

## Purpose of Paper

To explain the potential impact of the Risk Factor Guidelines recently issued for consultation under the Fourth Money Laundering Directive on EU financial institutions dealing with customers (this would encompass financial services businesses and products) established in third countries (non-EU), such as the Bailiwick of Guernsey.

## Executive Summary

The Fourth AML Directive came into force on 26 June 2015 and must be transposed into national laws of Member States by 26 June 2017. Under the Third AML Directive, financial institutions could rely on a 'white list' of countries outside of the EU, where according to the regulators, the AML regimes were considered equivalent to those within the EU Member States. The Fourth AML Directive repealed the 'white list.' Under the new regime, financial institutions must conduct country specific risk assessments for any jurisdiction outside of the EU where such financial institutions do business.

Article 17 and 18(4) of the Fourth AML Directive require the European Supervisory Authorities to issue guidelines on the risk factors to be considered when undertaking simplified and enhanced due diligence. These Guidelines were issued for consultation on 21 October 2015 with a closing date for responses by **22 January 2016**.

## Areas of Concern

There are three main areas of concern in these Guidelines which could make it difficult for EU financial institutions to conduct business on a cost effective basis with customers established in third countries. As a third country is any country which is non-EU these Guidelines will impact smaller jurisdictions such as the Bailiwick of Guernsey, but also larger jurisdictions such as the United States of America, China and India.

The three areas of concern are detailed below: -

### Country Risk

Paragraph 23 of the Risk Factor Guidelines sets out the risks associated with countries and geographical areas that EU firms should consider when entering a customer relationship. One of the risks is, "*Is the jurisdiction a known tax haven, secrecy haven or offshore jurisdiction?*" There is no definition as to what constitutes a tax haven and it is unclear as to why an offshore jurisdiction is a risk criterion.

### Equivalence

Notwithstanding the statement that the Fourth AML Directive does not require equivalence of third countries, the Risk Factor Guidelines includes references to equivalence with the Directive, e.g. Paragraph 30 refers to intermediaries which are subject to AML obligations that are consistent with those of the Directive and Paragraph 78 states that in correspondent banking relationship the correspondent may consider a respondent as lower risk if the respondent's AML/CFT controls are in line with the Directive. There are similar examples of equivalence in Paragraphs 99, 180 and 210. It is unclear from the Guidelines if this is technical equivalence or outcomes based equivalence.

## Intermediaries

Paragraph 212 of the Risk Factor Guidelines states that where a firm uses a financial intermediary to distribute fund shares, e.g. a regulated platform, a bank or a financial adviser, that intermediary may be regarded as the firm's customer. However, Paragraph 215 states that where the financial intermediary is established in a third country this concession cannot be used; therefore EU financial institutions will need to seek full CDD on the underlying beneficiaries of Guernsey intermediaries.

## **Recommendation**

It is recommended that industry trade bodies assess the impact of the proposed Risk Factor Guidelines on their sectors and respond accordingly to the consultation issued by the European Supervisory Authorities by 22 January 2016.

[http://www.eba.europa.eu/documents/10180/1240311/JC+2015+060+%28Joint+Consultation+on+Guidelines+on+AML\\_CFT+RBS\\_Art+48%2810%29%29.pdf](http://www.eba.europa.eu/documents/10180/1240311/JC+2015+060+%28Joint+Consultation+on+Guidelines+on+AML_CFT+RBS_Art+48%2810%29%29.pdf)

[http://www.eba.europa.eu/documents/10180/1240374/JC+2015+061+%28Joint+Draft+Guidelines+on+AML\\_CFT+RFWG+Art+17+and+18%29.pdf](http://www.eba.europa.eu/documents/10180/1240374/JC+2015+061+%28Joint+Draft+Guidelines+on+AML_CFT+RFWG+Art+17+and+18%29.pdf)