

**IMMEDIATE
ATTENTION**

SM/03/379
Volume I

November 19, 2003

To: Members of the Executive Board

From: The Secretary

Subject: **Jersey—Publication of Offshore Financial Sector Assessments—
Volume I—Review of Financial Sector Regulation and Supervision**

Attached for the **information** of the Executive Directors is Volume I of the staff's offshore financial sector assessment for Jersey, concerning financial sector regulation and supervision. Management has consented to a request by the Jersey authorities to publish the assessment, in accordance with the practices and procedures described in SM/01/228 (7/16/01), which they intend to do by the **close of business on Monday, November 24, 2003**. The assessment will also be posted on the Fund's external website on the same day.

Questions may be referred to Mr. Carrington (ext. 38089) in MFD.

This document will shortly be posted on the extranet, a secure website for Executive Directors and member country authorities.

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**ASSESSMENT OF THE SUPERVISION AND REGULATION OF THE
FINANCIAL SECTOR**



**VOLUME I: Review of Financial Sector Regulation
and Supervision**

Jersey

October 2003

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ACRONYMS

AML	anti-money laundering
AML/CFT	anti-money laundering and combating the financing of terrorism
BCP	Basel Core Principle
CIF	collective investment fund
CISX	Channel Islands' Stock Exchange
CP	Core Principle
EU	European Union
FEC	Finance and Economics Committee
GAAP	generally accepted accounting principles
UK-FSA	U.K. Financial Services Authority
FSC	Financial Services Commission
FSL	Financial Services (Jersey) Law 1998
HM Treasury	Her Majesty's Treasury
IAIS	International Association of Insurance Supervisors
IOSCO	International Organization of Securities Commissions
JFCU	Joint Financial Crimes Unit
LEG	Legal Department
Commission	Jersey Financial Services Commission
MFD	Monetary and Financial Systems Department
MOU	memorandum of understanding
OFC	Offshore Financial Center
OGBS	Offshore Group of Banking Supervisors
ROSCs	Reports on Standards and Codes
SPV	special purpose vehicle
States of Jersey	Parliament of Jersey

PREFACE

In July 2000, the Executive Board approved a program of assessments on the basis of the paper “Offshore Financial Centers—The Role of the IMF,” published in July 2000. In this context, the President of the Finance and Economics Committee of the States of Jersey (Parliament of Jersey) invited the IMF to carry out an assessment of the extent to which the regulatory and supervisory arrangements for the financial sector complied with certain internationally accepted standards and measures of good practice.

The assessments were carried out during a mission that took place September 11–25, 2002. The review of observance of the FATF 40+8 Recommendations was completed during a second visit January 13–21, 2003. The government indicated, when requesting the assessment, that they wished its scope to include both the offshore and the domestic markets. This was easily accommodated since the offshore and domestic sectors are covered by the same legislation and supervised by the same agency. The overall assessment was carried out on the basis of the “Module 2” approach, as described in the above-mentioned paper of July 2000.

The mission undertook a review of all relevant current legislation and practices and held discussions with the regulatory authorities, government officials, and a broad cross-section of the private sector practitioners.

The mission was led by Mr. R. Barry Johnston (Monetary and Financial Systems Department (MFD)) and comprised Messrs. Neville Grant (Deputy Mission Chief, Consultant, MFD);¹ Ian Carrington (MFD); Ross Delston (Consulting Counsel, LEG); Marcel Maes (Consultant, MFD); Jack Heyes (Consultant MFD); Helmut Mueller (Consultant, MFD); John Farrell (Consultant, MFD); and Richard Carpenter (Consultant MFD). Detective Chief Superintendent Felix Mc Kenna was the Independent Anti-Money Laundering Expert for the AML/CFT assessment. Ms. Jacqueline Pentz-Greene (MFD) assisted with the preparation of the report.

The mission is most grateful for the excellent cooperation, the openness, and the hospitality of the staff of the Jersey Financial Services Commission (Commission), government officials, and a number of private sector organizations and institutions.

¹ The IMF's Monetary and Exchange Affairs Department (MAE) was renamed the Monetary and Financial Systems Department (MFD) as of May 1, 2003. The new name has been used throughout the report.

EXECUTIVE SUMMARY

The financial regulatory and supervisory system of Jersey complies well with international standards. The Commission is to be commended for the excellent progress it has made since its inception in upgrading the financial regulatory and supervisory system to meet international standards for banking, insurance, securities and anti-money laundering and combating the financing of terrorism. In addition, the framework for trust and company service provider regulation is consistent with the OGBS Statement of Best Practice.

The mission noted in particular:

- the jurisdiction has in place a comprehensive legal framework and supervisory structure that works well in practice but will require strengthening to respond to new challenges;
- the authorities are aware that their reputation is their greatest asset and they continue to develop a structure to preserve that reputation. An example is the 2002 introduction of a new regime for the regulation and supervision of trust company business including the development of extensive supporting orders, codes of practice, and guidance notes;
- over the past few years the authorities entered into a number of formal agreements for information exchange and cooperation with foreign supervisory agencies; and
- comprehensive measures are in place for confiscation of the proceeds of criminal conduct; customer identification; and international cooperation.

The assessments identify the following areas where consideration should be given to further strengthen the legal, regulatory, and supervisory arrangements:

- the functions and independence of the Commission;
- the on-site regime, particularly for banks, to take account of future changes in commercial practices giving rise to new risks. There will be a need for further resources to tackle this;
- the Convention for Suppression of the Financing of Terrorism should be extended to Jersey and
- efforts to direct FIs toward the standards for customer identification set out in the Overriding Principles Paper should be redoubled to ensure a greater degree of consistency in the approach adopted by licensees.

The authorities are, therefore, encouraged to take actions in the following areas:

- enhance the independence of the Commission;
- increase its resources and improve its processes with respect to on-site banking supervision;
- issue instructions on on-site examination work in banking on matters related to prudential risks. Supervisory guidance needs to be developed, for example, for credit policies, loan evaluation, and loan-loss provisioning;
- although the Commission has set capital requirements for credit risks, it has not introduced similar requirements for market risk;
- increase the staff of the insurance division and institute more frequent on-site inspections; and
- amend AML/CFT-related laws as recommended in the detailed assessment.

I. INTRODUCTION AND FINANCIAL SYSTEM OVERVIEW

1. The report, which provides the findings of a Module 2 assessment of Jersey, consists of two volumes. Volume I presents a general overview of the financial system; a summary of the assessment findings and the Reports on Observance of Standards and Codes (ROSCs); and the authorities' action plan. Volume II presents the detailed assessment for banking, insurance, securities, AML/CFT, and company and trust service providers.

2. The banking sector was assessed against the Basel Core Principles for Effective Banking Supervision. The Insurance Core Principles of the IAIS were used in the assessment of the supervision of the insurance sector. The regulation of mutual funds and securities business was assessed relative to the Objectives and Principles of Securities Regulation of the IOSCO. With respect to the review of the regulation of company and trust service providers, the mission used the OGBS's draft Statement of Best Practice for Trust and Company Service Providers as its guideline. The AML/CFT regime was assessed against the FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism Standards.

3. In conducting these assessments, the mission held discussions with officers of the Commission and government, and with a number of private sector practitioners who play an important role in the financial sector. Two members of the mission visited the U.K.'s Financial Services Authority (UK-FSA) to discuss with certain officials responsible for banking how they conduct their relationships as home supervisor of U.K. entities operating in Jersey.

4. Jersey is situated off the north-west coast of France, 14 miles from Normandy and 85 miles from the south coast of England. It has an area of 45 square miles (118 square kilometers) and a population of more than 87,000, the largest in the Channel Islands.

A. Background

5. The growth of the economy in recent years has generally been attributed to the expansion of financial services and the related spin-off effects on the rest of the economy. Tourism is also important, and there is some agriculture and a small manufacturing sector. It is estimated that finance and related services provide about 55 percent of Jersey's GDP and about 60 percent of its tax income. Income tax was introduced in the 1920s and, except for a brief period in the 1930s, remained at 2.5 percent until 1940, when it was increased to the current level of 20 percent for individuals and corporate entities. The jurisdiction has double taxation arrangements with Guernsey and the United Kingdom.

6. The number of persons employed in the financial services industry, at June 2001, was 12,606, a 14.2 percent rise compared to 1998. Banking was the largest category accounting for about 47 percent of total industry employment. The growth in the number of persons employed in legal activities rose by 48.4 percent, far outstripping all other categories

B. Financial Institutions and Markets

Financial sector structure

7. Jersey attracts a wide range of financial business, including banking, insurance, investment, and trust and company business. The majority of transactions are conducted with and between nonresidents.

8. Jersey's financial system is dominated by private banks that provide asset management services for high-net-worth individuals. Nonbank institutions also offer asset management services and mutual funds. Insurance services are offered, but are less developed as compared to some other international financial centers. Jersey also offers a growing range of services to corporations, including securitizations and employee-share-ownership schemes. These facilities use the skills and expertise in trust and company administration, as well as legal skills.

9. The proximity to both the United Kingdom and continental Europe, low taxes, and a stable government have contributed to Jersey's attractiveness as a financial center. Other major influences in the past include (i) the decision of the U.K. Government to redraw the boundaries of the sterling area in 1972, which left Jersey as one of only a few offshore centers within that area; (ii) the removal of exchange controls by the U.K. in 1979 that opened up Jersey to international business without restrictions; and (iii) the growth of the world economy and private wealth, and the buoyant international investment climate, particularly in the 1980s.

10. Jersey has a comprehensive legal framework and supervisory structure. The structure is robust and current arrangements work well in practice, but will require strengthening to respond to new challenges. The authorities are aware that their reputation is their greatest asset and continue to develop a structure to preserve that reputation. For example, the introduction recently of a new regime for the regulation and supervision of trust company business. In addition, over the past few years, they have entered into a number of formal agreements for information exchange and cooperation and have made additions to the AML/CFT regime and some refinements of regulatory and supervisory arrangements.

11. The Commission has assessed the main risks facing Jersey's financial sector. On-site and off-site supervision has been focused primarily on corporate governance (in particular, the setting and monitoring of internal controls) and on "know-your-customer" principles. The Commission over the past two years has completed an ambitious program of first round of visits to all regulated institutions. At the time of the mission, the Commission was in a transitory state with the on-site visitation process evolving. It has identified a number of specific and general control weaknesses in institutions, and has taken effective action to remedy them. The mission is satisfied that the direction of this effort will be beneficial when fully implemented.

Banking

12. At the end of June 2002, 62 banks were registered compared with 70 a year earlier. The decrease reflects the global trend of mergers in the financial services industry, and the ongoing pressure within financial groups to streamline operations and reduce duplication. There are 38 subsidiaries and 24 branches of banks from 16 different countries. The largest number, 25, are from the United Kingdom with significant representation also from continental Europe and the United States. Total bank deposits were £132.4 billion compared with £125.9 billion a year earlier. Jersey resident depositors accounted for a small percentage of the total, the bulk was from nonresidents. Total assets were £170 billion of which £133.9 billion or 78.8 percent were interbank placements largely with the parent or holding company group.

Insurance

13. The Jersey insurance market is relatively small in comparison with other similar jurisdictions, especially Guernsey, which began to build up an offshore insurance center much earlier. The law distinguishes two kinds of permits; Category "A" and Category "B." Category A permits are granted to applicants authorized in jurisdictions outside of Jersey. Category B permits are for companies that establish their head offices in Jersey. The Commission is the home supervisor for companies with Category "B" permits.

14. The number of insurance permits outstanding at the end of June 2002 was 179, (160 Category A permits and 19 Category B permits) down from 186 a year earlier. This reflected the fact that, internationally, the industry has been going through a period of consolidation. Moreover, the very important motor liability insurance cannot be offered by Category B companies because there is no motor insurance bureau covering the claims in case of failure of the insurance company. This insurance business is only covered by U.K. Category A companies, which are members of the U.K. bureau.

15. The sector, therefore, comprises a number of companies that are incorporated locally and a number of branches of foreign entities, mostly from the United Kingdom, but also from continental Europe. The market involves a mixture of life and nonlife companies, the latter which mostly write property, motor and health insurance. The Commission does not collect data for premiums or other relevant indicators for category A companies.

Investments and securities

16. The principal investment products are interests in collective investment funds (CIFs) and interests in securitized assets through investment in special purpose vehicles (SPVs). The CIFs may be 'open-ended' or 'closed-ended' or they may be 'recognized' or 'unclassified.' Recognized CIFs can be marketed in the U.K. on the same basis as U.K. CIFs. They are able to do this because such funds are subject to legislation in Jersey (recognized Funds legislation) and a regulatory regime that has been deemed by HM Treasury to provide investor protection equivalent to that provided to U.K. investors under equivalent U.K.

legislation and regulation. Unclassified CIFs are marketed in the jurisdiction and in selected other jurisdictions under special bilateral arrangements between regulators.

17. The majority of funds within Jersey are designed for and marketed to sophisticated or institutional investors. Only a minority of funds are intended for marketing to members of the general public. In addition, a growing number of funds are aimed at fewer than 50 investors and are therefore controlled under the Control of Borrowing legislation, rather than the CIF Law. The majority of CIF investment is derived from offshore investors. Interests in the SPVs are marketed to professional investors, almost exclusively overseas. Since there is no stock exchange in the jurisdiction, any listing of CIF or SPV interests will be in another jurisdiction.

18. The value of collective investment funds was £106.2 billion at the end of June 2002, compared with £105.6 billion a year earlier. Funds under investment management were £31 billion. There were 368 funds and 1,528 sub-funds compared with 302 funds and 1,575 sub-funds a year earlier.

