

Consultation on AML/CFT obligations upon VASPS and additional obligations upon licensed trustees and partners

9 June 2023

Introduction

This consultation paper seeks comments on:

- i) Proposed rules and guidance for virtual asset service providers (“VASPs”) on information requirements for virtual asset transfers and general guidance for VASPs and specified businesses with a connection to, or involvement with, virtual assets, on how to meet the requirements of Schedule 3 to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law 1999 (“the POC Law”) and rules in the Handbook on Countering Financial Crime and Terrorist Financing (“the Handbook”). These rules and guidance are in a new chapter of the Handbook.
- ii) Proposed additional rules and guidance for trustees of trusts and partners (excluding limited partners) of partnerships and limited partnerships without legal personality to hold information on the identity of other regulated agents and service providers to a trust or partnership, and disclose their status as trustee or partner. These rules will apply to licensed trustees and licensed partners.

Both sets of proposed rules and guidance are to support additional provisions being made by the States of Guernsey Policy and Resources Committee to Schedule 3 of the POC Law upon which industry has already been consulted. Both sets of rules and guidance take into account feedback from those consultations.

The consultation period is short. Responses are being sought by the close of business on Monday 3 July 2023. The reasons for this are to ensure that there are rules and guidance in place to assist specified business in meeting their obligations under these new provisions in Schedule 3 which are due to come into effect in early July after consideration by the States of Guernsey. These provisions upon VASPS and upon trustees and partners are necessary to ensure that the Bailiwick continues to meet the recommendations issued by the Financial Action Task Force on combating money laundering and terrorist financing against which the Bailiwick will be assessed by MONEVAL in its forthcoming evaluation.

Virtual Assets

The draft rules and guidance for VASPS on the information which must accompany virtual asset transfers include requirements that the VASP holds and submits certain information on the originator and beneficiary of a virtual asset transfer. These requirements are colloquially known as “the travel rule” and are similar to the existing requirements for wire transfers.

The Commission, mindful of the importance of the alignment of global requirements for the virtual asset sector, has developed the rules and guidance in this chapter which take into account the proposed information disclosure requirements being considered in the UK and EU. Limited feedback was received from the aforementioned consultation on the proposed changes to Schedule 3 on virtual asset transfers for the Commission to consider.

These draft rules and guidance include specific information requirements on originators and beneficiaries of virtual asset transfers and the information requirements on virtual asset transfers of £1,000 (or equivalent value) or less, as indicated in the draft legislation.

Licensed VASPS are required to meet all the provisions within Schedule 3 and the associated rules in the Handbook. The chapter therefore includes guidance on how VASPS can apply a risk-based approach and comply with customer due diligence and enhanced customer due diligence measures.

This chapter also incorporates additional risk factors specific to virtual assets to help VASPs and other licensees which are not licensed as a VASP, but who have business connected to virtual assets, to identify, understand and mitigate specific risks attached to virtual assets when dealing with customers where there is a virtual asset connection.

The link to the draft legislation can be found [here](#).

The link to the proposed chapter on Virtual Assets can be found [here](#).

Trustees and partners (excluding limited partners)

This new section at the end of chapter 7 of the Handbook on the due diligence measures for legal persons and legal arrangements will apply to licensed trustees of trusts and licensed partners of partnerships and limited partnerships without legal personality. It proposes additional rules and guidance for trustees of trusts and partners to hold information on the identity of other regulated agents and service providers to a trust or partnership, and the disclosure of their status as trustee or partner.

The reasons for these additional obligations are to meet FATF Recommendations to ensure the availability of beneficial ownership of these types of legal entity to the competent authorities.

The link to the draft legislation can be found [here](#).

The link to the extract on additional requirements on trustees and partners can be found [here](#).

Timing

It is envisaged that the updated Handbook will be issued in early July to take into account the commencement on 1 July 2023 of the licensing regime for VASPS and when the draft legislative changes to Schedule 3 regarding independent audit, business risk assessments, virtual asset information requirements and trustee/partner obligations are due to take effect after being laid before the States at its meeting on 5 July.

The revised Handbook will include the final version of the rules and guidance regarding the independent audit function, and business risk assessments, as well as the VASP AML/CFT obligations and trustee/partners obligations which are the subject of this consultation.

There will be no transitional provisions. Licensees will be expected to consider the risk element when they next review their business risk assessments and the audit element when the Board next considers AML/CFT matters following the publication of the updated Handbook. Licensed trustees and partners would be expected to consider the applications of these additional measures as part of their periodic reviews of a trust or partnership (or upon a trigger event) or when reviewing, renewing or changing the regulated agent or service provider to the trust or partnership.

The Commission will be issuing feedback on both consultations.

Responses to this Consultation

Any responses to this consultation paper should be provided via the Consultation Hub by the close of business on Monday 3 July 2023.