

# **CONSULTATION PAPER NO.120**



## **PROPOSED CHANGES TO THE DFSA'S ANTI MONEY LAUNDERING, COUNTER- TERRORIST FINANCING AND SANCTIONS REGIME – PHASE 2**

18 APRIL 2018

## **PREFACE**

### **Why are we issuing this Consultation Paper (CP)?**

In advance of the upcoming Financial Action Task Force (FATF) Mutual Evaluation of the United Arab Emirates (UAE), the DFSA is proposing changes to the Anti-Money Laundering, Counter-Terrorist Financing and Sanctions Module (AML) of the DFSA's Rulebook. The changes proposed are to ensure that the DFSA's AML regime is compliant with the 2012 FATF Recommendations<sup>1</sup> (the 2012 Recommendations).

### **Who should read this CP?**

The proposals in this Paper should be of interest to Relevant Persons, including Authorised Firms, Authorised Market Institutions, Designated Non-Financial Businesses or Professions (DNFBPs), to their advisers, and to applicants and their advisers.

### **Terminology**

In this CP, defined terms are identified by the capitalisation of the initial letter of a word, or of each word in a phrase, and are defined in the Glossary Module ([GLO](#)). Unless the context otherwise requires, where capitalisation of the initial letter is not used, the expression has its natural meaning.

### **What are the next steps?**

All comments should be emailed to [consultation@dfsa.ae](mailto:consultation@dfsa.ae) using the table provided in Appendix 3. Please refer to the CP number in the subject line. You may identify the organisation you represent in providing your comments. The DFSA reserves the right to publish, including on its website, any comments you provide, unless you expressly request otherwise at the time of making comments. The deadline for providing comments is **20 May 2018**.

Once we receive your comments, we shall consider if any further refinements are required to these proposals. We shall then proceed to make the relevant changes to the DFSA's Rulebook. You should not act on these proposals until the relevant changes to the DFSA Rulebook are made. We shall issue a notice on our website telling you when this happens.

### **Structure of this CP**

The remainder of this CP contains:

- (a) background to the proposals;

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<sup>1</sup> The International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation.

- (b) specific issues to note;
- (c) an explanation of the proposed changes to the AML Module;
- (d) Appendix 1: draft amendments to the AML Module;
- (e) Appendix 2: draft amendments to the COB Module; and
- (f) Appendix 3: template for providing comments on this CP.

**BACKGROUND**

1. FATF is the global standard setter in the fight against money laundering and combatting the financing of terrorism and terrorist acts. They have developed Recommendations, which set out the legal, regulatory and operational measures that countries must have in place to protect the financial system from misuse.
2. These Recommendations are revised periodically to ensure that countries respond to current money laundering and terrorist financing threats (AML/CTF) as well as other threats to the financial system. The methodology, which accompanies the Recommendations, is also revised on an on-going basis, most recently in February 2018.
3. FATF monitors, by means of a Mutual Evaluation (ME), the progress of its members (which includes the UAE) in implementing these Recommendations. This ME also evaluates how effective their AML/CTF measures are. After a ME is carried out, a follow-up process provides a framework to monitor progress made by the countries to address any deficiencies identified.
4. The UAE, including the DIFC, was last subject to a FATF ME in 2007. The relevant ME Report was published in April 2008. The ME report identified areas requiring improvement. The DFSA made changes to its Rules, in response to the recommendations in the report, at that time.
5. In 2012, FATF updated and issued a set of Recommendations (2012 FATF Recommendations), with a particular emphasis on a Risk Based Approach. In response to the 2012 FATF Recommendations, the DFSA undertook a review of its entire AML framework, which resulted in the creation of a new AML regime that covered both Financial Institutions and Designated non-Financial Businesses and Professions (DNFBP). These changes came into effect in July 2013.
6. In late 2015, the DFSA carried out a further assessment of the AML regime against the 2012 Recommendations and the Federal AML Legislation (updated in 2014), and identified areas in the AML Module that need to be enhanced. Those changes

were proposed in June 2016 and came into effect in February 2017.<sup>2</sup>

7. It has now been confirmed that the next UAE FATF ME will take place in the second half of 2019, and preparations have begun at a Federal level to coordinate the UAE's response. The DFSA, as a stakeholder, is expected to contribute to this ME. Over the course of the last nine months, the DFSA has reviewed its AML regime (via a self-assessment process) to assess whether it meets the Recommendations set by FATF.
8. The DFSA identified areas that required change and consulted on those in March 2018 in [CP118](#). Those changes related to the DFSA's AML remit in the DIFC and the DFSA's regulation and supervision of DNFBPs. In that CP, we let firms know that we expected to propose further enhancements to the AML regime later in 2018 in the lead up to the UAE's ME. The reason for consulting in two parts related to the proposed changes to the Regulatory Law 2004 in CP118. If we were to get those changes to the Law enacted by June 2018, and present them in our final technical assessment for the FATF mutual evaluation, they had to be sent to HH the President of the DIFC and then to the Ruler for their consideration by April 2018.
9. We have now considered what further enhancements are required to ensure the DFSA's AML regime is compliant with the 2012 Recommendations, and those are set out in this CP.

### **SPECIFIC ISSUES TO NOTE**

10. There are some specific points we would like draw attention to in this CP. Firstly, there are four elements in the 2012 FATF Recommendations that FATF requires to be embedded in primary legislation – the overarching concept of Consumer Due Diligence (CDD); Record Keeping; the obligation to file Suspicious Transaction Reports (STR); and tipping-off provisions<sup>3</sup>. FATF requires the remaining detail in relation to these Recommendations (and of course the remaining Recommendations), to be included in enforceable means such as Regulations. These four areas are of the utmost importance to FATF assessors when carrying out a ME, and compliance with these Recommendations is scrutinised very closely. You will see that we have proposed some detailed changes in respect of CDD and Record Keeping<sup>4</sup> reflecting the importance placed on them by FATF.