19. Total funds under investment management (Class B of the Financial Services (Jersey) Law 1998) stood at £31 billion, a decrease of 17.3 percent when compared to the same period last year. As at September 17, 2002, the Commission was responsible for supervising 210 firms engaged in investment business on behalf of others in or from Jersey.

20. There is no organized equity or debt market and no exchanges in Jersey. The licensed organizations deal in overseas markets, and where funds are listed, they are listed largely in Dublin, Luxembourg, and the United Kingdom. There is a stock exchange in Guernsey—the Channel Islands Stock Exchange (CISX). The Commission has no authority over the CISX, which is regulated by the Guernsey Financial Services Commission. Intermediaries provide investment services to local and overseas clients in respect of locally based and overseas investments. They are regulated by the Commission as dealers, discretionary investment managers, or investment advisers.

Company and trust service providers (trust company businesses)

21. Jersey is one of the first jurisdictions to regulate and supervise company and trust service providers. The legislative framework was established when the Financial Services (Extension) (Jersey) Law 2000 came into force in November 2000. This amended the Investment Business (Jersey) Law 1998 to bring trust and company service providers (termed in the Law “trust company businesses”) within the scope of the Law.

22. Since then, a number of orders have been made concerning trust company business, and the Trust Company Business Codes of Practice have been issued together with a number of guidance notes. A consultation paper on advertising standards has also been issued, which is of general application.

23. The Financial Services (Jersey) Law introduced transitional provisions that permitted each existing trust company business that applied for registration as a trust company within the permitted time frame, to continue operating until the determination of its application by the Commission. The Commission received 295 applications for trust company business licenses (including applications for registration as an experienced personal advisor) and is dealing with the applications using a risk-based approach.

24. At the time of the mission, there were some 90 applications outstanding, although the Commission advised the mission that about a third of these are close to determination. The Commission expected to complete its assessment of transitional applicants by the end of June 2003.

25. The Commission estimates that trust company businesses currently administer approximately 200,000 client entities. This figure includes trusts, Jersey companies, and companies incorporated outside Jersey. Although accurate figures are not available, the Commission estimates that trust company businesses administer approximately three times as many companies incorporated outside Jersey than Jersey companies.

26. Trust company businesses in Jersey derive a fee income of approximately £500 million per year and, although accurate figures are not available, the Commission estimates that the total value of assets under management could exceed £200 billion.

27. All Jersey incorporated companies are subject to the Companies (Jersey) Law, which makes no distinction between companies owned by residents and nonresidents. For tax purposes, however, there are three categories of company in Jersey: income tax exempt companies; international business companies (IBCs); and income tax paying companies. Jersey's IBCs are therefore not equivalent to the IBCs incorporated in many other offshore jurisdictions.

28. At the end of June 2002, there were in excess of 33,000 live companies registered in Jersey of which approximately 21,000 were exempt companies, 120 were international business companies, and the rest were income tax paying companies. The companies registry currently incorporates approximately 3,000 companies per year. Approximately 2,500 companies are dissolved each year and the number of active companies therefore increases at the rate of approximately 500 per year. Of the companies on the register, 522 are public companies. The companies registry believes that most of the companies incorporated in Jersey for offshore clients are utilized as asset holding companies and do not carry out commercial activity.

29. There are approximately 300 limited partnerships registered in Jersey. These are principally utilized by offshore clients. Although Jersey has enacted legislation enabling the formation of limited liability partnerships, none have yet been registered.

C. Regulatory Framework, Oversight, and Market Integrity Arrangements

Supervisory authority

30. The Commission was established in 1998, and is responsible for the regulation and supervision of deposit-taking business, insurance business, investment business, trust companies, and company service providers, and collective investment funds (and their functionaries). Prior to July 1998, the regulation of the financial services industry was undertaken directly by the Finance and Economics Committee through the Financial Services Department.

31. The Commission is a statutory body corporate, set up under the Financial Services Commission (Jersey) Law 1998. The Law established the Commission as an independent body with a Board of Commissioners as the governing body. The Commission is accountable for its overall performance to the States of Jersey through the Finance and Economics Committee.

32. The Commission's responsibilities as set out by the statute include:

- the supervision and development of financial services provided in or from within the island;
- providing the States of Jersey, any committee of the States of Jersey, or any other public body with reports, advice, assistance, and information in relation to any matter connected with financial services; and
- preparing and submitting to the Finance and Economics Committee of the States of Jersey recommendations for the introduction, amendment or replacement of legislation pertaining to financial services, companies, and other forms of business structure.

33. The Commission describes its purpose as being to maintain Jersey's position as an international finance center with the highest regulatory standards. It aims to achieve this purpose by:

- reducing risk to the public;
- protecting and enhancing the island's reputation and integrity;
- safeguarding the island's best economic interests; and
- contributing to the fight against financial crime.

34. In this it is supported by Article 7 of the Financial Services Commission (Jersey) Law 1998, which established the Commission's guiding principles.

35. The Commission has a staff establishment of 72 and a current complement of 68, of whom 26 hold professional qualifications and 10 hold technical qualifications. A further six staff are studying to obtain either professional or technical qualifications. Where appropriate, the work of the Commission is supplemented by outside resources on contract.

36. The Commission's budget is funded by means of fees paid by regulated entities. The budget is prepared by the Commission and incorporated within a business plan, which is submitted to the Finance and Economics Committee—a body that exercises the functions of a ministry of finance for the jurisdiction. Independence from government is also achieved by the fact the Commissioners are appointed by the States of Jersey on recommendation of the Finance and Economics Committee. The process is overseen by the independent Commission of Appointments.

37. The Finance and Economics Committee may give guidance or general directions to the Commission in relation to the policies of the States of Jersey. However, to date the Committee has refrained from issuing guidance to the Commission. The Annual Report of the Commission is made public and includes policies, developments and activities, and a two-year regulatory plan, as well as audited financial statements.

38. With respect to solvency risk, Jersey's authorities believe that they have attempted to minimize such risks as they apply to Jersey through their licensing policy. That licensing policy is generally aimed at selecting applicants from among the very largest firms in each industry. The Jersey authorities believe that the thrust of their regulatory and supervisory effort should also be directed towards mitigation of the risks of financial crime which has direct bearing on the reputation of the jurisdiction. With regard to financial crime and maintaining a high reputation the Commission focuses on:

- adequate real presence by financial institutions;
- conduct of business risks;
- strong mechanisms to prevent money laundering and terrorist-financing;
- adequate levels of competence in the institutions; and
- high levels of integrity.

39. The Commission has developed a range of practices by which it seeks to minimize risk in relation to authorization or licensing:

- a policy to only license banks from the top 500 banking groups;
- a general policy to require other businesses to be operations of international stature;
- satisfactory regulatory and audit track records must be demonstrated; and
- comprehensive business plans must be submitted.

40. Once a financial institution is authorized or licensed, the Commission seeks to ensure that standards are maintained on an ongoing basis through off-site supervision and on-site visits. The latter requires full access to Board minutes, control documents, and client files. Where serious matters arise, the Commission has a range of supervisory and investigatory

powers and, where appropriate, can take effective enforcement action. Examples of these powers include the ability to appoint an inspector, seek revocation of a license or remove individuals.

Legal and regulatory framework

41. The jurisdiction is a dependency of the British Crown and is not part of the United Kingdom. The British Government has ultimate responsibility, within clearly set conventions, for the jurisdiction's defense and international relations. Much of the executive function is delegated to committees, each of which has responsibility for a particular area. The Finance and Economics Committee has political responsibility for the Financial Services Commission.

42. With respect to the legal system, criminal law was originally much influenced by Norman law, but in recent times has drawn on English law. Commercial law is heavily influenced by the common law principles of England, but is not identical. In areas such as property and succession, Jersey law is very different to English law. In relation to financial regulation, Jersey law is based substantially on the equivalent statutes of the United Kingdom.

43. Jersey is neither a separate member state nor an associate member of the EU. A Protocol to the Treaty of Accession sets out the very limited extent to which European measures apply within Jersey. By virtue of the Protocol, the jurisdiction complies with applicable European measures on trade, industrial, and agricultural products. The Protocol ensures that Jersey is not subject to any regulation or directive in relation to European Monetary Union; harmonization of direct or indirect taxation; financial services exchange of information between fiscal authorities; or social policies.

44. Jersey has a comprehensive system of financial sector regulation:

- The responsibilities of the Commission are set out in the **Financial Services Commission (Jersey) Law, 1998**. The Law confers general powers that enable the Commission to carry out its supervisory functions.
- The legislation relating to banking is the **Banking Business (Jersey) Law, 1991**. It sets out a regime for the licensing of banks to carry out deposit-taking business and the supervision of those banks. Inter alia, it gives the Commission the ability to impose conditions on licensees and provides for penalties for breaches of the legislation and for the revocation of licenses.
- The primary legislation relating to insurance supervision is the **Insurance Business (Jersey) Law, 1996**. The Law makes provision for the authorization and supervision of insurance businesses. It prohibits persons from carrying on insurance business without a permit (license), sets out the conditions a company must meet when obtaining a license, the license procedures, enables imposition of conditions and

withdrawal of a license, gives the applicant the right to appeal to the Commission and after that, the court in case of refusal, or withdrawal, or other negative decision in the licensing procedures.

- The Law is complemented by the **Insurance Business (General Provisions) (Jersey) Order 1996** and the **Insurance Business (Solvency Margin) (Jersey) Order, 1996**. The law, together with the above mentioned two orders, regulates the ongoing supervision of a licensed company (information requirements; duties and qualifications of directors, auditors, actuaries; assets; solvency; technical provisions; disclosure; advertising; transfer of portfolio; on-site inspection; enforcement, etc.). Three schedules to the law define the classes of insurance business, and give details relating to the transfer of long-term business and transitional provisions.
- The main piece of legislation governing the collective investment funds business is the **Collective Investment Funds (Jersey) Law 1988**. The Law was designed to prohibit unauthorized persons from operating collective investment funds and to regulate such persons and funds. Other legislation which provide powers to the Commission as the securities regulator are the **Financial Services (Jersey) Law 1998**, the **Companies (Jersey) Law 1991**, and the **Borrowing Control (Jersey) Law, 1947**. The Commission has issued a number of instruments under those laws, including notes to give guidance in the application of the legislation in certain areas. Jersey is a full member of the International Organization of Securities Commissions.
- **The Companies (Jersey) Law 1991**, governs the incorporation, administration, and winding up of companies. It also contains provisions that specify the duties of company directors, although the majority of duties are determined by common law. It provides for the disqualification of directors for a period of up to 15 years, and permits the Commission to petition the court for disqualification. This may be utilized by the Commission as one of its regulatory tools.
- **The Borrowing (Control) (Jersey) Law 1947**, and the associated **Control of Borrowing (Jersey) Order 1958**, have the effect of requiring persons seeking to incorporate a company of any type to disclose the identity of the company's legal and beneficial owners to the registrar of companies for the purposes of obtaining its approval for the issue of shares. The registry carries out certain due diligence checks against such legal and beneficial owners. In some cases, this is limited to searches against certain subscription databases and regulatory databases, but where there is any concern, the registry carries out much more extensive due diligence. The registrar can impose conditions on the granting of a 'control of borrowing authorization.' Legal ownership information is available from the registry under the Companies (Jersey) Law 1991. Beneficial ownership information is confidential and is not available to the public, however it can be made available to overseas regulators and law enforcement agencies. In addition to requirements for disclosure of beneficial ownership information, Orders made under the Borrowing (Control) (Jersey) Law 1947 also enable the Commission to require declaration of the intended activities of Jersey

entities and to require further details where those activities are determined to be “sensitive,” for example, the provision of professional and financial services.

- Limited partnerships may be established under the **Limited Partnerships (Jersey) Law 1994**, and limited liability partnerships may be formed under the **Limited Liability Partnerships (Jersey) Law 1997**.
- Trusts and trustees are provided for in part by the **Trusts (Jersey) Law 1984**, and in part through established case law in Jersey, England and Wales, and other common law jurisdictions.
- The legislative framework to regulate and supervise company and trust service providers (termed in the Law “trust company businesses”) was established with the **Financial Services (Extension) (Jersey) Law 2000**. It amended the Investment Business (Jersey) Law 1998 (now the Financial Services (Jersey) Law 1998), and requires all persons engaged in the provision of company and trust services to be licensed. As noted previously, Jersey is one of the first jurisdictions to apply a comprehensive regulatory regime to persons providing company and trust services.
- The legislation on the investigation of fraud and the proceeds of drug trafficking and terrorism include: the **Investigation of Fraud (Jersey) Law 1991**, **Drug Trafficking Offenses (Jersey) Law 1988**, and **Terrorism (Jersey) Law, 2002 (scheduled to come into effect in September 2003)**. The **Proceeds of Crime (Jersey) Law, 1999**, and the related **Money Laundering (Jersey) Order, 1999**; the Drug Trafficking Offenses (Jersey) Law 1988 and the Terrorism (Jersey) Law 2002 define the offense of money laundering, impose obligations on financial service providers to help prevent money laundering, and allow the courts to confiscate funds that have been found to originate from criminal activities.

II. STRENGTHS AND VULNERABILITIES IN THE FINANCIAL, REGULATORY, AND SUPERVISORY ARRANGEMENTS

A. Overview

45. The Commission is a well-established, well-respected supervisory agency, with an experienced staff and a good range of regulatory and enforcement powers. The assessments show that the supervisory process is effective and that the financial regulatory system complies well with the Basel Core Principles, the IAIS Core Principles, the IOSCO Principles, and the FATF Recommendations. The legal framework for company and trust service providers is consistent with the OGBS Statement of Best Practice. Section III of this volume provides the relevant ROSCS and the detailed assessments are contained in Volume II. The following sections provide a summary of the findings.

46. The assessments identified two issues that could affect the operational independence of the Commission and its carrying out of its regulatory obligations.

