

National Risk Assessment: Implications for Guernsey businesses

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Introduction

The Handbook on Countering Financial Crime and Terrorist Financing (the **Handbook**) issued by the Guernsey Financial Services Commission (the **Commission**) is a statement of the standards expected by the Commission of all businesses that are financial services business or a prescribed business (a **specified business**^[1]) and contains rules and guidance to assist firms in complying with relevant legislation concerning the countering of money laundering, terrorist financing, financial crime and related offences (**AML/CFT Legislation**). The AML/CFT Legislation aims to prevent the Bailiwick financial system and operations from being abused for money laundering and financial crime.

Following the full MONEYVAL evaluation in 2016, the AML/CFT Legislation has been fully overhauled and the Bailiwick undertook a National Risk Assessment (**NRA**) to identify jurisdiction-wide and systemic risks to which the Bailiwick's financial system is deemed particularly vulnerable, which was published in January 2020. Individual specified businesses were initially given until the end of May 2020 to update their business risk assessments (**BRA**). In response to the impact on specified businesses of the COVID-19 pandemic, the Commission has extended some of the timeframes contained in the Handbook. As such, each specified business is now required to review and approve its BRA, revise policies and procedures in light of the risks identified by the NRA by 30 September 2020 and subsequently to re-evaluate existing business relationships in the light of this by 31 December 2021, albeit the Commission is recommending that specified businesses target to complete this process by 30 June 2021. The details of these revised deadlines are contained in the transitional provisions in the Handbook found at Chapter 17.

This Article looks in more detail at the contents of the NRA and the implications for specified businesses in the Bailiwick.

NRA and the Handbook

In 2016, Guernsey's anti-money laundering (AML)/countering financial crime and terrorist financing (CFT) Advisory Committee (the **Advisory Committee**) commenced work on a NRA as part of the jurisdiction wide undertaking to strengthen Guernsey's AML/CFT regime in conjunction with the island's continuing efforts to maintain compliance with international standards following the receipt of comments from the peer review undertaken by MONEYVAL. The NRA builds on previous risk assessment work conducted to produce by far the most comprehensive assessment of the money laundering and terrorist financing risks present in Guernsey to date, with the Policy and Resources Committee publishing the results of the NRA in January this year.

Specific areas of risk identified in the NRA

Money Laundering

In relation to money laundering risk, the NRA identified that the greatest risk comes from the laundering of the proceeds of foreign criminality. This is likely to take the form of offences such as bribery, corruption and fraud (including tax evasion), as well as drug trafficking and insider dealing or other forms of market manipulation. As such, the sectors most at risk of being involved in this activity are considered to be the private banking sector and the parts of the trust and corporate service provider sectors dealing with legal persons and legal arrangements. In all such circumstances, the Advisory Committee noted that there is likely to be a chain of transactions across several jurisdictions involved in the money laundering process, with Guernsey being at the end, or near to the end, of that chain.

Terrorist Financing

The risks presented by terrorist financing were assessed to be substantially lower than those presented by money laundering, with the greatest of these coming from cross-border business being used to support foreign terrorism via funds being passed through or administered from Guernsey. The NRA indicates that terrorist financing within Guernsey is most likely to arise in the context of secondary terrorist financing, i.e. where criminal proceeds are used to fund terrorism. An additional risk has been identified from funds raised in Guernsey for legitimate purposes being diverted subsequently to support foreign terrorism. Unlike money laundering, the Advisory Committee were unable to identify any particular sector or product as standing out in relation to terrorist financing risks, though they did indicate that certain sectors carried lower risk than the others. These include eCasinos, real estate, domestically focussed legal persons and arrangements, registered non-profit organisations, emerging technologies, cash and trade.

Domestic risks

From a domestic perspective, the NRA identifies much lower risks in relation to money laundering. Those that do exist mainly take the form of domestic criminality arising primarily from drug trafficking and fraud. The Advisory Committee believes that the proceeds of these crimes are most likely to involve the retail banking sector and the use of cash. The risk of funds being used in

Guernsey to support domestic terrorist activity was assessed to be extremely low across all sectors and products due to Guernsey's demographic, geographic, political and cultural profile.

