would also damage the reputation and integrity of *the Bailiwick* as an international finance centre.
5. Under Section 1(1) of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 as amended (“*the Law*”) all offences that are indictable under the laws of *the Bailiwick* are considered to be predicate offences and therefore funds or any type of property, regardless of value, acquired either directly or indirectly as the result of committing a predicate offence, are considered to be the *proceeds* of crime. Under *Bailiwick* law all offences are indictable, with the exception of some minor offences which mainly concern public order and road traffic. The range of predicate offences is therefore extremely wide and includes, but is not limited to, the following:
  - (a) participation in an organised criminal group and racketeering;
  - (b) terrorism, including *FT*;
  - (c) financing of proliferation of weapons of mass destruction;
  - (d) human trafficking and migrant smuggling;
  - (e) sexual exploitation, including sexual exploitation of children;
  - (f) illicit trafficking in narcotic drugs and psychotropic substances;
  - (g) illicit arms trafficking;
  - (h) illicit trafficking in stolen and other goods;
  - (i) corruption and bribery;
  - (j) fraud and tax evasion;
  - (k) counterfeiting and piracy of products;
  - (l) environmental crime;
  - (m) murder, manslaughter and grievous bodily injury;

- (n) kidnapping, illegal restraint and hostage taking;
  - (o) robbery and theft;
  - (p) smuggling;
  - (q) extortion;
  - (r) forgery;
  - (s) piracy; and
  - (t) insider trading and market manipulation.
6. *The Bailiwick's* anti-money laundering (“AML”) and countering the financing of terrorism (“CFT”) legislation (and by extension this *Handbook*) applies to all *specified businesses* conducting business in *the Bailiwick*. This includes *Bailiwick*-based branches and offices of companies incorporated outside of *the Bailiwick* conducting financial services and/or prescribed business within *the Bailiwick*. In this *Handbook* all references to ‘the firm’ shall have the same meaning as *specified business* in Paragraph 21(1) of *Schedule 3*, and includes all such businesses whether natural persons, *legal persons* or *legal arrangements*, including but not limited to, companies, partnerships and sole traders.
7. *Schedule 3 to the Law* (referred to henceforth as “*Schedule 3*”) and this *Handbook* have been drafted to take into account the fact that not all of the requirements of *the FATF Recommendations* are relevant to all businesses. In this regard, while certain provisions (for example, the application of a *risk*-based approach, corporate governance, *customer due diligence* (“*CDD*”), suspicion reporting, *employee* training and record keeping) apply equally to all firms, there are other requirements set out in this *Handbook* which may not be as relevant to some particular areas of industry (for example, *wire transfers*). Taking such an approach to the drafting of *Schedule 3* and this *Handbook* is intended to prevent the application of unnecessary and bureaucratic standards.

### 1.3. The Bailiwick’s AML and CFT Framework

8. *The Bailiwick's* AML and CFT framework includes the following legislation (henceforth referred to as “*the Relevant Enactments*”):
- (a) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
  - (b) The Drug Trafficking (Bailiwick of Guernsey) Law, 2000;
  - (c) The Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011;
  - (d) The Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011;
  - (e) The Afghanistan (Restrictive Measures) (Alderney) Ordinance, 2011;
  - (f) The Afghanistan (Restrictive Measures) (Sark) Ordinance, 2011;
  - (g) The Al-Qaida (Restrictive Measures) (Guernsey) Ordinance, 2013;
  - (h) The Al-Qaida (Restrictive Measures) (Alderney) Ordinance, 2013;
  - (i) The Al-Qaida (Restrictive Measures) (Sark) Ordinance, 2013;
  - (j) The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
  - (k) The Disclosure (Bailiwick of Guernsey) Law, 2007;
  - (l) The Transfer of Funds (Guernsey) Ordinance, 2017;
  - (m) The Transfer of Funds (Alderney) Ordinance, 2017;
  - (n) The Transfer of Funds (Sark) Ordinance, 2017;
  - (o) The Disclosure (Bailiwick of Guernsey) Regulations, 2007;
  - (p) The Terrorism and Crime (Bailiwick of Guernsey) Regulations, 2007;
  - (q) The Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008;
  - (r) The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008;
  - (s) The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017;
  - (t) The Beneficial Ownership of Legal Persons (Alderney) Law, 2017;
  - (u) The Beneficial Ownership (Definition) Regulations, 2017;
  - (v) The Beneficial Ownership (Alderney) (Definitions) Regulations, 2017;