- a) The provisions in Article 5 of the JFSC Law gives the Commission the responsibility, among other things, for the development of the financial services provided in or from within the jurisdiction.
- (b) Under Article 11 of the JFSC Law, the FEC has authority to give guidance and directions to the Commission concerning the policies to be followed by the Commission in relation to development and supervision of the financial services in the bailiwick, and the manner in which any functions of the Commission are to be carried out.

47. The context in which these provisions are set is given by Article 7, which provides the overriding statutory guiding principles to which the Commission must adhere when carrying out its functions. As such, the Commission's responsibility for development, and FEC's guidance or direction given to the Commission must not conflict with the Commission's statutory obligation to protect and enhance the jurisdiction's reputation and reduce risk to the public.

48. The mission acknowledges that the FEC has not exercised its authority to give guidance or directions and has not interfered with the Commission's capacity to carry out its functions. However, the Mission recommends that the Commission and the FEC review the potential impact on the supervisor of these provisions of the current (JFSC) law, with a view to ensuring that these provisions do not reduce the independence of the supervisor.

Sectoral assessments

49. In addition to the above observation on operational independence, the following provides a brief summary of the four assessments. More details are provided in the individual ROSC in the next section and in the detailed assessments in Volume II.

Basel Core Principles

50. **Jersey has achieved a high degree of compliance with the Basel Core Principles.** The assessment noted three general areas where the legal and supervisory framework could be strengthened. These relate to (i) the Commission's functions and its independence as noted above; (ii) the current resource deficit in the banking resource in the Compliance Division with respect to on-site inspections; and (iii) the need for regulatory guidance with respect to capital requirements, credit policies, loan evaluation, loan-loss provisioning and internal controls. Subsequent to the mission, Jersey has significantly increased the resource allocation to banking supervision.

IAIS Core Principles

51. **There was also a high degree of compliance with the IAIS Core Principles.** The comments above about independence are also applicable here. In addition, the insurance division needs to augment its staff for on-site inspections.

IOSCO Principles

52. **The mission also found that Jersey complies well with the IOSCO Principles.** The considerations relating to the independence of the regulator are also applicable here. The mission also recommends that the Commission finalize and disseminate its contingency plan for dealing with the failure of a market intermediary.

AML/CFT Standards

53. Jersey demonstrates a high level of compliance with the FATF 40+8 Recommendations particularly with respect to confiscation of the proceeds of criminal conduct; law enforcement and prosecution powers; customer identification; exchange of information; international cooperation and measures to combat terrorist financing;. The regulation of the financial sector by a single effective authority is another strength. The general framework for AML/CFT has been well implemented. The Commission has issued detailed guidance notes and has established a program of on- and off-site surveillance of financial service businesses to assess compliance with required standards. There is a high level of awareness, and existence within financial institutions, of appropriate AML/CFT policies and procedures.

Company and trust service providers (trust company business)

54. The Commission's regulatory and supervisory framework for trust company business is consistent with all of the practices set out in the OGBS Statement of Best Practice for trust and company service providers.

B. Actions to Strengthen the Observance of Standards and Codes

55. The authorities in Jersey are aware that, to maintain the jurisdiction's reputation of being well-regulated, the island must continue to update its supervisory and regulatory framework to reflect the changing international regulatory environment and international standards. The following section outlines some key concerns.

Functions and operational independence of the regulator

56. **As noted above, there are two concerns that could affect the operational independence of the Commission** that relate to (i) the power of the FEC to provide guidance and direction to the Commission; and (ii) the Commission's functional responsibility for the development of the financial services. The Mission recommends the following actions:

- The Commission and the Finance and Economics Committee undertake a review of the powers of the Finance and Economics Committee with a view to remove its ability to provide guidance and direction to the Commission; and
- The Commission's responsibility for "development" should be removed from the Commission law to avoid potential conflicts in the functions of the Commission. The attainment and sustainability of these objectives will enhance the reputation and contribute to the development of the financial system in Jersey.

57. In addition, a number of more specific recommended actions are provided in the next section for each of the four addressed standards.

Authorities' response to key concerns

General

Overview

58. The authorities note the Fund's key concerns and welcome the Fund's more specific cross-sector recommendations, many of which support action planned or already underway at the time of the Fund's assessment. Responses to sector-specific recommendations including enhancing resourcing, the need for regulatory guidance for banks, and the development of a contingency plan to deal with the failure of a market intermediary, are set out in Section III of the assessment.

59. The authorities have committed to maintaining and improving adherence to international standards and have established an action plan (appended to this volume), which describes how the issues raised by the Fund are to be addressed.

Functions and operational independence

60. The authorities have noted carefully the Fund's comments on the independence of the Financial Services Commission (the Commission) and its development function.

61. The authorities agree that, while the Commission is operationally independent, the Financial Services Commission (Jersey) Law 1998 does permit the Finance and Economics Committee of the States of Jersey to give guidance and directions to the Commission concerning the policies to be followed by it in relation to the development and supervision of financial services in the jurisdiction. The authorities note that the Fund acknowledges that the Committee has never in fact sought to do so, and that, even if it did, the Commission would not be able to comply with a direction that conflicted with the guiding principles established by Article 7 of the Financial Services Commission (Jersey) Law 1998.

62. The authorities have concluded that it is appropriate for the Commission to retain the function of development of financial services. The authorities are clear and, in practice, work on the basis that the Commission's ability to develop financial services is limited by its

statutory guiding principles, which operate to ensure that the Commission's regulatory function is preeminent.

63. The authorities have noted the Fund's comments carefully on the existing power that allows the Finance and Economics Committee to give directions to the Commission. The authorities note that the Commission has now developed a model for independence, accountability, and transparency arrangements, based on guidance and standards established by the Basel Committee, IOSCO, IAIS, and the IMF. While most of the provisions of the model are either met or in the process of being met, the authorities expect that enhancements to the Commission's accountability, independence, and transparency, which will also address the Fund's comments on the Committee's power of direction, will be recommended to the Economic Development Committee in 2004.

III. OBSERVANCE OF FINANCIAL SYSTEM STANDARDS AND CODES: SUMMARY ASSESSMENTS

A. Basel Core Principles for Effective Banking Supervision²

Institutional setting and market structure

64. At the end of June 2002, 62 banks were registered compared with 70 a year earlier. The decrease reflects the continuing trend of mergers and takeovers in the international industry. There are 38 subsidiaries and 24 branches of banks from 16 different countries. The largest number, 25, come from the U.K. and there is also significant representation from continental Europe and the United States. Jersey considers itself the home supervisor for 14 of those banks. Total bank deposits were £132.4 billion compared with £125.9 billion a year earlier. Jersey resident depositors accounted for a small percentage of the total, the bulk was from nonresidents. Total assets were £170 billion of which £133.9 billion or 78.8 percent were interbank placements largely with the parent or holding company group. Loans are a fraction of deposits. This reflects the clientele of the banks.

² The assessment was undertaken by Jack Heyes and Marcel Maes (Consultants MFD).

Table 1. Banks and Bank Deposits, 1998 to 2002
(In millions of U.K. Pounds)

Date 30 June	Number of Banks	Sterling	Other Currencies	Total
1998	79	37,848	61,937	99,785
1999	77	38,245	70,774	109,019
2000	73	40,862	74,217	115,079
2001	70	42,377	83,520	125,897
2002	62	43,136	89,307	132,443

Source: Quarterly Reports. Jersey Financial Services Commission

65. Jersey's banking system is dominated by private banks that provide asset management for high-net-worth individuals who are attracted to the jurisdiction by low taxes, a sound legal environment, a convenient location close to the main European financial markets, and high quality wealth-management services. There is also significant corporate business related to corporate securitizations, employee stock ownership plans, and special purpose vehicles designed to raise funds for banking and trading groups.

General preconditions for effective banking supervision

66. Jersey has a well developed public infrastructure; effective mechanisms for market discipline; and adequate measures for the resolution of problem banks. The Commission is the supervisory agency for banks and its authority and powers are discussed in Section II above

67. There is a sound and generally effective framework for the regulation and supervision of banking activity. The effective licensing authority is supplemented by comprehensive criteria in order to warrant a consistent approach of permissible activities and ownership.

68. The legislation and secondary regulations, which govern banking accounting, represent a valid basis for the supervisory authority. Jersey incorporated subsidiary banks must produce "true and fair" audited accounts to the Commission.

Principle-by-principle assessment

69. Our assessment is that the supervisory structure is robust and current arrangements work well in practice, but will require strengthening to respond to new challenges. This general view is supported by the high level of compliance against the core principles.

70. There are a few issues that predominate. They relate to the current resource deficit of the Compliance Division, which reduces scope and efficiency of on-site supervision. We are also concerned that unless the Compliance Division is adequately resourced, the progress made to date will not be sustained nor will the division be able to address in an effective

manner progress needed in other domains. Comprehensive credit policies and best practices regarding loan evaluation and loan-loss provisioning should be developed and circulated among banks. Standards on market risks and internal controls should also be developed including elaboration of internal audit requirements should be elaborated.

Objectives, autonomy, powers and resources (CP 1)

71. Taken collectively, the banking laws, orders, and guidance notes provided by the supervisor constitute a generally appropriate legal framework for banking supervision, although some weaknesses are noted. These will be addressed by the planned amendments of the banking legislation in 2003.

72. A review of the business process of banking supervision in order to enhance its efficiency is pivotal to that issue. Consequently, an adequate structure and corresponding level of resources should be defined, as well as an appropriate change process. External expert aid could be relied upon in the benchmarking exercise.

Licensing and structure (CPs 2–5)

73. Jersey 's effective licensing authority is supplemented by comprehensive criteria in order to warrant a consistent approach of permissible activities and ownership.

Prudential regulations and requirements (CPs 6–15)

74. Jersey demonstrates a high degree of compliance with the majority of these CPs. The minimum risk-asset ratio prescribed by the Commission amounts to 10 percent and, where appropriate, higher minimum ratios can be imposed on individual institutions. Although the Commission has set capital requirements for credit risks both on a solo and consolidated basis, it has not to date introduced capital requirements for market risk. The development of a corporate governance route planner will provide guidance to the compliance staff to ensure that the assessment of the risk-management process is consistent. The Commission has also developed a credit-risk-route planner. The existence of such a tool is a constructive step to balance the general assessment indicated in the corporate governance route planner. Additional reference to generally accepted assessment credit-risk techniques and practices could be of benefit to Compliance Department staff if they were included in the credit risk route planner.

75. The Commission's approach to supervision requires that it pay close attention to the internal controls applied by the banks. When dealing with internal audit, the Commission takes into consideration its independence, access to senior management and the Board, its risk-assessment and quality-control processes, and technical experience and training programs. However, standards on internal control should be developed and best practices regarding internal audit should be elaborated. Anti-money laundering legislation provides a good legal framework for banks.

Methods of ongoing supervision (CPs 16–20)

76. Jersey demonstrates a high degree of compliance with these CPs. Comprehensive efforts are undertaken by the Commission to enhance the structure and approach to on- and off-site supervision. Contributing factors to the enhanced supervisory process include a revised organizational structure, a risk-rating system, route planners allowing for a more consistent approach to be applied to the supervisory process, a technology platform for statistical comparisons, and standardized reporting formats.

77. When the program is fully implemented and supported by an appropriate level of resources and quality control procedures, the Commission will be well-positioned to comply with the core principle. Subsequent to the mission, Jersey has significantly increased the resource allocation to banking supervision. The validation of supervisory information could be enhanced through the work of the external auditors.

Information requirements (CP 21)

78. The legislation and secondary regulations, which govern bank accounting, represent a valid basis for the supervisory authority. Jersey incorporated subsidiary banks must produce “true and fair” audited accounts to the Commission. Secondary legislation establishes circumstances in which auditors or reporting accountants are required to communicate matters to the Commission. There is also regular and open communication between the Commission and external auditors.

Formal powers of supervisors (CP 22)

79. While informal oral and written communication with management is a common form of remedial action utilized by the Commission, it has a range of powers, including powers to impose conditions, appoint inspectors and to revoke registration. The supervisor applies sanctions not only to the bank, but, when and if necessary, also to management and / or the Board of directors. The Commission also has power to issue a public statement. The Commission can impose a condition to achieve a takeover or merger with a healthier institution, and has the power to apply to the court for the winding up of a company where there are just and equitable grounds to do so. Once deposit taking activity is subsumed within the FSL, the Commission will also have the ability to petition the royal court to appoint a manager to a bank.

Cross-border banking (CPs 23–25)

80. The Commission has the necessary legal authority to request and receive information from a bank, a bank’s holding company, subsidiaries, related companies, and fellow subsidiaries. The Commission regularly engages in dialogues with home and host country supervisors and conducts on-site examinations abroad. The Commission has wide gateways for the sharing of information with home and host country supervisors.

Table 2. Recommended Actions to Improve Compliance with the Basel Core Principles

Reference Principle	Recommended Action
CP 1.2 Independence and adequate resources	<p>Conduct a review of the Finance and Economic Committee's power of direction and the Commission's development function.</p> <p>Conduct an in-depth analysis of the resources required to fulfill the supervisory objectives and as a consequence establish a change plan.</p>
CP 7 and 8	Develop guidance/guidelines or orders covering generally accepted credit risk policies and procedures.
CP 12 Market Risks	Impose market risk capital requirements.
CP 13 Other Risks	Develop guidance and 'best practice' documents.
CP 14 Internal Control and Audit	<p>Systematic confirmation by senior management and Board regarding their fiduciary responsibilities.</p> <p>Introduce "best practice" paper on internal controls and internal audit.</p>
CP 16 On-Site and Off-site Supervision	Establishment of a full scope on-site examination program supplemented by formalized quality control procedures.