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<sup>2</sup> The changes can be found here: [http://www.dfsa.ae/MediaRelease/News/Notice-of-Amendments-to-Legislation-\(14\)](http://www.dfsa.ae/MediaRelease/News/Notice-of-Amendments-to-Legislation-(14)).

<sup>3</sup> The obligation to provide STRs and the prohibition against tipping-off are set out in the UAE's Federal AML Legislation. The requirements to conduct CDD and retain records are set out in the DFSA's Regulatory Law 2004 (the latter relating to record keeping was included in our proposed amendments in CP118).

<sup>4</sup> The overarching responsibility for STR's and tipping-off lies with the UAE Federal Authorities.

11. Secondly, as DFSA Guidance is indicative,<sup>5</sup> and not binding, it cannot be presented to FATF assessors as part of the assessment. This means that, in some situations, where the Recommendations (or parts) have been referred to in DFSA Guidance, the assessors would be obliged to conclude that the standard is not met. This has led the DFSA to reassess what material should be in Guidance, and what in Rules, and propose changes accordingly.
12. Lastly, FATF consistently reviews and updates the Recommendation methodology in light of market developments and emerging risks (as referred to in paragraph 2). For example, Recommendation 8 in respect of non-profit organisations was updated in November 2017, and Recommendation 2 on national cooperation and coordination was updated in February 2018.<sup>6</sup> The DFSA (and the UAE) will be evaluated against the most recent methodology. We will, therefore, be keeping track of updates and may have to propose further enhancements to the AML Module to ensure that we are compliant with them.

**PROPOSED AREAS OF CHANGE**

13. In order to help those reading the CP navigate through the proposed enhancements, Table 1 lists the areas we are consulting on, the associated FATF Recommendation,<sup>7</sup> as set out in the methodology, and the proposed DFSA rule amendment.

**Table 1: Proposed amendments to the DFSA's AML Module**

	<b>FATF Recommendation</b>	<b>Proposed rule amendments<sup>8</sup></b>
1	Customer Due Diligence (CDD) – FATF Recommendation 10	AML 6.1.1 AML 6.1.2 AML 6.1.3 AML 6.1.4 AML 6.1.7 AML 7.2.1 AML 7.2.2 AML 7.3.1 AML 7.3.2 AML 7.3.3 AML 7.3.4 AML 7.3.5

<sup>5</sup> See Schedule 1 to the Regulatory Law 2004.

<sup>6</sup> Please see the FATF website for the most recently published methodology <http://www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html>

<sup>7</sup> Please see the FATF website for the most recently published Recommendations <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>

<sup>8</sup> References are to rule numbers as amended.

		AML 7.3.6 AML 7.3.7 AML 7.3.8 AML 7.4.1 AML 7.5.1 AML 7.6.1
2	Record keeping – FATF Recommendation 11	AML 14.4.1 AML 14.4.1A AML 14.4.2 AML 14.4.3
3	New technologies – FATF Recommendation 15	AML 5.1.1 AML 5.1.3
4	Wire transfers - FATF Recommendation 16	AML 9.3.1 - AML 9.3.15
5	Reliance on third parties – FATF Recommendation 17	AML 8.1.2
6	Internal controls and foreign branches and subsidiaries – FATF Recommendation 18	AML 14.1.1 AML 14.2.1
7	Higher risk countries – FATF Recommendation 19	AML 6.1.2 AML 10.3.1 AML 10.3.2
8	Transparency and beneficial ownership of legal arrangements – FATF Recommendation 25	COB 5.9.1

14. In addition to the FATF Recommendations set above, Recommendation 22 and Recommendation 23, which deals with DNFBPs, have also been taken into consideration.

**I. Customer Due Diligence (CDD) – FATF Recommendation 10 and Recommendation 22**

15. Recommendation 10 and Recommendation 22 sets out the measures that are expected of a financial institution and DNFBPs when undertaking CDD for each of their customers. We have assessed these measures and identified certain issues in our rules relating to CDD, which will affect our compliance with Recommendation 10 and Recommendation 22. The following outlines proposed changes.

*Please see proposed changes to AML 6.1.7 in Appendix 1.*

**a) Anonymous or fictitious names**

**Recommendation 10.1**

16. Recommendation 10.1 requires financial institutions to be prohibited from keeping anonymous accounts or accounts in obviously fictitious names. While this requirement is addressed in AML 6.1.4, Guidance

Note 15 provides further detail relating to the use of numbered accounts or accounts with abbreviated names. As noted above, Guidance is not taken into account by FATF assessors. Therefore, we propose to delete Guidance Note 15 and set out in AML 6.1.7 (NEW) conditions regarding the use of a numbered account or an account with an abbreviated name.

17. We also propose to include in AML 6.1.7 (NEW) a requirement for persons who have responsibility for identifying and/or monitoring transactions for suspicious activities, to have full information about these account holders.

*Please see proposed changes to AML 7.3.1 to 7.3.7 in Appendix 1.*

#### **b) CDD measures for customers**

##### **Recommendation 10.4**

14. Recommendation 10.4 requires financial institutions to verify that any person purporting to act on behalf of the customer is authorised to do so, and to identify and verify the identity of that person.
15. AML 7.3.1 does not address this requirement. Therefore, we propose to amend AML 7.3.1(2) to introduce the explicit requirement discussed in paragraph 14.

