



## PROPOSED CHANGES TO THE ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM FRAMEWORK

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The Guernsey Financial Services Commission is responsible for administering a significant part of the Bailiwick of Guernsey's anti-money laundering (AML) and countering the financing of terrorism (CFT) framework. This framework covers not only financial services businesses but also prescribed businesses (firms of lawyers, accountants and estate agents registered with the Commission for AML/CFT purposes and only for AML/CFT purposes). Detailed definitions of what is a financial services business and what is a prescribed business are contained in Schedules 1 and 2 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the Law).

The Commission is consulting on proposed changes to the definitions. In summary the changes are:

- the addition of postage stamp dealers and bullion dealers as financial services businesses;
- an extension of the provision on businesses who issue, redeem, manage or administer means of payment to include electronic money; (Businesses covered by the above bullet points would need to register with the Commission.)
- clarification that most of the financial activities described in Schedule 1 to the Law are only considered as financial services business when carried on by way of business for or on behalf of a customer; and
- the bringing into the AML/CFT framework of fiduciary businesses carrying out two types of activity which are exempted activities in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000. These activities are where an individual is acting as a director of not more than six directorships and the activity of forming, and providing advice in respect of, a RAT, pension scheme or a trust or a life insurance policy. There would be no requirement for such fiduciary businesses to register with the Commission.

All of the new businesses brought into the definitions would need to comply with AML/CFT regulations made under the Law and the rules in the Commission's Handbook for Financial Services Businesses on Countering Financial Crime and Terrorist Financing.

The Commission is also consulting on proposed amendments to Schedule 2 to the Law, which will amend the description of accountancy services to include all services provided by way of business by firms (including sole practitioners) of accountants, insolvency practitioners, auditors and tax advisers acting in those capacities.

Businesses undertaking any of the activities in the amendments to Schedules 1 and 2 to the Law should be

aware that, if the proposed amendments are taken forward and introduced into the AML/CFT legislation, those businesses will need to comply with either the Criminal Justice (Proceeds of Crime) (Financial Services Businesses) Regulations, 2007 or the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) Regulations, 2008 and the rules in the associated Commission handbooks. The regulations and rules cover requirements such as customer due diligence, the monitoring of transactions and record keeping.

There are exemptions from registration, which provide that businesses (with the exception of businesses providing money or value transmission services) undertaking financial services business or prescribed business on an incidental or occasional basis may not be required to register with the Commission or to meet the AML/CFT regulations and rules in the handbooks. Any business in the Bailiwick which does not meet the exemption provisions and undertakes any of the activities listed in Schedules 1 and 2 to the Law whilst not being registered with the Commission is in breach of the legislation and is subject to criminal penalties.

The current definitions in Schedules 1 and 2, with proposed changes highlighted, along with the exemption provisions are detailed below.

Further information on the consultation is available on the consultation page of the Commissions website at [www.gfsc.gg](http://www.gfsc.gg).

Comments on the proposals should be made in writing by the close of business on Friday 22 January 2010 to the Policy and International Affairs Division, Guernsey Financial Services Commission, La Plaiderie Chambers, La Plaiderie, St Peter Port, GY1 3HQ, or by email to: [info@gfsc.gg](mailto:info@gfsc.gg).

## **DEFINITION OF FINANCIAL SERVICES BUSINESSES - highlighted to show the proposed changes**

1. The businesses specified in Part I of Schedule 1 to the Law are financial services businesses for the purposes of this Law except where they are incidental or other activities falling within Part II, however, those businesses specified in paragraphs 2 to 19 (excluding paragraphs 4A and 8) are only financial services businesses when carried on by way of business for or on behalf of a customer and the business specified in paragraph 8 is only a financial services business when carried on for the account of a customer.
2. Lending (including, without limitation, the provision of consumer credit or mortgage credit, factoring with or without recourse, financing of commercial transactions (including forfeiting) and advancing loans against cheques).
3. Financial leasing.
4. Operating a money service business (including, without limitation, a business providing money or value transmission services, currency exchange (bureau de change) and cheque cashing).
- 4A. Buying or selling bullion or postage stamps, except

(a) where

- (i) the business consists only in buying bullion or postage stamps from, or selling bullion or postage stamps to, persons, and
- (ii) the value of each purchase or sale does not exceed £10,000, in total, whether the transaction is executed in a single operation or in two or more operations which appear to be linked, or

(b) selling postage stamps, in the course of

(i) a postal services business carried on under the authority of a licence granted under the Post Office (Bailiwick of Guernsey) Law, 2001, or

(ii) a business authorized to sell postage stamps by the holder of a licence under that Law.

5. Facilitating or transmitting money or value through an informal money or value transfer system or network.

6. Issuing, redeeming, managing or administering means of payment, means of payment includes, without limitation, credit, charge and debit cards, cheques, travellers cheques, money orders and bankers drafts and electronic money

7. Providing financial guarantees or commitments.

8. Trading (by way of spot, forward, swaps, futures, options, etc.) in

(a) money market instruments (including, without limitation, cheques, bills and certificates of deposit),

(b) foreign exchange, exchange, interest rate or index instruments, and

(c) commodity futures, transferable securities or other negotiable instruments or financial assets, including, without limitation, bullion.

9. Participating in securities issues, including, without limitation, underwriting or placement as agent (whether publicly or privately).

10. Providing settlement or clearing services for financial assets including, without limitation, securities, derivative products or other negotiable instruments.