Authorities' response

Basel Core Principles for Effective Banking Supervision

Overview

81. The authorities welcome the Fund's confirmation that the Island has achieved a high degree of compliance with the Basel Core Principles, and its constructive recommendations to further enhance implementation of international standards, many of which support action planned or already underway at the time of the Fund's assessment.

82. Notwithstanding this, the authorities do not consider that the Commission's overall risk-based approach to supervision is sufficiently highlighted in the assessment. This approach has identified that the licensing criteria for banks and the nature of the banking business in Jersey has meant that supervisory guidance on credit policies, loan evaluations, and loan-loss provisioning, and setting specific capital requirements for market risk in banks should be afforded lower priority than addressing the risks posed by investment and trust company business. It has been for this reason that banking supervision undertaken by the Commission has focused on such matters as corporate governance, detailed conduct of business, and on money laundering risk. Nevertheless, as noted below, the Commission will be addressing the particular prudential risks referred to in the Fund's assessment.

83. The authorities' response to the question of areas relating to operational independence is addressed in the general comments section (page 21).

84. A consolidated action plan, prepared by the authorities, is appended to this volume.

Resourcing and ongoing supervision (CPs 1.2 and 16)

85. The authorities note that the Commission has moved quickly to address the resource deficit noted at the time of the Fund's visit, which took place shortly after the loss of some key banking staff. The staff complement in its Compliance Division has been increased from 27 to 40 staff, of whom 35 are now in post, including an additional senior manager with considerable experience of the banking industry, who will provide technical support to the Division's banking team. Staffing requirements will continue to be reviewed on an ongoing basis to ensure that they continue to support the Commission's objectives and a comprehensive on-site supervision program.

86. The Commission, with support from outside consultants, has enhanced its on-site visit program to facilitate a more effective and focused use of its resources. This process was already underway at the time of the Fund's assessment. The Commission has developed a new risk model that will allow it to identify higher risk operations more accurately, a comprehensive set of on-site visit programs, and a revised report format which, inter alia, will more accurately reflect the materiality of on-site visit findings and enhance quality-control procedures.

Prudential regulations and requirements (CPs 7,8,12, and 13)

87. Credit and market risk are assessed by the Commission as being low, based on information collected from banks on a quarterly basis, and are mitigated by Jersey's high capital requirements (a 10 percent risk capital requirement against the international norm of 8 percent), strict licensing policies (the Commission restricts licenses to banks in the top 500, measured by capital), and requirement for a letter of comfort from the parent company. Instead, the Commission has focused on corporate governance, detailed conduct of business, and on money-laundering risk.

88. Notwithstanding this, the Commission proposes to finalize Codes of Practice for banks in 2004, preparation of which was already underway at the time of the Fund's assessment and which will address best practices for the management of credit, market, and other risks (including loan evaluation and loan-loss provisioning), internal controls and internal audit, as well as review capital requirements (which already exceed the international norm) as part of the Commission's assessment and implementation of the second Basel Capital Accord.

Management declaration on internal controls (CP 14)

89. The authorities accept that, currently, only trust company businesses are required to submit a declaration to the Commission that they have complied with relevant regulatory and anti-money-laundering legislation and Codes of Practice (Article 6 of the Financial Services (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000).

90. The Commission intends to review whether or not directors (and senior management of branches) of all regulated businesses should be required to make such a declaration. Any changes proposed would then be subject to a period of consultation and legislative approval.

B. FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

Introduction

91. This Report on the Observance of Standards and Codes (ROSC) for the FATF 40 +8 Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism was prepared by a team composed of staff of the International Monetary Fund, and an independent expert not under the supervision of Fund staff who was selected from a roster of experts in the assessment of criminal law enforcement.³

92. The report provides a summary of the level of observance with the FATF 40+8 Recommendations and provides recommendations to strengthen observance.

93. In preparing the detailed assessment, Fund staff reviewed the relevant AML/CFT laws and regulations, and supervisory and regulatory systems in place to deter money laundering and financing of terrorism among prudentially regulated financial institutions. In addition, the Fund reviewed the transitional regulatory arrangements in place for trust and company service providers. The independent expert reviewed the capacity and implementation of criminal law enforcement systems. The mission was undertaken over the course of two visits to Jersey. The assessment is based on information available at the time of the two visits (i.e., September 25, 2002 and January 21, 2003).

³ The assessment was undertaken by Ian Carrington (MFD), Ross Delston (Consulting Counsel LEG), with assistance from Richard Carpenter (Consultant MFD), Stuart Yikona (Technical Assistance Officer, LEG), and Detective Chief Superintendent Felix McKenna (Criminal Asset Bureau, Ireland), the independent anti-money laundering expert (IAE). Portions of the assessment attributable to the IAE appear in italicized text.

Criminal Justice Measures and International Cooperation

Ratification of conventions and criminalizing ML and FT

Jersey has a comprehensive legal framework for the criminalization of money laundering and terrorism financing. Money laundering is criminalized as a serious offense, extends to all proceeds of criminal conduct and is consistent with the definitions set out in the Vienna Convention, Palermo Convention, and the FATF 40+8 recommendations. The financing of terrorism is criminalized as a serious offense and is consistent with the definition set out in the Convention for the Suppression of the Financing of Terrorism. The Vienna Convention has been ratified by the United Kingdom on Jersey's behalf. However, the Convention for Suppression of the Financing of Terrorism, the Council of Europe Convention, and the Palermo Convention have not been extended to Jersey.

Confiscation of proceeds of crime or property used to finance terrorism

94. The framework includes provisions for confiscation, freezing and seizure of assets; orders to identify and trace assets; and the protection of the rights of innocent third parties to such assets. Civil forfeiture is available with respect to crimes relating to the financing of terrorism, but not otherwise. The authorities have indicated that under Jersey rules of civil procedure, a third-party intervener may assert legal rights over property. The authorities have also indicated that courts will not enforce illegal contracts as a matter of common law.

The FIU and processes for receiving, analyzing, and disseminating intelligence at the domestic and international levels.

95. Under the procedure for the reporting of suspicious transactions, reporting parties are required to disclose all suspicious reports to a police or customs officer. In addition, regulatory authorities and third-party inspectors appointed by the regulatory authorities or the court are required to report to the police where they have information relating to money laundering. There is no authority in the law requiring reporting parties to provide additional documentation to the Joint Financial Crimes Unit (JFCU). However, the police have the power to seek additional information by obtaining a production order, by authority of the Bailiff (equivalent to the chief judge), which would require a suspicion of criminal activity.

96. The JFCU is headed by a detective inspector who is appointed by the Chief Officer of Jersey Police and is answerable to him on the activities of the JFCU. The JFCU is subdivided into an Intelligence and Operational Unit. The Intelligence section is staffed by a detective sergeant, three detective constables, and three civilian personnel, which includes a financial analyst. The operational section is staffed by one detective sergeant, four detective constables, and two senior customs officers. The JFCU is currently supported by seven personnel from the U.K. and local police in order to service the increased workload and make progress with ongoing ML/FT investigations. The approved and recommended strength of the JFCU is 17.5 positions.

97. All police officers and customs officers attached to the JFCU have undergone training in a range of areas, including company and trust law, advanced financial investigation, and compliance procedures.

98. The attorney general's office records all statistics relating to amounts of property frozen, seized, and confiscated relating to ML, the predicate offenses, and FT. Statistics are kept on all requests, made or received, for mutual legal assistance relative to ML/FT and the predicate offenses. The requests are categorized by fraud notices, international cooperation notices, evidence orders, proceeds of crime orders, terrorism orders, drug trafficking (confiscation order), and saisies judiciaires orders. The records include details of the nature and result of the request.

Law enforcement and prosecution authorities, powers, and duties

99. The JFCU and the attorney general's office have responsibility for ensuring that ML and FT offenses are properly investigated. There are a number of ongoing major investigations, some of which arose from STRs, while others were identified by the investigation of other criminal activity. Law enforcement agencies are making reasonable efforts to meet their demands in order to successfully investigate, prosecute, and convict criminals and freeze, seize, and confiscate the proceeds of crime or property to be used to finance terrorism.

International cooperation

100. There are laws and procedures for mutual legal assistance in money laundering and financing of terrorism regarding the production of records by financial institutions and other persons, the search of persons and premises, seizure and obtaining of evidence for use in investigations and criminal proceedings, in some cases by application to the attorney general.

101. The principal areas of concern with respect to the legal framework, criminal justice measures and international cooperation are as follows:

- Jersey needs to adopt implementing legislation so that the Convention for Suppression of the Financing of Terrorism, and the Palermo Convention may be extended to Jersey.
- *The current permanent staff level of the joint Financial Crimes Unit is less than adequate to effectively implement aggressive investigations into ML and FT in the jurisdiction. Since 1999, the workload of the JFCU has increased 600 percent because of the increased number of STRs and increased requests for assistance from foreign law enforcement agencies. Permanent staffing levels have not kept pace with the increased workload.*

Preventive measures for financial institutions

102. The Commission has established a comprehensive program for implementing the AML/CFT legal framework. The Commission has issued detailed Guidance Notes (Notes) and has also developed a system of notices through which it updates its guidance to financial institutions. The Commission carries out its mandate through the use of on- and off-site surveillance mechanisms. Over the last two years it has completed a program of on-site visits to most licensed institutions. The Commission appears to have a constructive relationship with institutions for which it has regulatory responsibility.

103. Principal responsibility for AML/CFT rests with the Director of Policy and Legal Affairs. The Authorization, Compliance and Enforcement Divisions also have AML/CFT responsibilities appropriate to their principal mandates. The Commission has access to external assistance for specialized projects such as revision of the Notes. It has also formed an AML Steering Group, consisting of lawyers, compliance officers, and financial executives to assist in the revision of the Notes. The manpower resources of the Compliance Division were increased in 2003 and are expected to be further increased in 2004.

104. Over a 24-month period, the Commission has been able to undertake on-site inspections of most licensed institutions, which included a focus on AML/CFT procedures and practices.

105. Financial institutions visited generally displayed a high level of awareness of AML/CFT issues and employed measures that generally met international standards. Systems for verification of customer identity were generally in place and there was a high level of awareness of the need to be familiar with customers' normal activity trends. Most institutions had well-developed systems in place to recognize unusual transactions. In some cases where manual systems were used to detect activity inconsistent with expected patterns, the need to upgrade to automated systems was recognized. Institutions generally had systems in place to allocate countries into different risk categories on the basis of weakness in AML/CFT systems.

106. In December 2000 Jersey, in conjunction with Guernsey and the Isle of Man, developed a consultation document entitled, "Overriding Principles For a Revised Know Your Customer Framework." On the basis of responses to the document, the Commissions have issued a paper outlining the direction to be taken in the AML legal and regulatory frameworks in each jurisdiction. This paper, which does not replace the existing Guidance Notes, focuses on issues related to the verification of customer identity.

107. Among the many aspects of identity verification addressed in the paper are the issues of introduced business and the verification of identity of customers whose relationship with financial institutions pre-dates the all-crimes anti-money laundering legislation (Progressive Program). Unlike the existing framework where an introducer can hold verification documents to be made available to the "accepting party" on request, the paper envisages that an "accepting party" will always hold either originals or copies of these documents. In terms

of the Progressive Program, the paper envisages that where FIs discover any deficiencies in existing verification documents they should seek to obtain necessary information to address the deficiency. It proposes that this work be undertaken on the basis of risk prioritization and trigger events.

108. The principal areas of concern with respect to preventative measures for financial institutions are the following:

- Visits to financial institutions revealed a wide range of KYC practices in relation to the issues addressed by the Overriding Principles Paper. The Commission has already undertaken considerable work to direct FSBs towards the customer identification standards required by the Position Paper. It is nevertheless recommended that these efforts be redoubled to ensure a greater degree of consistency in the approach adopted by licensees.
- There are instances in which the language of the Notes should be amended to express more clearly the standard that is expected of licensees.

Summary assessment against the FATF Recommendations

109. Jersey has a comprehensive legal and institutional AML/CFT framework with high levels of compliance observed among regulated institutions. This report however makes a number of recommendations for further strengthening of the regime. Table 3 summarizes actions required in relation to the 40+8 recommendations.

Table 3. Recommended Action Plan to Improve Compliance with the FATF Recommendations

Reference FATF Recommendation	Recommended Action
Forty Recommendations for AML	
Customer identification and record-keeping rules (FATF 10–13)	<p>The relevant laws should be amended to explicitly require that customer identification procedures be followed.</p> <p>The Commission has already undertaken considerable work to direct FSBs towards the customer identification standards required by the Position Paper. It is nevertheless recommended that these efforts be redoubled to ensure a greater degree of consistency in the approach adopted by licensees.</p>
Increased diligence of financial institutions (FATF 14–19)	The POCL should be amended to provide financial institutions with an affirmative obligation to report suspicious transactions rather than the act of reporting being used as a defense against the money laundering offense.
Measures to cope with countries with insufficient AML measures (FATF 20–21)	Consideration should be given to ensuring that foreign branches and subsidiaries observe appropriate AML/CFT measures consistent with Jersey's requirements, to the extent that local laws and regulations permit.
Eight Special Recommendations on Terrorist Financing	
I. Ratification and implementation of UN Instruments	The Convention for Suppression of the Financing of Terrorism should to be extended to Jersey.
VII. Wire transfers	Within the two-year period referred to by FATF, the relevant laws should be amended to require that accurate and meaningful originator information on funds transfers remain with the transfer through the payment chain, and that FIs give enhanced scrutiny to wire transfers that do not contain complete originator information.

Other Recommended Actions

110. Other recommendations arising from the AML/CFT assessment appear in Table 9 of Volume II.

Authorities' response

FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism

Overview

111. The authorities welcome the Fund's confirmation that the Island demonstrates a high level of compliance with the FATF 40+8 Recommendations assessed and its constructive recommendations to further enhance implementation of international standards, many of which support action planned or already underway at the time of the Fund's assessment. The authorities report that they are committed to following the standards set by the FATF's recently revised 40 Recommendations.