##### **Recommendation 10.5**

16. Recommendation 10.5 requires financial institutions to identify the beneficial owner and to take reasonable measures to verify the identity of the beneficial owner.
17. While the AML Module explains our approach to the identification of beneficial owners, the definition of a beneficial owner is in the Glossary in the AML Module, and there is a mix of Rules and Guidance Notes explaining how this should be done, including where the beneficial owner is a trust. Our approach may not be clear enough to demonstrate full compliance with this Recommendation. We propose to amend AML 7.3.1, and introduce AML 7.3.3-7.3.6 (NEW), to clarify the obligations relating to identifying and verifying a beneficial owner. In particular, we propose to provide further clarity in the Rules on what steps should be taken to identify a beneficial owner of a legal person, such as a body

corporate, or foundation, and legal arrangements, such as a trust or similar legal arrangement.<sup>9</sup>

*Please see proposed changes to AML 7.3.1, AML 7.3.2 and AML 7.3.3 to 7.3.6 in Appendix 1.*

### **c) Specific CDD measures for legal persons and legal arrangements**

#### **Recommendation 10.8**

18. Recommendation 10.8 also requires financial institutions to understand the nature of a customer's business and its ownership and control structure where that customer is a legal person or legal arrangement.
19. AML 6.1.1(3) requires a Relevant Person, when undertaking a risk-based assessment of any customer (including a legal person or legal arrangement) to, among other things, take into consideration the nature of its customer. In order to be fully compliant with this Recommendation, we propose to add to AML 6.1.1(3) a requirement to take into consideration the nature of the customer's business.
20. We also propose to introduce an express requirement in AML 7.3.1(1) for the Relevant Person to take reasonable measures, if the customer is a legal person or legal arrangement, to understand the nature of its business and its ownership and control structure.

#### **Recommendation 10.9**

21. Recommendation 10.9 requires, for customers that are legal persons or legal arrangements, that financial institutions identify the customer and verify its identity through the following information:
  - a) name, legal form and proof of existence;
  - b) the powers that regulate and bind the legal person or arrangement; as well as the names of the Relevant Persons having a senior management position in the legal person or arrangement; and
  - c) the address of the registered office and, if different, the principal place of business.
22. While AML 7.3.1(1)(a) requires a Relevant Person to identify its customer, only Guidance Notes 1 and 3 go into detail about what information is expected in respect of legal persons, and only briefly

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<sup>9</sup> We are adding to the AML glossary a definition of 'legal arrangement.'

cover what is expected for trusts. Therefore, we propose to amend AML 7.3 to specify expressly what information needs to be obtained and verified relating to the identity of the customer. AML 7.3.2 (NEW) will set out the information required for natural persons, body corporates, trusts and foundations, when carrying out CDD. Guidance Notes 1 and 3 will be deleted.

#### Recommendation 10.10

23. Recommendation 10.10 requires, for customers that are legal persons<sup>10</sup>, that the financial institution identifies, and takes reasonable measures to verify, the identity of beneficial owners through the following information:
- a) the identity of the natural person(s) (if any<sup>11</sup>) who ultimately has a controlling ownership interest<sup>12</sup> in a legal person; and
  - b) to the extent that there is doubt under (a) as to whether the person(s) with the controlling ownership interest is the beneficial owner(s), or where no natural person exerts control through ownership interests, the identity of the natural person(s) (if any) exercising control of the legal person or arrangement through other means; and
  - c) where no natural person is identified under (a) or (b) above, the identity of the relevant natural person who holds the position of senior managing official.
24. AML 7.3.1 does not directly address this Recommendation. Therefore, we propose to introduce AML 7.3.3 (NEW), to explain the measures required to verify the identity of the beneficial owners for customers that are legal persons as set out in Recommendation 10.10.

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<sup>10</sup> Where the customer, or the owner of the controlling interest, is a company listed on a stock exchange and subject to disclosure requirements (either by stock exchange rules or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership, or is a majority-owned subsidiary of such a company, it is not necessary to identify and verify the identity of any shareholder or beneficial owner of such companies. The relevant identification data may be obtained from a public register, from the customer or from other reliable sources.

<sup>11</sup> Ownership interests can be so diversified that there are no natural persons (whether acting alone or together) exercising control of the legal person or arrangement through ownership.

<sup>12</sup> A controlling ownership interest depends on the ownership structure of the company. It may be based on a threshold, e.g., any person owning more than a certain percentage of the company (e.g., 25%).

Recommendation 10.11

25. Recommendation 10.11 requires, for customers that are legal arrangements, the financial institution to identify, and take reasonable measures to verify, the identity of beneficial owners through the following information:
- a) for trusts, the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (including through a chain of control/ownership); and
  - b) for other types of legal arrangements, the identity of persons in equivalent or similar positions.
26. Guidance Note 14 to AML 7.3.1 covers where a Relevant Person carries out identification and verification in respect of actual and potential beneficial owners of a trust. As mentioned, Guidance is not evaluated, so we propose to remove this text from Guidance and place it in AML 7.3.6 (NEW).
27. We also propose to add AML 7.3.5 (NEW) setting out the information about beneficial owners that is required in the case of a foundation (taking into account the recent enactment of a DIFC Foundations Law 2018).

*Please see proposed changes to AML 6.1.1(3)(fa), AML 7.3.7 and AML 7.3.8 in Appendix 1.*

**d) CDD for beneficiaries of life insurance policies**Recommendation 10.12

28. Financial institutions are required to carry out further CDD on the beneficiaries of life insurance and other investment related insurance policies:
- a) in respect of a beneficiary that is identified as a named natural or legal person or legal arrangement at the time of the payout – taking the name of the person;
  - b) in respect of a beneficiary that is designated by characteristics or by class or by other means – obtaining sufficient information concerning the beneficiary to satisfy the financial institution that it will be able to establish the identity of the beneficiary at the time of the payout; and

- c) for both the above cases, the verification of the identity of the beneficiary should occur at the time of the payout.
29. AML 7.3.1(2)(a) requires a Relevant Person to verify the identity of a named beneficiary, not a legal person or legal arrangement. Therefore, we propose to delete AML 7.3.1(2) and to include the requirements relating to beneficiaries of insurance policies in AML Rule 7.3.7 (NEW). This Rule will include the requirements for a Relevant Person to identify a beneficiary of a life insurance policy (whether a natural or legal person) and to verify the identity of that beneficiary at the time of payout.