11. Providing advice to undertakings on capital structure, industrial strategy or related questions, on mergers or the purchase of undertakings.

12. Money broking.

13. Money changing.

14. Providing individual or collective portfolio management services or advice.

15. Providing safe custody services.

16. Providing services for the safekeeping or administration of cash or liquid securities on behalf of clients.

17. Carrying on the business of a credit union.

18. Accepting repayable funds other than deposits.

19. [This paragraph has been repealed]

20. Accepting deposits in the course of carrying on "deposit-taking business" as defined in the Banking Supervision (Bailiwick of Guernsey) Law, 1994.

21. Carrying on "controlled investment business" as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987.

22. Carrying on "insurance business" as defined in the Insurance Business (Bailiwick of Guernsey) Law, 2002, or doing anything which can only lawfully be done under the authority of a licence of the Commission under the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002,

23. Carrying on "regulated activities" as defined in the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, in circumstances where the activity is prohibited except under the authority and in accordance with the conditions of a licence granted by the Commission under section 6 of that Law (a fiduciary licence) or carrying on by way of business the activities described in sections 3(1)(g) or (x) of that Law.

23A. Otherwise investing, administering or managing funds or money on behalf of other persons.

## **PART II - EXEMPTION PROVISIONS**

(1) Any financial services business falling within paragraphs 2 to 19 carried out in the course of carrying on the profession of -

- (a) [This sub-paragraph has been repealed]
- (b) [This sub-paragraph has been repealed]
- (c) an actuary where such business is incidental to the provision of actuarial advice or services.

(2) For the purposes of this paragraph, business is incidental to the provision of such advice or services, if -

- (a) separate remuneration is not being given for the business as well as for such advice or services,
- (b) such advice or services is not itself financial services business falling within paragraphs 2 to 19, and
- (c) the business being carried out is incidental to the main purpose for which that advice or services is provided.

The carrying on of any business in Part I -

- (a) by way of the provision of in-house legal, accountancy or actuarial advice or services to any business referred to in paragraphs 2 to 23A, or
- (b) in the course of carrying on the profession (respectively) of a lawyer, accountant or actuary for any client carrying on such a business.

A business falling within paragraphs 2 to 18 of Part I provided that-

- (a) the total turnover of that business, plus that of any other business falling within Part I carried on by the same person, does not exceed £50,000 per annum,
- (b) no occasional transactions are carried out in the course of such business, that is to say, any transaction involving more than £10,000, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked,
- (c) the turnover of such business does not exceed 5% of the total turnover of the person carrying on such business,
- (d) the business is ancillary, and directly related, to the main activity of the person carrying on the business,
- (e) in the course of such business, money or value is not transmitted or such transmission is not facilitated by any means,
- (f) the main activity of the person carrying on the business is not that of a business falling within Part I,
- (g) the business is provided only to customers of the main activity of the person carrying on the business and is not offered to the public, and
- (h) the business is not carried on by a person who also carries on a business falling within paragraphs 20 to 23 of Part I.

## **DEFINITION OF PRESCRIBED BUSINESSES - highlighted to show the proposed changes**

### 1. Estate agency

Acting, in the course of a business, on behalf of others in the acquisition or disposal of real property or any interest therein

- (a) for the purpose of or with a view to effecting the introduction to the client of a third person who wishes to acquire or (as the case may be) dispose of such an interest, and
- (b) after such an introduction has been effected in the course of that business, for the purpose of securing the disposal or (as the case may be) the acquisition of that interest.

### 2. Legal and accountancy services

The business of lawyer, notary or other independent legal professional, or accountant, when they prepare for or carry out transactions for a client in relation to the following activities -

- (a) the acquisition or disposal of an interest in or in respect of real property (including for the avoidance of doubt a leasehold interest),
- (b) the management of client money, securities or other assets,
- (c) the management of bank, savings or securities accounts,
- (d) the organisation of contributions for the creation, operation, management or administration of companies,
- (e) the creation, operation, management or administration of legal persons or arrangements, and the acquisition or disposal of business entities, or the business of accountant, insolvency practitioner, auditor or tax adviser.

An "independent legal professional" does not include legal professionals employed by -

- (a) public authorities, or
- (b) undertakings which do not by way of business provide legal services to third parties.

An "accountant" means any person who by way of business, provides accountancy services, an auditor means any person who, by way of business, provides auditing services, an insolvency practitioner means any person who by way of business provides insolvency services, and a tax adviser means any person who by way of business, provides tax advisory services and, for the avoidance of doubt in each case, does not include an employed person whose duties relate solely to the provision of accountancy services, auditing services, insolvency services or tax advisory services, as the case may be, to his employer.

## **EXEMPTION PROVISIONS**

A prescribed business is not required to be registered with the Commission where it meets all of the following provisions

- (a) the total turnover of the person carrying on the prescribed business in respect of the prescribed business does not exceed £50,000 per annum,
- (b) the prescribed business

- (i) if it is an estate agent, does not hold deposits, or
- (ii) if it is a prescribed business other than an estate agent, does not carry out occasional transactions, that is to say any transactions involving more than £10,000 carried out by the prescribed business in question in the course of that business, where no business relationship has been proposed or established, including such transactions carried out in a single operation or two or more operations that appear to be linked,

(c) the services of the prescribed business are provided only to customers resident in the Bailiwick, and

(d) the funds received by the prescribed business are drawn on a bank operating from or within the Bailiwick.

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