112. A consolidated and more detailed action plan, prepared by the authorities, is appended to this volume.

Civil forfeiture

113. The authorities observe that the FATF's Recommendations were revised in Berlin in June 2003, and state for the first time that countries may consider adopting measures that allow proceeds of crime or instrumentalities to be forfeited without requiring a criminal conviction.

114. In common with many other jurisdictions, the authorities will now consult on the inclusion of such a provision in Jersey's anti-money laundering framework. The authorities observe that in the case of *Re Illinois District Court JLR 1995* (Note 10), approved in *Re Batalla-Esquival 2001* (Jersey Legal Review 160, at page 165), the Royal Court of Jersey held that it had jurisdiction to enforce a forfeiture order made abroad after civil proceedings in rem. Accordingly, Jersey is already in a position to assist in the enforcement of overseas civil forfeiture orders.

Review of anti-money laundering framework

115. The authorities have pointed out that the Island's framework to counter money laundering and the financing of terrorism is constantly under review and being updated, in line with changing international standards. Most recently, the Terrorism (Jersey) Law 2002 has updated the definition of terrorism and criminalized the financing of terrorist activities in line with the Convention for the Suppression of the Financing of Terrorism, and the Commission has consulted on an oversight regime for bureaux de change and money service businesses, the latter in line with FATF Special Recommendation VII. The authorities accept that there still remains some work to do in this respect, particularly in light of very recent changes to the FATF's 40 Recommendations, publication this year of Interpretative Notes for FATF Special Recommendations VI and VII, and legislative amendments in the United Kingdom and elsewhere within the European Union. Recommendations made as part of the Fund's assessment will be considered as part of this process.

116. The authorities emphasize that this work is already well underway (and was so at the time of the IMF's assessment). The authorities welcome the Fund's acknowledgement of the work that the Commission has already undertaken in this respect and, in particular, publication of a paper in February 2002 outlining the direction to be taken in certain important aspects of the anti-money laundering framework in Jersey, including the identification of customers and underlying "principals" and the treatment of professional intermediaries. More recently, an industry Steering Group has been established to assist with this process, and in particular with updating the Commission's Anti-Money Laundering Guidance Notes for the Finance Sector (currently issued under the Financial Services Commission (Jersey) Law 1998), consultation on which will take place later in 2003. In particular, consultation will consider proposals:

- to require financial services businesses to apply anti-money laundering standards equivalent to those in place in Jersey to subsidiary and branch operations outside the Island (though in practice the majority of such operations are in either Guernsey or the Isle of Man and already covered by a pan-Island agreement that anti-money laundering standards should be consistent in each jurisdiction); and
- to implement necessary provisions to enable the Island to comply with the FATF's Special Recommendation VII on wire transfers, in line with the timetable established by the FATF (the provision of accurate and meaningful originator information on funds transfers and the scrutiny of incoming transfers that do not contain complete originator information).

117. Since existing legislation already requires customer identification procedures to be followed by all financial services business (Article 3 of the Money Laundering (Jersey) Order 1999), the authorities confirm that no changes are considered necessary in this respect.

Affirmative obligation to report suspicions

118. The authorities note that Article 18A of the Drug Trafficking Offenses (Jersey) Law 1988 and Article 23 of the Terrorism (Jersey) Law 2002 already establish an affirmative obligation to report knowledge or a suspicion that another person is laundering the proceeds of drug trafficking or a terrorist activity.

119. Notwithstanding this, the authorities confirm their intention to bring forward proposals, subject to consultation and legislative approval, to amend the Proceeds of Crime (Jersey) Law 1999 so as to ensure, inter alia, that financial services businesses report knowledge or suspicion directly to the Joint Financial Crimes Unit. Currently, such businesses must already have reporting procedures in place, and reporting knowledge or a suspicion provides a defense against commission of a money-laundering offense.

120. As part of this consultation, consideration will also be given to whether or not the Joint Financial Crimes Unit should be able to give instructions to financial services businesses.

International conventions

121. The authorities welcome the Fund's recognition that money laundering is criminalized as a serious offense, extends to all proceeds of criminal conduct, and is consistent with the definitions set out in the Vienna Convention, Palermo Convention, and the FATF 40+8 Recommendations. Similarly, the financing of terrorism is criminalized as a serious offense and is consistent with the definition set out in the Convention for the Suppression of the Financing of Terrorism. They note that this reflects Jersey's enactment of domestic legislation to conform with international conventions, and, in particular, the Convention for the Suppression of the Financing of Terrorism, Vienna Convention, Council of Europe Convention, and anti-money laundering aspects of the Palermo Convention.

122. The authorities have requested the United Kingdom government to extend its ratification of the Convention for the Suppression of the Financing of Terrorism to Jersey with effect from September 1, 2003. They also expect to make similar requests for the 1959 Council of Europe Convention and the Palermo Convention.

Resourcing

123. The authorities reaffirm that they will ensure that the JFCU has sufficient resources to meet its domestic and international obligations.

C. IAIS Core Principles⁴

General

124. This assessment of the current state of Jersey's compliance with the IAIS Insurance Core principles has been completed as part of the IMF Offshore Financial Sector (OFC) report. Completion of a formal assessment serves several purposes. First, it benchmarks the current state of insurance supervision, recognizing that there have been extensive changes in the last years. Second, it suggests a number of further improvements or changes. Thus, this report provides a key input for the development of an action plan to move toward full compliance with the Core Principles.

Institutional and macroprudential setting

125. The insurance industry in Jersey is a relatively new compared to that in Guernsey or the Isle of Man. The government decided late to open the market and to set up an offshore

⁴ The assessment was undertaken by Helmut Mueller (Consultant MFD).

center for insurance business. From the outset the government was aware that a good reputation was needed for the insurance business to be successful. The insurance supervision was fully aware of international regulatory standards and their application to Jersey. In 1996 the law enabling insurance supervision, the Insurance Business (Jersey) Law 1996, came into force. This provided for efficient and flexible supervision.

General preconditions for effective insurance regulation

126. The insurance industry in Jersey is small in relation to Guernsey and the Isle of Man. The government decided relatively late to open the market and to set up an offshore center for insurance business. Unfortunately, it is very difficult to assess the importance and size of the market, because figures from the international companies (insurers, which are granted a license by virtue of their authorization in a jurisdiction outside Jersey, so-called Category A Insurers) are not available.

127. The Commission is responsible for the supervision of the financial services sector. That means, besides supervision of insurance companies, the Commission is also supervisor of deposit-takers, long-term insurance intermediaries, investment and trust company business, and fund functionaries. Supervision is effected by function (authorization, compliance, and enforcement), not by sector. The only exception is insurance supervision. Given the size of the sector, the responsibility for all aspects of regulation is given to the Insurance Division.

128. The principal laws are the Insurance Business Law 1996 (amended in 1998, 1999, and 2000) which repealed the Insurance Business (Jersey) Law 1983 and, for the first time, allowed under license the incorporation of Jersey companies for the purposes of carrying on all classes of insurance business, the Insurance Business (General Provisions) Order 1996 and the Insurance Business (Solvency Margin) Order 1996. The Insurance Business (Amendment No 4) (Jersey) Law 2003 came into force on 28 March 2003. The Commission has explained the legal provisions by guidance notes. The Insurance Division intends to reinforce the supervision by preparing and issuing Codes of Practices for the industry that reflect the IAIS Core Principles.

129. The preconditions for an effective insurance supervision are in place:

- the infrastructure is well developed;
- the legal framework in place is consistent, modern and in compliance with international standards;
- the court system is efficient and reliable;
- the applied accounting standards are internationally accepted ;
- the actuarial and auditing professions are available and apply recognized principles;

- an efficient financial market (banks, investment funds) exists; and
- sound and effective macroeconomic policies are in place that allow the insurance industry to operate in a stable environment.

130. The Commission has the information and intervention powers that are necessary to fulfill its functions. The insurance division has a staff of three, comprising a director, a finance manager, and a finance officer. The staff is professionally qualified.

Principle-by-principle assessment

131. Jersey has achieved a high standard of compliance with the IAIS Insurance Core Principles.

Organization (Principle 1)

132. The supervisor has to be operationally independent from the government and the industry. The Finance and Economics Committee has the legal possibility to give guidance or general directions to the Commission in relation to a policy of the States of Jersey; however, this guidance is subject to the overriding statutory obligation of the Commission to adhere to its guiding principles. There is no apparent need for intervention possibilities of the government. It is, therefore, recommended that the Commission and the FEC review the FEC's power to give such guidance or general directions.

133. The personnel within the Insurance Division possess good professional qualifications and experience. With regard to the fact that the Division has to fulfill other tasks, besides insurance supervision, like the financial planning for the Commission and in view of the necessity to increase the number of on-site inspections the Division seems to be under-resourced, even if help is given from time to time from other divisions, like the Compliance Division and the Enforcement Division. It is therefore recommended to increase the number of staff.

Licensing and changes in control (Principles 2 and 3)

134. The legal mechanism for the licensing of insurance companies in and from Jersey is provided in the Insurance Business Law. Licensing provisions, responsibilities, and tasks specified are conferred upon the Commission. The Law contains detailed minimum criteria for licensing. The Commission will not grant a license unless it is satisfied that the criteria have been met. The supervisor has the power to suspend or to revoke the license in a variety of circumstances, including where the insurer has been involved in substantial irregularities.

135. The Insurance Business Law requires that any change of owners, shareholder controllers, chief executives, or directors of an insurance company, should be notified in writing to the Commission. The supervisor has the power to accept or to reject any change in control as if it were a new application for a license.

Corporate governance and internal control (Principles 4 and 5)

136. Corporate governance and internal control requirements are not dealt with explicitly in total in the Insurance Business Law. The Insurance Business Law 1996, the Financial Services Law and the Companies Law 1991 contain requirements and powers which enable the supervisor to monitor most of the essential and additional criteria of corporate governance. In addition further powers and requirements are set out in the conditions attaching to insurance licenses. A person who fails in complying with conditions is guilty of an offense and liable to imprisonment or fine or both. However, it is recognized by the Commission that these provisions need to be consolidated and expanded. To achieve this, the Commission intends to issue Codes of Practice pursuant to Article 39 of the Insurance Business Law 1996. The draft Codes of Practice contain the required corporate governance criteria and have been issued for industry consultation and are expected to come into force during 2003.

137. The concentration of all provisions about internal controls in the Codes of Practices will be a constructive step. The management of the companies needs to be encouraged by the supervisor to introduce efficient internal control systems, including risk-management methods and systematic confirmation by the management and Board regarding their responsibility for internal controls. When these plans are realized, the principles will be fully observed.

Prudential rules (Principles 6–10)

138. The Insurance Business (Solvency Margin) Order 1996 lists in detail the types of assets in which the company may invest. However, the permitted investments for each insurance company may be extended or restricted according to the special situation of each company through the use of the already-mentioned special conditions attaching to the insurance license.

139. The rules relating to the valuation of assets and liabilities are in accordance with Recognized Accounting Standards (e.g., U.K. GAAP). Furthermore, every long-term insurer has to appoint a qualified actuary, who is responsible inter alia for the establishment of provisions in accordance with actuarial principles.

140. All insurers must provide the Commission at six monthly intervals with financial returns that fully disclose the technical provisions and the solvency margin position.

141. The minimum solvency margin for life insurers and pension business is the greater of £50,000 and 2.5 percent of the long-term fund, while for general business it is 17.5 percent of the premium income. The minimum capital for all insurance companies is £100,000. The supervisory authority has the power to require a higher level taking into account the size, the complexity of the business, and the risk exposure of the individual company. Jersey complies with the solvency requirements of the IAIS. Nevertheless, in light of recent European

developments, Jersey should ensure that minimum capital requirements are in accordance with international standards.

142. Derivatives are not approved as admissible assets. At the request of the insurer, the supervisor may authorize the limited use of derivatives by means of a special condition attached to the license. The conditions under which the approval may be given are not mentioned in the law. It is recommended that the present practices of the Commission in relation to derivatives be incorporated in the Codes of Practice.

143. The Commission has the authority to review the reinsurance arrangements to consider the security of the reinsurer and to cooperate with supervisors in the home country of the reinsurer. The supervisor can require the increase or decrease of the reinsurance cover of the primary insurer, as well as to spread the reinsurance if it is considered that the company is over-exposed to one reinsurer.

144. Under the Insurance Business Law 1996, reinsurance companies are treated in the same way as primary insurance companies.

Market conduct (Principle 11)

145. All intermediaries that are dealing directly with the general public are regulated by the Financial Services Law 1998 and its legally enforceable Codes of Practice for the purpose of giving advice on and selling long-term insurance products. For giving advice on and selling general insurance, there is no specific legislation. Jersey follows the self-regulation practices adopted in the U.K., where such intermediaries are regulated by the General Insurance Standards Council. General insurance intermediaries in Jersey are expected to join this Council and to respect its standards.

Monitoring, inspection, and sanctions (Principles 12–14)

146. The Commission has the authority to require insurance companies to provide accounts on a six-month basis. These accounts are on an individual or a consolidated basis or both, following the form determined by the Commission. Furthermore, the insurance companies are required to produce annual audited financial statements.

147. The accounting techniques used by the insurers must be in accordance with internationally accepted standards (e.g., U.K. or U.S. GAAP). The valuations are required to be prudent, realistic, and consistent. They are tested by auditors and—in the case of long-term insurance—also by appointed actuaries.

148. The Commission has the authority to obtain all information that is necessary to fulfill its functions. One of the most important information tools is on-site inspections. The Insurance Division has only recently begun to conduct detailed on-site inspections of insurance companies. It is planned to increase the number of these inspections. For this purpose, it is necessary to strengthen the staff in the Insurance Division (see Principle 1).