Recommendation 10.13

30. Recommendation 10.13 requires financial institutions to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable. If the financial institution determines that a beneficiary who is a legal person or a legal arrangement presents a higher risk, it should be required to take enhanced measures, which should include reasonable measures to identify and verify the identity of the beneficial owner of the beneficiary, at the time of payout.
31. AML 7.1.1(1)(b) requires a Relevant Person to undertake enhanced CDD in respect of any customer it has assessed as high risk. Additionally, AML 7.3.1(2)(b) requires the Relevant Person, in undertaking CDD, to verify the identity of any named beneficiaries of the insurance policy. However, there is no requirement for a Relevant Person to include the beneficiary, or beneficial owner of the beneficiary, of a life insurance policy as a relevant risk factor in determining whether enhanced CDD is necessary.
32. Therefore, we propose to add a requirement in AML 6.1.1(3)(fa) (NEW), for Relevant Persons to include the beneficiary or beneficial owner of the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are required. If a Relevant Person deems a beneficiary who is a legal person or legal arrangement to present a higher risk, it should be required to take enhanced measures at the time of payout. This would include identifying and verifying the identity of the beneficial owner of the beneficiary.

Recommendation 12.4 (Politically Exposed Persons - PEPs)

33. This Recommendation requires financial institutions, in relation to life insurance policies, to take reasonable measures to determine whether the beneficiaries or the beneficial owner of the beneficiary, are PEPs. This should occur, at the latest, at the time of the payout. Where higher risks are identified, financial institutions should be required to inform senior management before the payout of the policy proceeds, to conduct enhanced scrutiny on the whole business relationship with the policyholder, and, if required, to consider making a STR.
34. AML 7.3.1 only deals with this in part. Therefore, in order to avoid any ambiguity in this requirement, we propose to include in the AML 7.3.8 (NEW) a direct requirement for a Relevant Person to determine if a life insurance beneficiary, or a beneficial owner of the beneficiary, is a PEP.
35. We are also proposing to update our enhanced due diligence requirements in relation to PEPs to further explain what is required when a customer, or a beneficial owner of a customer, is a PEP. This can be found in AML 7.3.8 (NEW).

*Please see proposed changes to AML 7.2.2(4) in Appendix 1.*

**e) Timing of verification**Recommendation 10.15

36. Recommendation 10.15 requires financial institutions to adopt risk management procedures concerning the conditions under which a customer may utilise a business relationship prior to verification. AML 7.2.1 has detailed requirements regarding when a Relevant Person can establish a relationship with a customer before verification. There are no specific requirements for Relevant Persons, as part of their general risk management systems and controls, to put in place risk management procedures relating to the conditions under which a customer may utilise the business relationship prior to verification.
37. Therefore, we propose to add to AML 7.2.2(4), a general requirement for Relevant Persons to put in place specific risk management procedures, relating to the conditions under which a customer may utilise the business relationship prior to verification.

*Please see proposed changes to AML 7.6.1(1)(d) & (e), AML 7.6.1(2) and AML 7.6.2 in Appendix 1.*

#### **f) Existing customers**

##### **Recommendation 10.16**

38. Recommendation 10.16 requires financial institutions to apply CDD requirements to existing customers on the basis of materiality and risk, and to conduct due diligence on such existing relationships at appropriate times, taking into account whether and when CDD measures have previously been undertaken and the adequacy of data obtained.
39. The AML Module has on-going CDD requirements in AML 7.2.1(1)(b), 7.3.1(1)(d) and 7.6.1. However, these requirements may not fully address the requirements in Recommendation 10.16. There is an expectation that Relevant Persons should review their pre-existing customer base, and take a risk-based view on the extent to which they need to undertake on-going CDD on certain customers.
40. On this basis, we propose to amend AML 7.6.1(1)(d) and (e) to delete 'periodically,' and add AML 7.6.1(2) (NEW) to explain that these reviews must be carried out 'periodically' and at other 'appropriate times' in order to reflect the requirement in Recommendation 10.16. We also propose to add AML 7.6.2 (NEW) to explain that a Relevant Person must review its customers, their businesses and transactions, against United Nations Security Council sanctions lists and against any other relevant sanctions lists when complying with AML 7.6.1(1)(d)

*Please see proposed changes to Guidance in AML 5.1.2 and AML 7.3 and to Rule AML 7.5.1 in Appendix 1.*

#### **g) Risk-based approach**

##### **Recommendation 10.18**

41. Recommendation 10.18 allows financial institutions to apply simplified CDD measures, where lower risks have been identified, as long as they have taken an adequate analysis of risks presented by the country or the financial institution. The simplified measures should be commensurate with the lower risk factors, but are not acceptable whenever there is suspicion of AML/CTF, or specific higher risk scenarios apply.
42. The DFSA permits a Relevant Person to undertake simplified CDD where a customer has been assigned as low risk under AML 7.1.1(2).