- (w) The Beneficial Ownership of Legal Persons (Provision of Information) (Transitional Provisions) Regulations, 2017;
- (x) The Beneficial Ownership of Legal Persons (Provision of Information) (Transitional Provisions) (Alderney) Regulations, 2017;
- (y) The Beneficial Ownership of Legal Persons (Nominee Relationships) Regulations, 2017;
- (z) The Beneficial Ownership of Legal Persons (Nominee Relationships) (Alderney) Ordinance, 2017; and
- (aa) The Beneficial Ownership of Legal Persons (Provision of Information) (Limited Partnerships) Regulations, 2017;

and such other enactments relating to *ML* and *FT* as may be enacted from time to time in *the Bailiwick*.

9. Sanctions legislation is published by the States of Guernsey’s Policy & Resources Committee and can be accessed via the below website:

[www.gov.gg/sanctions](http://www.gov.gg/sanctions)

#### 1.4. Handbook Purpose

10. This *Handbook* has been issued by *the Commission* and, together with statements and instructions issued by *the Commission*, contains the rules and guidance referred to in: Section 49AA(7) of *the Law*; Paragraph 3(7) of *Schedule 3 to the Law*; Section 15(8) of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as amended (“*the Terrorism Law*”); Section 15 of the Disclosure (Bailiwick of Guernsey) Law, 2007 as amended (“*the Disclosure Law*”); and Section 11 of the Transfer of Funds (Guernsey) Ordinance, 2017, the Transfer of Funds (Alderney) Ordinance, 2017 and the Transfer of Funds (Sark) Ordinance, 2017 (“*the Transfer of Funds Ordinance*”).
11. This *Handbook* is issued to assist the firm in complying with the requirements of the relevant legislation concerning *ML* and *FT*, financial crime and related offences to prevent *the Bailiwick’s* financial system and operations from being abused for *ML* and *FT*. *The Law* and *the Terrorism Law* as amended state that *the Bailiwick* courts shall take account of rules made and instructions and guidance given by *the Commission* in determining whether or not the firm has complied with the requirements of *Schedule 3*.
12. This *Handbook* has the following additional purposes:
  - (a) to outline the legal and regulatory framework for AML and CFT requirements and systems;
  - (b) to interpret the requirements of *the Relevant Enactments* and provide guidance on how they may be implemented in practice;
  - (c) to indicate good industry practice in AML and CFT procedures through a proportionate, *risk-based* approach; and
  - (d) to assist in the design and implementation of systems and controls necessary to mitigate the *risks* of the firm being used in connection with *ML* and *FT* and other financial crime.
13. The *Commission* acknowledges the differing approaches adopted by *specified businesses* to achieve compliance with the requirements of *the Relevant Enactments* and *Commission Rules*. This *Handbook* therefore seeks to adopt a technology neutral stance, allowing the firm to embrace whichever technological solution(s) it deems appropriate to meet its obligations. Further information about the use of technology can be found in Chapter 3 of this *Handbook*.

## 1.5. Requirements of Schedule 3

14. *Schedule 3* includes requirements relating to:
- (a) *risk* assessment and mitigation;
  - (b) applying *CDD* measures;
  - (c) monitoring *customer* activity and ongoing *CDD*;
  - (d) reporting suspected *ML* and *FT* activity;
  - (e) *employee* screening and training;
  - (f) record keeping; and
  - (g) ensuring compliance, corporate responsibility and related requirements.
15. Any paraphrasing of *Schedule 3* within parts of this *Handbook* represents *the Commission's* own explanation of that schedule and is for the purposes of information and assistance only. *Schedule 3* remains the definitive text for the firm's AML and CFT obligations. *The Commission's* paraphrasing does not detract from the legal effect of *Schedule 3* or from its enforceability by the courts. In case of doubt, you are advised to consult a *Bailiwick* Advocate.