149. The Commission has a range of powers to take remedial action in the interests of the policyholders. This allows it to exercise proactive supervision. For serious offenses, fines and prison sentences, as well as compulsory winding-up procedures, are available; in these cases, the Commission has to require the intervention of the court.

150. In order to complete the range of sanctions, it is recommended that the Commission be given the authority to impose civil money penalties (administrative fines) following international standards of financial services supervision.

***Cross-border operations, supervisory coordination and cooperation, and confidentiality
(Principles 15–16)***

151. The Insurance Business Law requires that every person who carries out insurance business in or from Jersey must be licensed and supervised by the Commission. The supervisor can grant and refuse a license under the same conditions required for domestic companies. The Commission has the power to request independent checks on information provided by a foreign insurer. This will usually be done jointly with the home supervisor.

152. The Commission is able and willing to cooperate with regulators of other jurisdictions without a requirement for a memorandum of understanding to be in place. It has a range of gateways to enable it to share information domestically and internationally. It can and does communicate information related to registered companies without their consent unless it believes that the information or other assistance is requested other than for the purpose of the exercise of supervisory functions.

153. Under the Insurance Business Law, any breach of confidentiality or disclosure of information by any person who receives this information is a criminal offense. The cases in which the supervisor is exceptionally permitted to share or disclose information are set out in the Law. This includes the sharing of information with other supervisors. The confidentiality requirements apply also to information that the Commission receives from other supervisors abroad.

Table 4. Recommended Actions to Improve Observance of IAIS Insurance Core Principles

Reference Principle	Recommended Action
CP 1 Organization	Increase number of staff of the Insurance Division. Avoid impairing the independence of the supervisor
CP 4 Corporate Governance	The Commission should complete its initiative to incorporate corporate governance requirements into Codes of Practice
CP 5 Internal Controls	Introduce quickly Codes of Practice containing the requirements for internal controls including risk management systems and systematic confirmation by senior management and Board regarding their responsibility for internal controls
CP 8 Capital Adequacy and Solvency	The Commission should continue to review the minimum capital standards, in light of recent European developments, to ensure that the legal minimum remains appropriate and in line with international standards
CP 9 Derivatives	It is recommended that the present practices of the Commission in relation to derivatives be incorporated in the Codes of Practice
CP 13 On-site Inspection	Intensify on-site inspections (increasing the number of staff, see above)
CP 14 Sanctions	Complete the range of sanctions by the power of the supervisor to impose monetary penalties (administrative fines)

Authorities' response

IAIS Core Principles

Overview

154. The authorities welcome the Fund's confirmation that Jersey has achieved a high degree of compliance with the IAIS Core Principles and its constructive recommendations to further enhance implementation of international standards, many of which support action planned or already underway at the time of the Fund's assessment.

155. Section IV describes a consolidated action plan prepared by the authorities.

Independence (ICP 1)

156. The authorities' response to the question of the Commission's development function and the Committee's power of direction is addressed in the general comments section (page 21).

Resourcing (ICPs 1 and 13)

157. The authorities note that the Commission has moved quickly to address the resource deficit noted at the time of the Fund's visit. An additional staff member has been approved in the Commission's business plan for 2003, and will be recruited in 2003.

158. Following recruitment, this additional member of staff will conduct on-site inspections, increasing the frequency of such inspections.

Codes of Practice (ICPs 4, 5, and 9)

159. Codes of Practice, which will address issues of corporate governance, internal controls, and the use of derivatives, are currently the subject of consultation and will be finalized in 2004, along with Codes for collective investment fund functionaries and deposit-takers.

160. Draft Codes of Practice were out for public consultation at the time of the Fund's assessment.

Management declaration on internal controls (ICP 5)

161. The authorities accept that, currently, only trust company businesses are required to submit a declaration to the Commission that they have complied with relevant regulatory and anti-money laundering legislation, and Codes of Practice (Article 6 of the Financial Services (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000).

162. The Commission intends to review whether or not directors (and senior management of branches) of all regulated businesses should be required to make such a declaration. Any changes proposed would then be subject to a period of consultation and legislative approval.

Solvency requirements (ICP 8)

163. The authorities have noted the Fund's comments on European Union solvency requirements but point out that Jersey's requirements currently in place are in line with international standards. The Commission will continue to review developments in international standards to ensure that minimum legal solvency requirements remain consistent with those standards.

Fining and civil money penalties (ICP 14)

164. The authorities issued a report in 1999 that included a commitment to introduce, in due course, a civil fining power to complete the Commission's arsenal of regulatory sanctions. This was in response to the Edwards Report on Financial Regulation. The authorities note that there remain a number of legal issues to be resolved before civil fining powers can be implemented and intend to consider these, and legislative proposals, in consultation with the industry.

D. IOSCO Objectives and Principles of Securities Regulation⁵

General

165. This report is prepared in the course of a formal assessment by the IMF of Financial Regulation and Supervision on Jersey. It relates to the law and practice of securities and investments on Jersey.

Information and methodology used for assessment

166. In essence, the assessment was undertaken by considering the relevant components of the regulatory system and matching them up against the expectations of the IOSCO Principles. Where difficult questions arose these are covered in this report in the Assessments or Comments sections of the principle-by-principle analysis below.

167. The mission reviewed a number of background documents before or in the course of the assessment. These included the IMF's own guidance notes on assessment process and procedures, various IOSCO reports and resolutions, relevant publications of OECD, selected Jersey legislation, orders, codes of conduct and guidance notes, various reports on the Commission website, the IOSCO self-assessments prepared by the Commission and various operational documents made available by the Commission. In reviewing this material the mission paid close attention to the explanatory notes accompanying the IOSCO Objectives and Principles and also to the MFP Transparency Code.

Institutional and macroprudential setting, market structure

168. The core investment product is the collective investment fund (CIF). The value of CIFs in Jersey as at June 30, 2002 was BP 106.2 billion. In addition, financial assets under direct administration were estimated to be BP 31 billion. There is no formal secondary market for securities in Jersey.

169. The main piece of legislation governing the collective investment funds business is the Collective Investment Funds (Jersey) Law, 1988. The Law was designed to prohibit unauthorized persons from operating collective investment funds and to regulate such persons and funds. Other legislation which provide powers to the Commission as the securities regulator are the Financial Services (Jersey) Law, 1998, the Companies (Jersey) Law, 1991, and the Borrowing Control (Jersey) Law, 1947. The commission has issued a number of instruments under those laws, including notes to give guidance in the application of the legislation in certain areas. Jersey is a full member of the International Organization of Securities Commissions

⁵ The assessment was undertaken by John Farrell. (Consultant MFD)

General preconditions for effective securities regulation

170. The core investment product is the collective investment fund (CIF). The value of CIFs in Jersey, as at June 30, 2002, was £106.2 billion. In addition, financial assets under direct administration were estimated to be £31 billion. There is no formal secondary market for securities in the jurisdiction.

171. The Financial Services Commission (the “Commission”) is a statutory body responsible as a single regulator for the regulation and supervision of the financial sector, including investment business. It also administers Company Law through its power to appoint the Registrar of Companies.

172. Jersey has a conventional framework of general business law, including a common law system. It does not have rules of law about competition, although the Competition Regulatory Authority was constituted by the Competition Regulatory Authority (Jersey) Law 2001 and a draft Competition Law has been circulated for consultation. However there is a diversity of market participants. The only barriers to entry into the finance sector we observed were those associated with the operation of the regulatory system and separate government licensing to operate in Jersey. The mission is not aware of any other barriers to entry or exit.

173. Industry representatives consider that the cost of compliance with securities regulation is higher in Jersey (and in Guernsey and the Isle of Man) than in competitor jurisdictions. They accept this on the basis that a key determinant of success for the jurisdiction as an international center is its reputation for high standards.

Principle-by-principle assessment

174. Jersey has achieved a high standard of compliance with the IOSCO Principles. The principles, which relate to SROs and secondary markets, do not apply. The Commission has a good range of regulatory powers. Its work on the authorization and supervision of investment business seems appropriately resourced and it seems able to maintain consistent standards of supervision within the investment industry.

Regulator (Principles 1–5)

175. The responsibilities of the Commission are clearly stated. They relate in particular to the supervision and development of financial services. The Commission has adequate powers and proper resources to do its investment-related work, has adopted clear and consistent processes, and maintains high professional standards for its staff. The mission gave particular consideration to whether the Commission is operationally independent. There are circumstances in which the government may issue guidance or directions on matters of policy. In addition, its cash flows, as publicly reported, are not all directly under its control, a matter which the government is currently addressing.

Self-Regulatory Organizations (Principles 6 –7)

176. There are no SROs. These principles do not apply.

Enforcement (Principles 8–10)

177. The Commission has wide powers of inspection, investigation, and surveillance. It has wide enforcement powers. It makes effective and credible use of its powers and has implemented an effective compliance program. It should nevertheless place greater emphasis in its supervision work on ensuring that timely, balanced, clear, and accurate information is communicated to investors and prospective investors.

Cooperation (Principles 11–13)

178. The Commission has wide powers to share information, both public and nonpublic, with domestic and foreign counterparts. It has entered into 13 MOUs with foreign counterparts and is at present negotiating with others. Typically, these are based on a pro forma document of the Forum of European Securities Commissions.

Issuers (Principles 14–16)

179. Some timeframes for periodic reporting, as stated in the law and in the terms and conditions of permits or registration, are not rigorous enough. They should be tightened up. In addition, the Commission should place greater emphasis in its supervision work on the information that issuers disclose to investors. Subject to this, issuers are committed to full, accurate and timely disclosure of financial and other information to investors and fair and equitable treatment for investors in Jersey. Accounting and auditing standards are of an internationally acceptable quality, although we have encouraged Jersey to commit resources to a review of accounting and auditing standards and auditor performance, recognizing that these are under careful scrutiny internationally.

Collective Investment Schemes (Principles 17–20)

180. Jersey has extensive rules of law about collective investment schemes, including standards for operators, rules for legal form and structure, the segregation and protection of client assets, disclosure and the basis for asset valuation, and unit pricing. The Commission maintains an active program of regulation and supervision.

Market Intermediaries (Principles 21–24)

181. There are minimum entry standards for market intermediaries, ongoing capital and other prudential requirements, and standards for internal organization and operational conduct. The Commission has not prepared a clear contingency plan for dealing with the failure of a market intermediary.

Secondary Market (Principles 25–30)

182. There is no stock exchange or other securities trading system in Jersey. Principles 25 to 27, 29, and 30 are not applicable. There is an offense of market manipulation and the Commission has wide-ranging inspection and investigation powers. These powers can be used to assist other regulators.

Recommended actions and authorities' response to the assessment

Table 5. Recommended Plan of Actions to Improve Observance of the IOSCO Objectives and Principles of Securities Regulation

Reference Principle	Recommended Action
(CP 1–5) Principles Relating to the Regulator	<p>Principle 1: The IOSCO Principles are backed by the three IOSCO Objectives:</p> <ul style="list-style-type: none"> the protection of investors; ensuring markets are fair, efficient and transparent; reducing systemic risk. <p>The Commission may wish to consider, in any review of its statement of responsibilities, whether its commitment to the IOSCO Objectives should be recognized more explicitly.</p> <p>The Commission should consider whether to recognize the statutory accountability of the Registrar of Companies in its annual report or otherwise.</p> <p>The Commission should review the authority under the Borrowing Control (Jersey) Law 1947 by which it regulates the offer of interest in SPVs and certain other investment activity.</p>

Reference Principle	Recommended Action
	<p>Principle 2: The Commission and FEC should review the authority under which the FEC is empowered to give guidance and directions to the Commission.</p> <p>The Commission and the government should complete the review of the procedure under which the Commission is required to raise money in excess of its operating needs by the use of its fee powers, for transfer to the government.</p> <p>The mission recommends that the Commission complete its work to provide codes of practice for collective investment fund functionaries.</p>
(CP 6–7) Principles of Self-Regulation	Not applicable
(CP 8–10) Principles for the Enforcement of Securities Regulation	<p>Principle 9: The Commission and the government should review the respective roles of the Commission, the government and the court in the enforcement of the law to ensure optimum outcomes having regard to the need to ensure that the process is principled, practical and effective.</p> <p>Principle 10: The Commission should consider whether to place greater emphasis in the supervision process on ensuring that timely, balanced, clear and accurate information is communicated to investors and prospective investors. The time frames for communicating information should be tightened up. The extent of the responsibility of the investment adviser in respect of promotional literature should be expressly recognized in the Code of Practice.</p>
(CP 11–13) Principles for Cooperation in Regulation	-
(CP 14–16) Principles for Issuers	<p>Principle 14: see recommendation under Principle 10 above.</p> <p>Principle 16: The Commission should continue to monitor international developments on the authority for financial reporting and audit standards applying to issuers of securities and investment products, whether companies, trusts, partnerships or other vehicles.</p>
(CP 17–20) Principles for Collective Investment Schemes	-
(CP 21–24) Principles for Market Intermediaries	Principle 24: The Commission should finalize and disseminate a clear contingency plan for dealing with the failure of a market intermediary.
(CP 25–30) Principles for the Secondary Market	-

Authorities' response to the assessment

IOSCO Objectives and Principles of Securities Regulation

Overview

183. The authorities welcome the Fund's confirmation that the Island has achieved a high standard of compliance with the IOSCO Principles, and its constructive recommendations to further enhance implementation of international standards, many of which support action planned or already underway at the time of the Fund's assessment.