However, in light of Recommendation 10.18, we are tidying up our approach, and propose the following minor changes:

- a) to remove AML 7.5.1(1)(c), which permits simplified CDD to include 'deciding not to verify an identified beneficial owner' and the associated Guidance Note 3;
- b) to remove AML 7.5.1(1)(e), which permits simplified CDD to include not enquiring to a customer's source of funds or source of wealth;
- c) to remove part of Guidance Note 2 to AML 5.1.2 where there are inaccurate references to situations where Relevant Firms can apply simplified CDD; and
- d) to remove the last sentence in Guidance Note 3 to AML 7.3, where there are references in respect of lower risk situations and a Relevant Person not having to verify all identification information.

**Q1: Do you have any concerns relating to our proposals? If so, what are they, and how should they be addressed? In relation to:**

- a) anonymous or fictitious accounts;
- b) CDD measures for customers;
- c) specific CDD measures for legal persons and legal arrangements;
- d) CDD for beneficiaries of life insurance policies;
- e) timing of verification;
- f) existing customers; and
- g) risk-based approach.

*Please see proposed changes to AML 7.3.1 in Appendix 1.*

**h) Source of wealth (SoW) and Source of funds (SoF)**

43. We have received feedback from firms about our requirements in respect of SoW and SoF. This feedback is in relation to requirements found in AML 7.3.1(1)(b) and (c) where we ask Relevant Persons, when

carrying out CDD, to “*understand the nature of a customer’s source of funds and to understand the nature of a customer’s source of wealth.*”

44. We are cognisant that this requirement is currently above the level set by FATF and above levels set in other jurisdictions. In order to align ourselves more closely with FATF, other jurisdictions, and without compromising our standards, we are proposing to remove the requirement in AML 7.3.1(b) and (c) for a Relevant Person to understand a customer’s SoW and SoF when carrying out CDD.<sup>13</sup>
45. Relevant Persons would, of course, still be required to identify and verify a customer’s SoW and SoF when carrying out enhanced CDD, as they currently are required to do under AML 7.4.1(c)(i) and (ii). We have also made slight changes to these provisions to reflect FATF wording – *identify and verify* - and to include a requirement to identify and verify the SoW and SoF of a beneficial owner, if applicable. Lastly, in order to complete the picture, we have updated the SoW and SoF definition in the AML glossary to reference a customer or beneficial owner.

**Q2: Do you have any concerns about our proposed changes relating to Source of Wealth and Source of Funds? If so, for what reasons, and how should they be addressed?**

## II. Record Keeping – Recommendation 11

*Please see proposed changes to AML 14.4.1, AML 14.2.1, AML 14.4.1, AML 14.4.1A, AML 14.4.2 and 14.4.3 in Appendix 1.*

42. Recommendation 11 requires financial institutions to maintain all necessary information on records of transactions, to enable them to comply with information requests from competent authorities.

### Recommendation 11.1

43. Recommendation 11.1 requires financial institutions to retain all necessary records on transactions, both domestic and international, for at least five years. AML 14.4 refers to documents and information obtained during CDD, and supporting records, but does not reference all records in relation to transactions.

<sup>13</sup> To note, Relevant Persons would still have to carry out an assessment to understand their customer as per AML 6.1.1, and in some cases, this may involve having to identify a customer’s SoW and/or SoF.

44. Therefore, we propose to amend AML 14.4.1, to include a requirement for Relevant Persons to maintain all necessary information on records of transactions. We also propose to include examples of what types of records we expect to be retained under this requirement.

#### Recommendation 11.2

45. Recommendation 11.2 requires financial institutions to keep all records obtained through CDD measures, account files and business correspondence, and results of any analysis undertaken,<sup>14</sup> for at least five years following the termination of the business relationship or after the date of the occasional transaction.
46. AML 14.4.1 does not explicitly require Relevant Persons to maintain business correspondence or an analysis of the transactions/business relationships that did not necessarily result in a SAR being filed with the Financial Intelligence Department (FID). On this basis, we propose to add to the list in AML 14.4.1, a requirement for Relevant Persons to retain this information.

#### Recommendation 11.3

47. Recommendation 11.3 requires the transaction records (mentioned in Recommendation 11.1) to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.
48. While the DFSA does not have any jurisdiction over criminal matters, we are required to ensure that Relevant Persons have sufficient transaction records to permit the reconstruction of individual transactions, if required. Currently, we only refer to this requirement in Guidance Note 3b to AML 14.4.2. Therefore, we propose to amend AML 14.4.1, to require Relevant Persons to retain sufficient records in respect of a transaction, which is the subject of CDD or ongoing monitoring to enable the transaction to be reconstructed.

#### Recommendation 11.4

49. Recommendation 11.4 requires financial institutions to ensure that all CDD information and transaction records are available swiftly to domestic competent authorities upon appropriate authority. It is our

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<sup>14</sup> For example, analysis of the transactions/business relationships that did not result in a SAR being filed with the Financial Intelligence Department (FID).

understanding that the expectation is that the relevant records must be made available within 24 hours.

50. Guidance note 3(d) to AML 14.4.2 requires Relevant Persons to, within an appropriate time, satisfy any regulatory enquiry or court order to disclose the information references in AML 14.4. As discussed, requirements in Guidance are not sufficient to meet a FATF Recommendation; therefore, we propose to include AML 14.4.1A (NEW), and amend AML 14.4.2 and AML 14.4.3 to include requirements for Relevant Persons to ensure all CDD information and transactions records are available immediately upon request by the DFSA.

**Q3: Do you have any concerns relating to our proposals on record keeping? If so, what are they, and how should they be addressed?**

### III. New Technologies – FATF Recommendation 15

*Please see the proposed changes to AML 5.1.1 and AML 5.1.3 in Appendix 1.*

51. FATF Recommendation 15 sets down a requirement for jurisdictions to identify and assess the AML/CTF risks that may arise in relation to a) the development of new products and new business practices, including new delivery mechanisms, and b) the use of new or developing technologies for both new and pre-existing products.