## 1.6. Structure and Content of the Handbook

16. This *Handbook* takes a two-level approach:
- (a) Level one ("*Commission Rules*") sets out how *the Commission* requires the firm to meet the requirements of *Schedule 3*. Compliance with the *Commission Rules* will be taken into account by the courts when considering compliance with *Schedule 3* (which is legally enforceable and a contravention of which can result in prosecution); and
  - (b) Level two ("*guidance*") presents ways of complying with *Schedule 3* and the *Commission Rules*. The firm may adopt other appropriate and effective measures to those set out in *guidance*, including policies, procedures and controls established by the group Head Office of the firm, so long as it can demonstrate that such measures also achieve compliance with *Schedule 3* and the *Commission Rules*.

17. When the requirements of *Schedule 3* are explained or paraphrased in this *Handbook*, the term 'shall' is used and the text is presented in blue shaded boxes for ease of reference. Reference is also made to the relevant paragraph(s) of *Schedule 3*.

18. When the requirements of *the Transfer of Funds Ordinance* and *the EU Regulation* are explained or paraphrased in Chapter 14 of this *Handbook*, the term 'shall' is used and the text is presented in clear boxes for ease of reference. Reference is also made to the relevant paragraph(s) of the Ordinance.

19. Where the *Commission Rules* are set out, the term 'must' is used and the text is presented in red shaded boxes to denote that these are rules.

20. In all cases the terms 'shall' and 'must' indicate that these provisions are mandatory and subject to the possibility of prosecution (in the case of a contravention of *Schedule 3* or *the Transfer of Funds Ordinance*) as well as regulatory sanction and any other applicable sanctions.
21. In respect of *guidance*, this *Handbook* uses the terms 'should' or 'may' to indicate ways in which the requirements of *Schedule 3*, *the Transfer of Funds Ordinance* and the *Commission Rules* can be satisfied, but allowing for alternative means of meeting the requirements as deemed appropriate by the firm.

22. *The Commission* will from time to time update this *Handbook* to reflect new legislation, developments in the financial services and *PB* sectors, changes to international standards, good practice and amendments to *Schedule 3* or *the Relevant Enactments*.
23. This *Handbook* is not intended to provide an exhaustive list of appropriate and effective policies, procedures and controls to counter *ML* and *FT*. The structure of this *Handbook* is such that it permits the firm to adopt a *risk*-based approach appropriate to its particular circumstances. The firm should give consideration to additional measures which may be necessary to prevent any exploitation of it and of its products, services and/or delivery channels by persons seeking to carry out *ML* and/or *FT*.

#### 1.7. Significant Failure to Meet the Required Standards

24. For any firm, whether regulated by or registered with *the Commission*, the primary consequences of any significant failure to meet the standards required by *Schedule 3*, the *Commission Rules* and *the Relevant Enactments* will be legal ones. In this respect *the Commission* will have regard to the firm's compliance with the provisions of *Schedule 3*, the *Commission Rules* and *the Relevant Enactments* when considering whether to take enforcement action against it in respect of a breach of any requirements of the aforementioned. In such cases, *the Commission* has powers to impose a range of disciplinary and financial sanctions, including the power to withdraw, restrict or suspend the licence of the firm where applicable.
25. Where the firm is regulated by *the Commission*, *the Commission* is entitled to take such failure into consideration in the exercise of its judgement as to whether the firm and its directors and managers have satisfied the minimum criteria for licensing. In particular, in determining whether the firm is carrying out its business with integrity and skill and whether a natural person is fit and proper, *the Commission* must have regard to compliance with *Schedule 3*, the *Commission Rules* and *the Relevant Enactments*.
26. In addition, *the Commission* can take enforcement action under *the Regulatory Laws* and/or *the Financial Services Commission Law* for any contravention of the *Commission Rules* where the firm is licensed under one or more of *the Regulatory Laws*.
27. Where the firm is not regulated by, but is registered with *the Commission*, *the Commission* is entitled to consider compliance with *Schedule 3*, the *Commission Rules* and *the Relevant Enactments* when exercising its judgement in considering the continued registration of the firm. In this respect *the Commission* can also take enforcement action under *the NRFSB Law* and *the PB Law* where the firm is registered with *the Commission* under those laws.

#### 1.8. Data Protection

28. *The Bailiwick's* AML and CFT legislation requires the firm to collate and retain records and *documentation*. Where such records and *documentation* contain personal data, the firm will need to comply with the Data Protection (Bailiwick of Guernsey) Law, 2017 ("*the Data Protection Law*") which brings *the Bailiwick* into line with the European Union's ("EU") regulation on data protection and privacy for all individuals within the EU.