184. A consolidated action plan, prepared by the authorities, is appended to this volume.

Functions and objectives (CP 1)

185. The authorities agree that there would be advantage in making more explicit their commitment to international standards. They consider that this point goes wider than the IOSCO objectives and principles, to which the report draws attention, and should include other standards especially those on banking, insurance, and defenses against money laundering and the financing of terrorism. In 2004, the Commission will consider reviewing its guiding principles with a view to emphasizing its commitment to the objectives set by the Basel Committee, IAIS, FATF, and IOSCO.

Recognition of statutory accountability of Registrar of Companies (CP 1)

186. The authorities accept that the statutory responsibility of the Registrar of Companies should be recognized in the Commission's annual report and confirm that this will be done in 2003.

Control of borrowing by special purpose vehicles (CP 1)

187. The authorities observe that Article 29 of the Companies (Jersey) Law 1991 controls the public offering of securities by Jersey companies. In addition, the Commission controls borrowing (including the issue of equity and debt) by Jersey and non-Jersey entities. The latter control already exceeds international standards, and the authorities are of the view that no additional action is required.

Independence (CP 2)

188. The authorities' response to the question of the Commission's development function and the Committee's power of direction is addressed in the general comments section (page 21).

189. The authorities point out that the Commission is preparing proposals to revise the way in which Registry fees are set in future. In future, subject to consultation and legislative approval, company registration and annual return fees will consist of two components:

Commission-determined administration fees and a government-determined fee, which the Commission will collect as agent. Action to implement such a change was well advanced at the time of the Fund's assessment.

Codes of Practice (CP 4)

190. The authorities note that public consultation on Codes of Practice for fund functionaries is already underway and it is intended that the Codes will be brought into force in 2004, when finalized.

Law enforcement (CP 9)

191. The authorities have pointed out that the Commission works very closely with the Law Officers' Department in enforcing regulatory legislation. As part of this process, the Commission will finalize a memorandum of understanding with the attorney general to formalize existing working practices for the enforcement of regulatory legislation and management of legislative breaches. Development of this memorandum of understanding was well advanced at the time of the Fund's assessment.

192. The authorities have noted that the Commission's Enforcement Division will also complete a review of its policies and procedures to ensure that law enforcement practices remain principled, practical and effective.

Communication of information to investors and prospective investors (CP 10)

193. The authorities have observed that the Commission already places great emphasis on ensuring that timely, balanced, clear, and accurate information is communicated to investors and prospective investors. For example, the Companies (General Provisions) (Jersey) Order 2002 and the Collective Investment Funds (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 control the circulation of prospectuses.

194. Notwithstanding this, in 2004 the authorities point out that the Commission is to consult on transferring regulation of fund functionaries to the Financial Services (Jersey) Law 1998, and is already consulting on Codes of Practice for fund functionaries. Both will facilitate regulatory focus on promotional literature for retail investment funds.

195. The authorities note that the Commission's on-site supervision will focus on the communication of information to investors. The Commission's risk model identifies fund functionaries marketing to retail investors as a higher risk indicator. In 2003 and 2004, a program of themed on- and off-site work will be carried out based on such information.

196. The authorities have considered carefully the Fund's views that the filing deadline for financial statements should be shortened and note that the Commission will review in 2004 the merits in doing so and, if a shorter deadline is considered to be appropriate, whether it should apply to all public companies under the Companies (Jersey) Law 1991 or just to those

offering securities to the public, and/or to collective investment funds through Codes of Practice. Any changes proposed would be subject to a period of consultation and legislative approval.

197. Amendments to Codes of Practice for investment business, which more explicitly address requirements for disclosure of information to investors, will be issued for consultation..

Financial reporting and audit standards (CP 16)

198. The authorities have pointed out that Article 104 of the Companies (Jersey) Law 1991 already requires companies to prepare accounts in accordance with generally accepted accounting principles. Though it does not prescribe which principles are to be considered as “generally accepted,” this is addressed through a Statement of Channel Islands Accounting Practice. The same law also sets qualifications for appointment as auditor.

199. Notwithstanding this, in 2004, authorities have said that the Commission will review:

- which accounting and auditing standards are adopted by issuers and issuers’ auditors respectively, with a view to determining whether they continue to be suitable; and
- methods of audit supervision adopted in other jurisdictions.

200. Any changes proposed would be subject to a period of consultation and legislative approval.

Contingency arrangements (CP 24)

201. The authorities have pointed out that the Commission already has regulatory powers (appointment of a manager, power to direct, and power of intervention) and procedures (including responsibilities of a manager appointed by the Royal Court) in place to manage the failure of a regulated entity. Indeed the Commission has used these powers and procedures in recent cases to facilitate the winding up of regulated entities.

202. The authorities have confirmed that the Commission will, however, develop its existing procedures in 2003 to manage the failure of a regulated institution by formalizing plans, training staff, and by ensuring that plans are appropriately tailored to the failure of an entity operating in any of the regulated sectors.

IV. JERSEY'S ACTION PLAN IN RESPONSE TO RECOMMENDATIONS

A. Introduction

Assessment of the Supervision and Regulation of the Financial Sector

203. In September 2002 and January 2003, the International Monetary Fund ("Fund") visited Jersey to carry out an assessment of Jersey's regulatory and anti-money laundering regimes. The Fund, at the request of the Financial Stability Forum, is engaged in a program of evaluations of offshore centers. The Fund was invited to conduct the evaluation of Jersey by Senator Walker, then President of the States of Jersey's Finance and Economics Committee.

204. During its visit, the Fund evaluation team examined the regulation of banks, funds, insurance, securities and trust company business. It also examined Jersey's anti-money laundering and anti-terrorist defenses. A report detailing the outcome of the review was issued by the Fund in two volumes and benchmarks Jersey against standards published by international standard setting bodies - the Basel Committee on Banking Supervision, the International Organization of Securities Commissions, the Offshore Group of Banking Supervisors (Statement of Best Practice for Trust and Company Service Providers), the International Association of Insurance Supervisors and the Financial Action Task Force on Money Laundering.

B. Response and Action Plan

Response to the Fund's Report

205. Jersey's authorities attach great importance to the Fund's assessment and consider that it is a valuable process which has clearly demonstrated Jersey's high degree of compliance with international standards.⁷ Jersey is committed to maintaining and improving its adherence to these international standards and welcomes the recommendations made within the report which will assist Jersey in strengthening its legal, regulatory and supervisory arrangements.

206. Jersey's authorities have:

- responded in some detail to matters raised in the report. These responses may be found in both volumes of the report; and

⁷ Set by the Basel Committee on Banking Supervision ("Basel Committee"), the International Organization of Securities Commissions ("IOSCO"), the Offshore Group of Banking Supervisors ("OGBS")(Statement of Best Practice for Trust and Company Service Providers), the International Association of Insurance Supervisors ("IAIS") and the Financial Action Task Force on Money Laundering ("FATF").

- established a comprehensive action plan, which is published here, to demonstrate how Jersey will respond, and in many cases has already responded, to the recommendations made by the Fund in its report.

Action Plan in Response to the Fund's Recommendations

207. The action plan is presented in the following sections:

- General recommendations;
- Banking sector-specific recommendations;
- Securities sector-specific recommendations [investment business, collective investment funds and other issuers of securities to the public];
- Trust company business sector-specific recommendations;
- Insurance sector-specific recommendations; and
- Anti-money laundering and countering the financing of terrorism recommendations.

208. Where appropriate, the action plan has grouped together proposed actions which are common to several recommendations made by the Fund.

C. Action Plan

General recommendations

209. The authorities welcome the Fund's confirmation that Jersey is compliant or largely compliant with 99 of the 102 international standards against which it was assessed, and its constructive recommendations to further enhance implementation of international standards, many of which support action planned or already underway at the time of the Fund's assessment.

No.	Subject	Action Plan
1	Relationship between the Commission and government	The Jersey Financial Services Commission ("Commission") intends to maintain its operational independence and, to this effect, has developed a model for independence, accountability and transparency arrangements, based on guidance and standards established by the Basel Committee, IOSCO, IAIS and the Fund. While most of the provisions of the model are either met or in the process of being met, enhancements to the Commission's accountability, independence and transparency, which will also address government's power of direction, will be recommended to the Economic Development Committee of the States of Jersey (and thereafter subject to a period of consultation and legislative approval).

No.	Subject	Action Plan
2	Commission supervisory resources	<p>The Commission reviews staff resource requirements on an annual basis during the process of establishing its annual business plan for the forthcoming year. The business plan for 2003 identified that additional staff resources were required to meet the supervision program and as a result the staff complement of the Compliance Division has been increased from 27 to 40 positions, of whom 35 are now in post. The increase in compliance staff includes the recruitment of a banking expert, who has considerable experience at a senior level within the banking industry, and who has joined the Commission at senior manager level to provide technical support to the banking team.</p> <p>The Commission has also approved the recruitment of an additional staff member to the Insurance Division, who will be appointed during 2003.</p> <p>To ensure that adequate skills and resources are devoted to tackling money laundering, the Commission proposes to have at least one anti-money laundering specialist in each division (one for each visit team in the Compliance Division), who will have appropriate training and will receive support to fulfill this role.</p> <p>The Commission will continue to review staffing requirements to support its objectives and comprehensive on-site supervision program, and to address, for example, the frequency of visits to license-holders and international developments such as the second Basel Capital Accord.</p>
3	Authority for on-site inspections	<p>The Commission already has wide information gathering powers, which allow it to carry out on-site supervisory visits.</p> <p>Subject to consultation and legislative approval, the Commission will recommend amending regulatory legislation to explicitly refer to the collection of information by the Commission through regular supervisory visits.</p>
4	Supervision of outsourced functions	<p>The Commission will not give its approval for an outsourcing arrangement which does not facilitate supervisory access to outsourced functions.</p> <p>Notwithstanding this, the Commission will review whether or not to extend its information gathering and investigation powers to those carrying out outsourced functions for regulated institutions, as well as to other third parties associated with a registered person for the purposes of its business, recognizing, in particular, difficulties in enforcing access to information held outside Jersey. Any changes proposed would then be subject to a period of consultation and legislative approval.</p>
5	Validation of supervisory information	<p>The Commission is to review the use of external experts in the validation of supervisory information, including its access rights to working papers of such experts, and any consequential amendments to regulatory legislation that may be required. Any changes proposed would then be subject to a period of consultation and legislative approval.</p>
6	Regulatory sanctions - administrative fines and monetary penalties	<p>The authorities note that they have already endorsed the proposition that the Commission should be able to impose fines for regulatory sanctions. There remain a number of legal issues to resolve before such powers could be approved for the Commission and the authorities will review these before consulting on the issue.</p>

No.	Subject	Action Plan
7	Regulatory sanctions—uniformity	Although the Commission does not consider that the absence of uniform powers across all sectors is a barrier to effective supervision, the Commission will undertake a general review of existing powers and sanctions to identify inconsistencies in the Commission's regulatory arsenal. In any event, the Commission is seeking to consolidate all of Jersey's existing regulatory legislation into one law, and, subject to consultation and legislative approval, regulation of deposit-taking, fund functionaries, and insurance business will be transferred to the Financial Services (Jersey) Law 1998 ("Financial Services Law").
8	Development of Codes of Practice	Codes of Practice are already in place for investment business and trust company business. In addition, Codes of Practice have been drafted by the Commission for deposit-taking, collective investment fund functionaries, and for insurance business, and, in the case of fund functionaries and insurance business, have already been issued for consultation. Consultation will follow for deposit-taking activities.
9	Management declarations on internal control	Currently, trust company businesses are required to submit a declaration to the Commission that they have complied with relevant regulatory and anti-money laundering legislation and Codes of Practice (which address corporate governance and internal control). The Commission intends to review whether or not directors (and senior management of branches) of all regulated businesses should be required to make such a declaration. Any changes proposed would then be subject to a period of consultation and legislative approval.
10	Regulation of external auditors	The Commission intends to review methods of audit supervision adopted in other jurisdictions to establish the options available to Jersey for appropriate oversight of the profession. The Commission also intends to review whether it should be permitted to approve the appointment (and continued appointment) of auditors of all regulated entities (subject to consultation and approval by the Economic Development Committee of the States of Jersey). The appointment and retention of auditors of trust company businesses and Category B insurance permit holders is already subject to approval by the Commission, and guidance is in place that establishes a requirement for relevant industry experience for auditors of trust company businesses.
11	Law enforcement process	The Commission will finalize a memorandum of understanding with the attorney general to formalize existing working practices for the enforcement of regulatory legislation and management of legislative breaches. The Commission's Enforcement Division will complete a review of its policies and procedures to ensure that law enforcement practices remain principled, practical and effective.
12	Revenue generated by the Registrar of Companies	The way in which Registry fees are set will be revised; in future (subject to consultation and legislative approval) companies' registration and annual return fees will consist of two components: Commission determined administration fees and a government determined fee, which the Commission will collect as agent.

Banking sector-specific recommendations

The authorities welcome the Fund's confirmation that Jersey is compliant or largely compliant with 29 of the 30 Basel Committee's Core Principles (and sub-principles), and its constructive recommendations to further enhance implementation of international standards, many of which support action planned or already underway at the time of the Fund's assessment.