#### Recommendation 15.1 & 15.2

52. Recommendations 15.1 & 15.2 require financial institutions to identify and assess the AML/CTF risks that may arise in relation to the development of new products and new business practices, including new delivery mechanisms or developing technologies for both new and pre-existing products. They go on to require financial institutions to undertake a risk assessment prior to the launch or use of such products, practices and technologies, and to take appropriate measures to manage and mitigate these risks.
53. AML 5.1.1(c) addressed these requirements, but only in part, it did not go as far as Recommendations 15.1 & 15.2. Therefore, we propose to add AML 5.1.3 (NEW) to explain what we expect Relevant Persons to do when developing new products, practices and technologies.

**Q4: Do you have any concerns relating to our proposals on new products, practices and technologies? If so, what are they, and how should they be addressed?**

#### IV. Wire Transfers – FATF Recommendation 16

*Please see the proposed changes to AML 9.3.1 - AML 9.3.15 in Appendix 1.*

54. The objective of Recommendation 16 is to prevent terrorists and other criminals from having unfettered access to wire transfers for moving their funds, and for detecting such misuse when it occurs. As we have not updated our Rules relating to wire transfers for some time, we have taken the opportunity to enhance our approach while at the same time ensuring compliance with FATF Recommendation 16.
55. In order to assist Authorised Persons to navigate through the Rules, we propose to amend AML 9.3.1 to explain the application of this section and have add further terms to the list of definitions set out in AML 9.3.2, including updating the terminology we have used. We are proposing to refer to 'electronic funds transfer' instead of 'wire transfer,' 'payer' instead of 'originator' and 'payee' instead of 'beneficiary'.
56. We are also proposing to include new headings to make it clear what we expect of the different institutions facilitating or participating in wire transfers.

##### **a) Ordering financial institutions**

###### Recommendation 16.1

57. Recommendation 16.1 requires financial institutions to ensure that all cross-border wire transfers of USD/EUR 1,000 or more are always accompanied by the following:
- a) required and accurate originator information:
    - i. the name of the originator;
    - ii. the originator account number where such an account is used to process the transaction or, in the absence of an account, a unique transaction reference number which permits traceability of the transaction; and

- iii. the originator's address, or national identity number, or customer identification number, or date and place of birth; and
  - b) required beneficiary information:
    - i. the name of the beneficiary; and
    - ii. the beneficiary account number where such an account is used to process the transaction or, in the absence of an account, a unique transaction reference number which permits traceability of the transaction.
58. Guidance Note 1 to AML 9.3 states that in the absence of having an account number, a unique transaction number that permits traceability of the transaction maybe used. As Guidance is not binding, we propose to remove this Guidance and to include references to unique transaction numbers in AML 9.3.4 and 9.3.5 (NEW) in order to be compliant with Recommendation 16.1.

#### Recommendation 16.2

59. Recommendation 16.2 requires, where several individual cross-border wire transfers from a single originator are bundled in a batch file for transmission to beneficiaries, that the batch file should contain required accurate originator and beneficiary information, which is fully traceable within the beneficiary country.
60. AML 9.3.2 does not explicitly state that the information about wire transfers should be provided for every transfer, rather than being bundled. On this basis, we propose to add AML 9.3.6 (NEW) to state that information about wire transfers must be provided for every transfer.

#### Recommendation 16.8

61. Recommendation 16.8 requires that ordering financial institutions not be allowed to execute wire transfers if they do not comply with the requirements specified in Recommendations 16.1 to 16.7.
62. AML 9.3.2 requires an Authorised Person to ensure all required information is accompanying all wire transfers. However, it does not expressly state that the Authorised Person must not execute the wire transfer if that information is not provided. We propose to include this requirement in AML 9.3.9 (NEW) and adopt the wording set out in

Recommendation 16.8, in that an Authorised Person should not be allowed to execute the wire transfer if it does not have the requisite information accompanying it.

*Please see the proposed changes to AML 5.2.1 and AML 9.3.15 in Appendix 1.*

#### **b) Beneficiary and intermediary financial institutions**

##### Recommendation 16.12 and 16.15

63. These Recommendations require intermediary and beneficiary financial institutions to have risk-based policies and procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary information, and (b) the appropriate follow-up action.
64. AML 9.3.2(1)(c) requires an Authorised Person to monitor wire transfers for the purpose of detecting those wire transfers that do not contain originator and beneficiary information and to take appropriate measures to identify any money laundering risks. AML 5.2.1(a) also sets down a requirement to have in place risk-based policies, procedures, systems and controls to prevent opportunities for money laundering in relation to the Relevant Person and its activities.
65. However, AML 9.3.2 and AML 5.2.1 do not mention the requirement to have risk based policies and procedures in place, including risk-based procedures for determining: (a) when to execute, reject, or suspend a wire transfer lacking required originator or required beneficiary or intermediary information, and (b) the appropriate follow-up action. Therefore, we propose to add these additional risk-based procedures in AML 9.3.15 (NEW).

*Please see the proposed changes to AML 9.3.2 and AML 9.3.11 in Appendix 1.*

#### **c) Beneficiary financial institutions**

##### Recommendation 16.14

66. Recommendation 16.14 requires that, for cross-border wire transfers of USD/EUR 1,000 or more, a beneficiary financial institution should be required to verify the identity of the beneficiary, if the identity has not been previously verified, and to maintain this information in accordance with Recommendation 11 Record Keeping.

67. AML 9.3.2.(3)(d) requires the identification of the named beneficiary in all wire transfers regardless of the value of the wire transfer. However, we do not have an explicit requirement that the identity of the beneficiary needs to be verified, if this has not already been done. On this basis, we propose to add this requirement to AML 9.3.11 (NEW) requiring an Authorised Person to verify the beneficiary if this has not previously been carried out.

