

Kinetic Partners AML/CFT Regulation Guide

December 2014

Please find below a helpful guide to the key changes to the Jersey AML/CFT Regulations.

AML Handbook	Topic	Details	Relevant legislation
Section 2	Corporate Governance	<p>The Board is required to consider its risk appetite and the cumulative effect of risks identified. Additional guidance is provided on performing the business risk assessment (“BRA”). The Board also needs to assess the effectiveness of systems and controls to ensure they are fit for purpose and effective on a day to day basis.</p> <p>Firms are required to consider the role of the MLCO and any potential conflicts of interest where the MLCO has other responsibilities.</p>	MLO (Articles 11 and 7)
Section 3	Identification measures - ownership and control	<p>New requirements have been introduced regarding the requirement to understand clients’ ultimate beneficial ownership and control structures.</p> <p>Firms must follow three steps to understand ownership: (1) request information from a customer, (2) validate that information and (3) check that the information makes sense.</p> <p>Firms should also consider requesting more general information from customers in order to assess the ML/FT risk and the AML/CFT Handbook now contains further guidance on conducting on-going monitoring of client relationships.</p>	<p>Article 15 (Enhanced Due Diligence) and Articles 17 and 18 (Simplified Due Diligence) (see below)</p> <p>MLO (Articles 3 and 13)</p>
Section 4	Finding out identity and obtaining evidence	<p>Face to face identification measures are a focus - where documentary evidence of identity is required, the originals need to be presented directly to the relevant person or through a suitable certifier.</p> <p>Evidence of identity can now be obtained from data services providers subject to a number of conditions.</p> <p>Additional considerations have been put in place for identification of trusts and limited partnerships.</p> <p>Delays in verifying identity are to be reported to the Board.</p> <p>For existing customers, identity must be discovered on or before 31 December 2014 and relationships must be terminated where a firm cannot discover a client’s identity.</p>	<p>MLO (Articles 2 and 3)</p> <p>Article 13</p>



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Section 5	Reliance on obliged persons and group persons (previously known as “introducers and intermediaries”)	<p>Details of procedures to be undertaken when placing reliance on obliged persons have been introduced.</p> <p>Reliance on obliged persons for third-party customer identification is subject to six conditions, including (but not limited to) ensuring the obliged person’s consent is being relied upon and that the obliged person provides written assurance of its identification procedures in place. The firm should also assess the risk and make written records of the appropriateness of placing reliance. Information obtained by the obliged person must also be immediately obtained by the relevant person.</p> <p>Firms should develop testing strategies to gain comfort over the effectiveness of procedures put in place by obliged persons.</p> <p>Certain exclusions apply to this concession where, for example, a firm suspects ML/FT risk or reliance on an obliged person presents ML/FT risk. A firm may however rely on a group entity to apply identification measures and keep evidence of identity. This is subject to the same six conditions and testing described above.</p>	MLO (Articles 3 and 16)
Section 6	On-going monitoring: Scrutiny of transactions and activity	<p>Firms need to implement procedures to recognise unusual transactions and unusual activity, including the identification of transactions and activities with enhanced risk states.</p> <p>Firms should develop business specific “red flags” to recognise complex/higher risk transactions and activity.</p> <p>Section 6 also sets out requirements relating to transactions with sanctioned countries, automated monitoring (including the requirement for firms to understand the systems used), the nature of any outputs and having an audit trail and procedures for dealing with positive and false positive matches.</p>	MLO (Articles 3 (3), 11 and 13)



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Section 7	Enhanced and Simplified Identification Measures	<p>Enhanced CDD measures must be applied for certain customer types (which may not necessarily be high risk):</p> <ul style="list-style-type: none"> customer is non-resident; customer is provided with private banking service; customer is personal asset holding vehicle; and customer is a company with nominee shareholders or issues bearer shares. <p><u>Level of EDD</u> It is for the firm to decide as to the type of enhanced measures applied. This will depend on each customer’s risk assessment or by applying a risk based approach taking account “net risk” e.g. where a customer is non-resident or not physically present. The Handbooks also allow for a more flexible, risk based approach to CDD for PEPs.</p> <p>The new requirements are not retrospective. Therefore no remediation is required for existing clients but a firm must apply identification measures where there are doubts as to the veracity of information previously obtained.</p> <p><u>Simplified due diligence (“SDD”)</u> Subject to certain conditions, SDD can be applied in some cases including where the relevant person’s customer conducts financial services business.</p> <p>When applying CDD there is basic information to be collected by a customer as a minimum. Firms must avoid applying SDD to customers resident in countries that do not apply FATF recommendations.</p> <p>Firms need to assess the risk of ML and make a written record of why it is appropriate to apply simplified measures. SDD may not be applied in certain circumstances including suspicion of ML/FT or where the customer represents a higher ML/FT risk or is resident in non-FATF territory.</p> <p>There is however a concession where the customer is regulated by the JFSC or is an equivalent business or where a customer is wholly owned by such persons and fulfills the conditions of Article 17.</p>	MLO (Articles 15, 17 and 18)



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Section 8	Reporting ML and FT	<p>This section clarifies reporting requirements, timeliness of reporting, effectiveness of reporting and tipping off regulations (including exemptions from tipping off offences). MLROs should consider the period of time between a matter coming to the employee's attention and the date of the submission of the SAR and it is a criminal offence if a SAR is not made as soon as reasonably practicable. A new provision requires a SAR to be made if there are reasonable grounds for suspecting that property constitutes or represents proceeds of criminal conduct or where property is or may be terrorist property.</p> <p>The new structure relating to SARs includes guidance on red flags, products and services.</p>	Proceeds of Crime Laws and Article 34 of the Terrorism (Jersey) Law
Section 9	Screening, awareness and training of employees	All relevant employees should receive training, including a written explanation of a firm's BRA and provision of case studies to contextualise policies and procedures to ensure AML/CFT obligations are clearly understood and applied.	MLO (Article 11)
Section 10	Record keeping	Provides further guidance on record keeping of governance, monitoring, SAR and training records.	MLO (Articles 19 and 20)