1	Banking supervision regime	<p>The Commission, with support from outside consultants, has enhanced its on-site visit program to facilitate more effective and focused use of its Compliance Division's resources. The supervisory risk model has been enhanced, a comprehensive set of on-site visit work programs ("route planners") has been developed which covers all areas of banking risk, and improved quality control checks are being incorporated into the on-site visit process.</p> <p>In particular, route planners require review of management policies on credit quality and provisioning levels and application of policies and procedures to manage all other core banking risks.</p> <p>As noted above, the on-site supervision regime has been further enhanced by increases in staff resources in the Compliance Division.</p>
2	Banking Codes of Practice	<p>While failure to follow existing banking guidance notes is not a criminal or direct regulatory offense, it may indicate that a business is not "fit and proper" and therefore non-compliance can attract regulatory sanctions.</p> <p>Subject to consultation, the Commission will bring Codes of Practice for deposit-taking activities into force, which, inter alia, will:</p> <ul style="list-style-type: none">• introduce best practices for credit risk, for connected lending, for loan evaluation and loan loss provisioning and for other key banking risks;• establish requirements for an adequate internal control framework and for internal audit; and• address capital adequacy requirements. <p>The Commission will also review the merits in developing a credit risk rating system.</p>
3	Market risk	<p>The Commission will consider the introduction of market risk capital requirements as part of its assessment of the second Basel Capital Accord.</p>

Securities sector-specific recommendations

210. The authorities welcome the Fund's confirmation that Jersey has implemented or broadly implemented 21 of the 23 Principles against which it was assessed, and its constructive recommendations to further enhance implementation of international standards, many of which support action planned or already underway at the time of the Fund's assessment.

No.	Subject	Action plan
1	Communication of information to investors	<p>The Commission is to consult on transferring the regulation of fund functionaries to the Financial Services Law (which will be subject to legislative approval), and is already consulting on the introduction of Codes of Practice for fund functionaries. Both will facilitate regulatory focus on promotional literature for retail investment funds.</p> <p>On-site supervision will focus on the communication of information to investors. The Commission's risk model identifies fund functionaries marketing to retail investors as a higher risk indicator. A program of themed on- and off-site work will be carried out based on such information.</p> <p>The Commission will review the merits involved in shortening the filing deadline for financial statements, and, if a shorter deadline is considered to be appropriate, whether this should apply to all public companies under the Companies (Jersey) Law 1991 or just to those offering securities to the public, and/or to collective investment funds through Codes of Practice. Any changes proposed would be subject to a period of consultation and legislative approval.</p> <p>Amendments to Codes of Practice for investment business, which more explicitly address requirements for disclosure of information to investors, will be issued for consultation.</p> <p>The Commission has issued a consultation paper on advertising, which proposes imposing increased standards on all promotional communications used by investment businesses (excluding fund functionaries), and intends to finalize consultation and, subject to approval by the Economic Development Committee of the States of Jersey, bring legislation into force.</p>
2	Regulatory objectives	<p>The Financial Services Commission (Jersey) Law 1998 ("Commission Law") provides the Commission with statutory guiding principles (Article 7) which are substantially in line with the objectives set by international standard setting bodies.</p> <p>The Commission will, however, consider reviewing its guiding principles, as established in the Commission Law, with a view to emphasizing its commitment to IOSCO's objectives and to other international standards. Any changes proposed would then be subject to a period of consultation and legislative approval.</p>
3	Failure of a market intermediary	<p>The Commission already has regulatory powers (appointment of a manager, power to direct, and power of intervention) and procedures in place to manage the failure of a regulated entity. The Commission has used these powers and procedures in recent cases to facilitate the winding up of regulated entities.</p> <p>The Commission will, however, develop its existing procedures to manage the failure of a regulated institution by formalizing plans, training staff, and by ensuring that plans are appropriately tailored to the failure of an entity operating in any of the regulated sectors.</p>

4	Accounting and auditing standards	The Commission will review which accounting and auditing standards are adopted by issuers and issuers' auditors respectively, with a view to determining whether they continue to be suitable.
5	Registrar of Companies	The statutory responsibility of the Registrar of Companies will be recognized in the Commission's 2003 annual report.

Trust company business sector-specific recommendations

211. The authorities welcome the Fund's confirmation that Jersey's regulatory and supervisory framework for trust company business is consistent with all of the practices set out in the Offshore Group of Banking Supervisor's Statement of Best Practice, and the Fund's constructive recommendations to further enhance implementation of international standards.

No	Subject	Action plan
1	Definition of trust company business (scope of regulation)	The definition of trust company business was extensively discussed during the consultation process leading to the introduction of trust company business to the Financial Services Law. The Commission will, however, continue to review the scope of regulated activities, including the definition of trust company business, taking into account developments in international regulatory standards and risks presented by non-regulated activities.
2	Licensing process	The licensing process for trust company businesses has now been substantially completed. Remaining transitional applicants are either subject to some form of regulatory action or, due to exceptional circumstances, have committed to a particular date to either cease business or to resolve an outstanding issue prior to licensing. This process is to be completed.
3	Extension of registration regime to key employees	Regulatory sanctions and powers available to the Commission extend to all employees of regulated business, and not only to controllers and those in senior management positions ("principal persons"). The Commission will, however, review the basis for extending the definition of "principal person" to include a licensed person's money laundering reporting and compliance officer(s); and other key post-holders (to be specified at the time of consultation). Any changes proposed would be subject to a period of consultation and legislative approval.
4	Codes of Practice	Subject to consultation, Codes of Practice will be amended to refer explicitly to record keeping requirements for customers' and clients' records and to provide for maintenance of a policy and procedures manual.

Insurance sector-specific recommendations

The authorities welcome the Fund's confirmation that Jersey has observed or broadly observed all of the IAIS Core Principles, and its constructive recommendations to further enhance implementation of international standards, many of which support action planned or already underway at the time of the Fund's assessment.

No.	Subject	Action Plan
1	Requirements for insurers	Subject to consultation, Codes of Practice for insurers, which will establish corporate governance and internal control requirements and requirements for the appropriate use of derivatives, will be brought into force by the Commission.
2	Insurer solvency requirements	Solvency requirements currently in place for insurers are in line with international standards. The Commission will, however, continue to review developments in international standards, and in standards applicable to the offshore market in particular, to ensure that minimum legal solvency requirements remain consistent with international standards.

Anti-money laundering and countering the financing of terrorism recommendations

212. The authorities welcome the Fund's confirmation that Jersey complies or largely complies with all of the FATF 40+8 Recommendations against which it has been assessed, and its constructive recommendations to further enhance implementation of international standards, many of which support action planned or already underway at the time of the Fund's assessment. Jersey is equally committed to following the FATF's recently revised standards.

213. The Commission is already in the process of revising its Anti-Money Laundering Guidance Notes for the Finance Sector ("Guidance Notes") and in proposing changes to the Money Laundering (Jersey) Order 1999 ("Money Laundering Order"), which establish anti-money laundering requirements for the finance sector. The revised Guidance Notes and Money Laundering Order, once issued, will address many of the recommendations made by the Fund, issues raised by the FATF's recently revised Recommendations, and will incorporate the overriding principles established in the Commission's 2002 Position Paper.

No.	Subject	Action Plan
1	Ratification of International Conventions	The Terrorism (Jersey) Law 2002 came into force on September 1, 2003, and the UK government has been requested to extend its ratification of the UN Convention for the Suppression of the Financing of Terrorism to Jersey from that date. Jersey also expects to make similar requests for the 1959 Council of Europe Convention and the Palermo Convention.
2	Proposals to strengthen primary legislation	Jersey's authorities propose to consult on a number of changes to Jersey's primary anti-money laundering legislation. This consultation process will consider: <ul style="list-style-type: none">• civil forfeiture provisions, on the basis that consideration of such provisions has recently been proposed by the revised FATF Recommendations;• standardizing confiscation provisions, so that property of equivalent value might be confiscated under the Terrorism (Jersey) Law 2002 (as is already the case under the Proceeds of Crime (Jersey) Law 1999 and Drug Trafficking Offences (Jersey) Law 1988), and the sharing of terrorist assets is facilitated.

2		<ul style="list-style-type: none"> proposals to provide the Commission with explicit authority under anti-money laundering legislation to issue Guidance Notes (currently, the Guidance Notes are issued under the Commission Law); proposals for a direct reporting obligation for knowledge or suspicion of money laundering by financial services businesses (where such obligations do not already exist); proposals to amend the Second Schedule to the Proceeds of Crime (Jersey) Law 1999 to extend the scope of the Money Laundering Order to include the Financial Services Law definition of trust company business; and increasing powers available to the Joint Financial Crimes Unit (“JFCU”) to facilitate access to additional information and increase access to additional sources of data without the need for a court order, and to allow it to give instructions to financial services businesses.
3	Proposals to strengthen secondary legislation and guidance for the finance sector	<p>The Commission proposes to consult on a number of changes to Jersey’s anti-money laundering framework for the finance sector. The consultation process will consider revisions to the Guidance Notes and proposals to enhance the Money Laundering Order. This consultation process will consider proposals:</p> <ul style="list-style-type: none"> for secondary legislation to require financial services businesses to report suspicions directly to the JFCU in a prescribed format; to require financial services businesses to re-verify the identity of customers when doubts appear as to their identity; to re-examine the basis for allowing concessions to financial services businesses subject to the European Union Money Laundering Directive; to require financial services businesses to establish a compliance officer role, and to register that officer (along with the money laundering reporting officer) with the Commission; to implement necessary provisions to enable Jersey to comply with the FATF’s Special Recommendation VII on wire transfers, in line with the timetable established by the FATF; to require financial services businesses to apply anti-money laundering standards equivalent to those in place in Jersey to subsidiary and branch operations outside Jersey; to require financial services businesses to take decisions concerning high risk customers at senior management level; for secondary legislation to explicitly require financial services businesses to maintain sufficient transaction records to enable investigating authorities to compile a satisfactory audit trail; for explicit requirements for financial services businesses to pay special attention to complex or unusual transactions, and complex or unusual patterns of transactions, and transactions involving jurisdictions that do not have adequate systems in place to prevent or deter money laundering or terrorist financing;

		<ul style="list-style-type: none"> • for financial services businesses to be required to establish procedures to report suspicious business that has been turned away; and • that will ensure ready access by financial services businesses to identification documentation for underlying beneficial owners held by third parties.
4	Guidance Notes framework	<p>The Commission is in the process of revising its Guidance Notes. It is intended that the revised Guidance Notes will clearly set out legislative and regulatory requirements and will contain a description of Jersey's legal framework, discussion of typologies and trends in money laundering and terrorist financing, and hypothetical and illustrative cases. The revised Guidance Notes will also enhance guidance specific to each industry sector to assist in the identification of suspicious activity and will propose specific requirements such as the need for banks to monitor customer activity on a consolidated basis and the need for insurers to carry out additional procedures where insurance payouts are made to third parties.</p>
5	Supervision regime	<p>Route planners have been updated to ensure that:</p> <ul style="list-style-type: none"> • levels of suspicion reporting are considered during on-site visits (in light of activities and customer base); and • an assessment is made of how financial services businesses determine the effectiveness of staff training on money laundering.
6	Codes of Practice	<p>Codes of Practice are already in place for investment business and trust company business, which establish requirements to vet and monitor the competence and probity of employees.</p> <p>In addition, Codes of Practice have been drafted by the Commission for deposit-taking, collective investment fund functionaries, and for insurance business, and, in the case of fund functionaries and insurance business, have already been issued for consultation. Consultation will follow for deposit-taking activities. Each will establish requirements to vet and monitor the competence and probity of employees.</p>
7	Grounds for imposing regulatory sanctions	<p>The grounds for imposing regulatory sanctions are already sufficiently broad to enable their use in the event that a business fails to comply with procedures to counter money laundering and financing of terrorism.</p> <p>However, the Commission will:</p> <ul style="list-style-type: none"> • make a firm statement that the integrity of a person working within the regulated sector will be questioned where the person has been convicted of a serious offense (i.e. one which has resulted in a term of imprisonment exceeding one year); and • subject to consultation, amend its regulatory Codes of Practice to include a requirement to comply with legislation to counter money laundering and financing of terrorism, and principles established in the Guidance Notes, where such a requirement does not already exist.

8	Oversight of other financial activities	<p>The Commission is already giving consideration to legislation to provide for the oversight of money services businesses [money transmitters, check cashers and bureaux de change].</p> <p>The Commission intends to review whether or not there should be oversight of compliance with anti-money laundering requirements by other non-regulated sectors such as lending and nonfinancial leasing, taking into account the risk of money laundering activity occurring. Any changes would be considered as part of the consultation on changes to Jersey's anti-money laundering framework.</p>
9	Oversight of charities	<p>The Commission already has access to information on any nonprofit organization or charity which is administered by a trust company business or which issues securities. Notwithstanding this, the Commission has established a working party, which will consider proposals for oversight arrangements for nonprofit and charitable organizations.</p>
10	JFCU resources	<p>The authorities reaffirm that they will ensure that the Joint Financial Crimes Unit has sufficient resources to meet its domestic and international obligations.</p>
11	JFCU systems	<p>The JFCU is currently in the process of testing a prototype replacement IT system which will enhance the analysis capability of the JFCU, facilitating improved analysis of trends and provision of improved feedback to industry. The new system will also speed up data processing and allow for electronic archiving of documents. The JFCU has upgraded its computer link with the UK's National Criminal Intelligence Service thereby ensuring that search requests are processed quickly and efficiently.</p> <p>The JFCU intends to update existing systems following satisfactory testing.</p>
12	JFCU action plan	<p>A high level business plan for the JFCU is already produced as part of the States of Jersey Police annual business plan.</p> <p>The JFCU and the attorney general will consider developing a more detailed plan including overseas requests for assistance and serious and complex fraud.</p>
13	Regulation of Investigatory Powers	<p>The draft Regulation of Investigatory Powers (Jersey) Law 200- has been lodged with the States of Jersey for debate.</p>
14	Cross-border cash movements	<p>Law enforcement authorities are authorised to seize money being imported or exported from the Island where there are reasonable grounds to suspect that money, directly or indirectly, represents the proceeds of drug trafficking or terrorist cash.</p> <p>The authorities will consider proposals to amend the Proceeds of Crime (Jersey) Law 1999, which will, subject to consultation, introduce provisions by which authorised officers may seize and detain cash if suspected that it directly or indirectly represents any person's proceeds of criminal conduct.</p>