Methodology

The NRA was undertaken in such a way such that it is designed to complement the BRA and risk profiling of client relationships that entities licenced by the Commission, or carrying out other specified activities, are already required to undertake as part of their statutory and/or licencing requirements. These requirements are for the most part set out in Schedule 3 of the Law and the Handbook. As an overview, these require specified businesses to understand the money laundering and terrorist financing risks present within this jurisdiction and to have in place effective policies, procedures and controls to identify, assess, mitigate, manage, review and monitor those risks relevant to them in a way consistent with the Law and the Handbook.

Revised Timings

With effect from 29 April 2020, the Commission has made certain amendments to the Handbook in response to the publishing of the NRA, which it is advisable that businesses should familiarise themselves with. These mainly relate to adjustments to the dates by which businesses subject to the Handbook's provisions are required to have carried out certain actions in view of the operational adaptations firms are underdoing. The Commission has also reinforced the obligation on businesses to take the NRA into account when considering their AML and CFT policies and procedures.

As an overview, businesses must now review their BRA in light of the findings of the NRA and have the board approve any necessary adjustments to their money laundering and terrorist financing assessments by 30 September 2020. Specified businesses must also review and revise their policies, procedures and controls in light of the risks identified by the NRA, and have these formally approved by their respective boards of directors no later than 30 September 2020. Finally, the boards of each specified business must also ensure that all business relationships are reviewed by 31 December 2021 within the context of the NRA. Although the Commission's rules allow specified businesses the flexibility to best manage the review of these relationships, the Commission does strongly encourage specified businesses to adopt a risk based approach in order to ensure that due diligence measures, including enhanced due diligence and other enhanced measures as required, are applied to high risk business well in advance of this deadline. The Commission goes on to suggest a target of 30 June 2021 for completing the review of high risk business relationships.

Other changes in the 29 April 2020 update

Aside from the extension to the deadlines noted above, the most notable change to the Handbook introduced by the Commission as part of these amendments is the removal of Iceland from the list of equivalent jurisdictions contained in Appendix C of the Handbook. Businesses should therefore also take this into account when conducting their reviews.

Commission's response

The Commission has advised that they do not envisage the NRA having a significant impact on their current supervision regime. As such, they will continue to apply risk based supervision across all sectors, with high risk sectors being the primary focus of that supervision. The main change will likely be an enhancement to the Commission's current data collection regime through the imposition of additional periodic financial flows returns and enhancements to the existing financial crime risk returns taking into account the NRA and the updated Handbook. As part of their supervision, the Commission will also be checking to ensure that businesses have taken into account the relevant money laundering and terrorist financing risks raised in the NRA, and which are applicable to the sector that business operates in, in their BRA. This will include a consideration of the actions that businesses have taken to mitigate such risks.

Practical steps

The following practical steps should be undertaken by specified businesses to ensure continued compliance with the requirements of the Law, the Handbook and any licence that they may hold:

1. familiarise yourself with the NRA and its findings, paying particular attention to those sectors within which you operate;
2. conduct a full review of the systems and controls employed by your business to mitigate these risks in the context of the NRA;
3. review the specific money laundering and terrorist financing risks applicable to your business and the potential exposure created by your customers, products and services in the light of the NRA and update and formally approve your policies and procedures by 30 September 2020;
4. applying a risk based approach based on the NRA and your revised policies and procedures review all existing customers preferably by 30 June 2021 and, in any event, at the latest by 31 December 2021; and
5. ensure that all relevant employees are aware of, and fully briefed on, any amendments made to your business' policies and procedures in light of the NRA.

Should you have any questions or require specific advice on your circumstances, please do not hesitate to get in contact with the authors or your usual contacts at Ogier.

[1] Specified business: in accordance with paragraph 1(1) of Schedule 3 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (as amended) (the Law).

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Meet the Author



Michelle Watson Bunn

Managing Associate

Guernsey

E: michelle.watsonbunn@ogier.com

T: [+44 1481 752220](tel:+441481752220)

Key Contacts



Tim Clipstone

Partner

British Virgin Islands

Guernsey

E: tim.clipstone@ogier.com

T: [+44 1481 752265](tel:+441481752265)

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