**Q5: Do you have any concerns relating to our proposal to update our approach to wire transfers? If so, what are they, and how should they be addressed?**

#### V. Reliance on third parties – FATF Recommendation 17

*Please see the proposed changes to AML 8.1.1. and AML 8.1.2 in Appendix 1.*

68. FATF Recommendation 17 allows financial institutions to rely on third parties to perform certain elements of CDD provided the ultimate responsibility for the CDD measures remains with that financial institution.

##### Recommendation 17.2

69. Recommendation 17.2 states that, when determining in which countries the third party can be based, financial institutions should have regard to information available on the level of country risk.
70. AML 8.1.1(3)(c) provides that where a Relevant Person relies on a third party to conduct CDD on its behalf, that third party must meet certain tests. They must be subject to regulation, including AML regulation, by a Financial Services Regulator or other competent authority in a country with AML regulations equivalent to the standards set out in the FATF Recommendations, and be supervised for compliance with such regulations.
71. Guidance Note 6 to AML 8.1.1 gives Relevant Persons an indication of what conditions and sources of information we would deem appropriate when they assess if the AML regulation in a third country is equivalent to FATF standards and the risk that country poses. On the basis that FATF assessors would expect such conditions to be in a Rule rather than Guidance, we propose to delete Guidance Note 6 and include these requirements in AML 8.1.2 (NEW).

**Q6: Do you have any concerns relating to our proposals relating to reliance on third parties? If so, what are they, and how should they be addressed?**

**VI. Internal controls and foreign branches and subsidiaries – FATF  
Recommendation 18**

*Please see the proposed changes to AML 14.1.1 in Appendix 1.*

72. Recommendation 18 requires financial groups to implement group wide programmes against money laundering and terrorist financing, including policies and procedures for sharing information within the group for AML/CTF purposes.

Recommendation 18.2

*a) Group-wide programmes*

73. Recommendation 18.2 requires financial groups to implement group-wide programmes against ML/TF, which should be applicable and appropriate to all branches and majority-owned subsidiaries of the financial group. These should include the measures set out in Recommendation 18.1 and also:
- a) policies and procedures for sharing information required for the purposes of CDD and ML/TF risk management;
  - b) the provision, at group-level compliance, audit, and/or AML/CFT functions, of customer, account, and transaction information from branches and subsidiaries when necessary for AML/CFT purposes; and
  - c) adequate safeguards on the confidentiality and use of information exchanged.
74. AML 14.1.1(1) requires a Relevant Person, which is a DIFC entity, to ensure that its policies, procedures, systems and controls required by AML 5.2.1 apply to (a) any of its branches or Subsidiaries, and (b) any of its Group entities in the DIFC. However, AML 14.1.1(2) states that this requirement does not apply if the Relevant Person can satisfy the DFSA that the relevant branch, Subsidiary or Group entity is subject to regulation, including AML, by an equivalent Financial Services Regulator.
75. The approach taken in AML 14.1.1(2) does not comply with Recommendation 18.1, which does not foresee any exemptions to this

standard, apart from those in Recommendation 18.3<sup>15</sup>. On this basis we propose to amend AML 14.1.1(2) and (3), and align it with Recommendation 18.3, to require Relevant Persons to ensure that their foreign branches and majority-owned Subsidiaries apply AML/CFT measures consistent with the home country requirements, where the minimum AML/CFT requirements of the host country are less strict than those of the home country.

*Please see the proposed changes to AML 14.2.1 in Appendix 1.*

*b) Policies and procedures for sharing information*

- 76. Recommendation 18.2(a) requires financial groups to have policies and procedures for sharing information required for the purposes of CDD and AML/CTF risk management. While AML 14.2.1(a) includes an obligation requiring a Relevant Person which is part of a Group to understand its Group policies on sharing information, it does not explicitly state that the Relevant Person should have policies and procedures for the sharing of information. Therefore, we need to have a specific requirement for Relevant Persons to have specific information sharing policies to help implement such an obligation.
- 77. On this basis we propose to amend AML 14.2.1(a) to include a positive obligation for policies, controls and procedures for sharing information in the Group.

**Q7: Do you have any concerns relating to our proposals relating to internal controls and foreign branches and subsidiaries? If so, what are they, and how should they be addressed?**

**VII. Higher risk countries – FATF Recommendation 19**

*Please see the proposed changes to AML 6.1.2, AML 6.1.3 and AML 10.3 in Appendix 1.*

- 78. FATF Recommendation 19 relates to the enhanced CDD measures that financial institutions should apply to business relationships and transactions from 'higher risk' countries.

Recommendation 19.1

- 79. Recommendation 19.1 sets out that financial institutions should be required to apply enhanced CDD, proportionate to the risks, and to

<sup>15</sup> 18.3 states that if a host country does not permit the proper implementation of AML/CTF measures consistent with the home country requirements, financial groups are required to apply appropriate additional measures to manage the ML/TF risks, and inform their home supervisors.

- business relationships and transactions with natural and legal persons (including financial institutions) from countries when called for by the FATF.
80. While AML 10.3.1(1)(c) appears to address this requirement, Guidance Note 2 contains softer language, for example, “pay attention to or be aware of any transactions or business relationship with person located in countries”, which diminishes the effect of this requirement.
81. On this basis we propose to amend Guidance Note 2 and AML section 10.3 to provide examples of countermeasures that may be imposed by FATF, the DFSA or other agencies to address identified risks.
82. We also propose to amend AML section 6.1, and remove Guidance Notes 10 and 11, relating to the factors that should be taken into account in determining if there is a high or low risk of money laundering. We propose to create new Rules 6.1.2 and 6.1.3, which will set out these factors (updated) to give Relevant Persons a wider range of customer risk factors (we have included a new section on geographical risks) they should be considering when assessing money-laundering risks (high and low). We believe that FATF assessors would expect these factors to be in Rules rather than Guidance. This will also help reinforce the principle that Relevant Persons need to pay closer attention to customers, for example, located in countries that present higher money laundering risks.