<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=113397&p=0>  
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32016R0679>

#### 1.9. The Financial Action Task Force

29. The FATF is an inter-governmental body that was established in 1989 by the ministers of its member jurisdictions. The mandate of the FATF is to set standards and to promote effective

implementation of legal, regulatory and operational measures for combating *ML*, *FT*, the financing of the proliferation of weapons of mass destruction and other related threats to the integrity of the international financial system.

30. *The FATF Recommendations* are recognised as the global AML and CFT standard. *The FATF Recommendations* therefore set an international standard which countries should implement through measures adapted to their particular circumstances. *The FATF Recommendations* set out the essential measures that countries should have in place to:

- (a) identify risks and develop policies and domestic co-ordination;
- (b) pursue *ML*, *FT* and the financing of proliferation of weapons of mass destruction;
- (c) apply preventive measures for the financial sector and other designated sectors;
- (d) establish powers and responsibilities for the competent authorities (for example, investigative, law enforcement and supervisory authorities) and other institutional measures;
- (e) enhance the transparency and availability of beneficial ownership information of *legal persons* and *legal arrangements*; and
- (f) facilitate international co-operation.

#### 1.10. The National Risk Assessment

31. In accordance with *the FATF Recommendations*, *the Bailiwick*, led by the States of Guernsey's Policy & Resources Committee, has conducted a National Risk Assessment ("*NRA*"). *The NRA was based on methodology developed by* the International Monetary Fund ("*IMF*") *supplemented by additional information provided by* the relevant agencies within *the Bailiwick* and industry to ensure a thorough assessment of the *ML* and *FT* risks *presented by the individual sectors within the finance industry and products and services from within the Bailiwick*.

~~31.~~32. *The key finding of the NRA with regard to ML risk is that as an international finance centre with a low domestic crime rate, the Bailiwick's greatest ML risks comes from the laundering of the proceeds of foreign criminality. The underlying offences most likely to be involved are bribery and corruption and fraud (including tax evasion). The key finding of the NRA with regard to FT risks is that the greatest risks come from its cross-border business being used to support foreign terrorism, by funds being passed through or administered from the Bailiwick. However, this risk is much lower than the ML risks from cross-border business. FT from cross-border business is most likely to arise in the context of secondary terrorist financing, i.e. where criminal proceeds are used to fund terrorism.*

~~32.~~33. *The assessment of risks and vulnerabilities detailed within the NRA will naturally cascade through to specified businesses within the Bailiwick. In this respect, references are made throughout Schedule 3 and this Handbook requiring the firm to have regard to the content of the NRA when undertaking certain activities, for example, the formulation of its business risk assessments and risk appetite.*

~~33.~~34. *The Bailiwick will continue to review the NRA on an on-going and trigger-event basis, making changes as necessary taking into account market changes, the advancement of technology and data collected from industry, for example, through various surveys and regulatory returns.*

~~34.~~35. *A copy of the Bailiwick's NRA can be found on the website of the States of Guernsey's Policy & Resources Committee:*

[National Risk Assessment](#)

## 1.11 MONEYVAL

~~35~~36. The Committee of Experts on the Evaluation of Anti-Money Laundering and the Financing of Terrorism (“MONEYVAL”) is a monitoring body of the Council of Europe. The aim of MONEYVAL is to ensure that its member states have in place effective systems to counter *ML* and *FT* and comply with the relevant international standards in these fields.

~~36~~37. On 10 October 2012 the Committee of Ministers of the Council of Europe, following a request by the United Kingdom (“UK”), adopted a resolution to allow *the Bailiwick*, the Bailiwick of Jersey and the Isle of Man (the “*Crown Dependencies*”) to participate fully in the evaluation process of MONEYVAL and to become subject to its procedures.

~~37~~38. MONEYVAL’s most recent evaluation of *the Bailiwick* was conducted during October 2014 and assessed *the Bailiwick’s* compliance with the FATF 2003 Recommendations. In its report, published on 15 January 2016, MONEYVAL concluded that *the Bailiwick* has ‘a mature legal and regulatory system’ and surpassed the equivalent review by the IMF in 2010.

[www.coe.int/en/web/moneyval/jurisdictions/guernesey](http://www.coe.int/en/web/moneyval/jurisdictions/guernesey)