#### Recommendation 19.2

83. Recommendation 19.2 calls on Countries to be able to apply countermeasures proportionate to the risks, a) when called upon by the FATF, and b) independently of any call by the FATF to do so.
84. As with our comments above, AML 10.3 does not directly address this and we propose to amend AML 10.3 and the associated Guidance Note 2, to include a reference to require Relevant Persons to apply ‘countermeasures’ when called upon by the FATF, and also independently of any call by the FATF to do so. We also propose to include a list of example countermeasures, for example, enhanced due diligence, increased reporting of financial transactions or limiting business relationships with persons in a specified jurisdiction.

**Q8: Do you have any concerns relating to our proposals relating to higher risk countries? If so, what are they, and how should they be addressed?**

**Q9: Do you have any concerns relating to our proposals on high and low risk customers? If so, what are they, and how should they be addressed?**

#### VIII. Transparency and beneficial ownership of legal arrangements – FATF Recommendation 25

*Please see the proposed changes to COB 5.9.1 in Appendix 2.*

##### Recommendation 25.1(b)

85. Recommendation 25.1(b) requires trustees of any trusts to hold basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors.

86. COB 5.9.1 addresses Trust Service Providers and the information they must retain in order to allow the recreation of transactions of the business and its clients. It does not go so far as to set down a requirement to hold the information about agents and service providers to the trust referenced in Recommendation 25.1(b). Therefore, we propose to amend COB 5.9.1 to address this and include a requirement to hold sufficient details about services providers and agents providing services to the trust.

**Q10: Do you have any concerns relating to our proposal? If so, what are they, and how should they be addressed?**

#### IX. Transitional arrangements

87. We have not included any transitional arrangements as part of this CP because we do not believe that any of the changes require them. However, if you are aware of any issues that you believe require transitional arrangements, please inform us of the issue and why you believe it would require such an approach.

**Q11: Are there any proposals, which you believe could require transitional arrangements? If so, what are they, and why?**

### Appendix 3: Table of Comments

<b>Name of commentator:</b>		
<b>Name of entity (if applicable)</b>		
<b>Is your response confidential?</b>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<b>If your response to the previous question is Yes, please state your reasons for such a request:</b>		

**Notes:**

- The DFSA reserves the right to publish, including on its website, any comments you provide. However, if you wish your comments to be kept confidential, you must expressly request at the time of making comments that this should be the case. You must also provide an explanation of why you wish your comments be kept confidential.
- Your answers may require explanations. Please include those in the second column.
- If you do not wish to comment on any issue, please select the “no comments” box.

Ref.	Response	Comments on proposal
<b>Q1:</b>	<b>Do you have any concerns relating to our proposals? If so, what are they, and how should they be addressed?</b>	
	<b>In relation to a) anonymous or fictitious accounts.</b>	
	<input type="checkbox"/> Yes	Click here to enter text. <input type="checkbox"/> No comments
	<input type="checkbox"/> No	
	<b>In relation to b) CDD measures for customers.</b>	
	<input type="checkbox"/> Yes	Click here to enter text. <input type="checkbox"/> No comments
	<input type="checkbox"/> No	
	<b>In relation to c) specific CDD measures for legal persons and legal arrangements.</b>	
	<input type="checkbox"/> Yes	Click here to enter text. <input type="checkbox"/> No comments

Ref.	Response	Comments on proposal	
	<input type="checkbox"/> No		
	<b>In relation to d) CDD for beneficiaries of life insurance policies.</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
	<b>In relation to e) timing of verification.</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
	<b>In relation to f) existing customers.</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
	<b>In relation to g) risk-based approach.</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
<b>Q2:</b>	<b>Do you have any concerns about our proposals relating to Source of Wealth and Source of Funds? If so, for what reasons, and how should they be addressed?</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
<b>Q3:</b>	<b>Do you have any concerns relating to our proposals on record keeping? If so, what are they, and how should they be addressed?</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
<b>Q4:</b>	<b>Do you have any concerns relating to our proposals on new products, practices, technologies? If so, what are they, and how should they be addressed?</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
<b>Q5:</b>	<b>Do you have any concerns relating to our proposal to update our approach to wire transfers? If so, what are they, and how should they be addressed?</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		

Ref.	Response	Comments on proposal	
<b>Q6:</b>	<b>Do you have any concerns relating to our proposals relating to reliance on third parties? If so, what are they, and how should they be addressed?</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
<b>Q7:</b>	<b>Do you have any concerns relating to our proposals relating to internal controls and foreign branches and subsidiaries? If so, what are they, and how should they be addressed?</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
<b>Q8:</b>	<b>Do you have any concerns relating to our proposals relating to higher risk countries? If so, what are they, and how should they be addressed?</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
<b>Q9:</b>	<b>Do you have any concerns relating to our proposals on high and low risk customers? If so, what are they, and how should they be addressed?</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
<b>Q10:</b>	<b>Do you have any concerns relating to our proposal? If so, what are they, and how should they be addressed?</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments
	<input type="checkbox"/> No		
<b>Q11:</b>	<b>Are there any proposals, which you believe could require transitional arrangements? If so, what are they, and why?</b>		
	<input type="checkbox"/> Yes	Click here to enter text.	<input type="checkbox"/> No comments