

**IMMEDIATE  
ATTENTION**

SM/03/379  
Volume II

November 19, 2003

To: Members of the Executive Board

From: The Secretary

Subject: **Jersey—Publication of Offshore Financial Sector Assessments—  
Volume II—Detailed Assessment of Observance of Standards and Codes**

Attached for the **information** of Executive Directors is Volume II of the staff's assessment of the offshore financial sector of Jersey, concerning the detailed assessment of observance of standards and codes. 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.

Att: (1)

Other Distribution:  
Department Heads



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



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

**Jersey**

**October 2003**

“The contents of this report constitute technical advice and recommendations given by the staff of the International Monetary Fund (IMF) to the Jersey authorities in response to their request for technical assistance. With the written authorization of the recipient’s country authorities, this report (in whole or in part) or summaries thereof may be disclosed to IMF Executive Directors and their staff, and to technical assistance providers and donors outside the IMF. Disclosure of this report (in whole or in part) or summaries thereof to parties outside the IMF, other than technical assistance providers and donors, shall require the written authorization of the recipient country’s authorities and the IMF’s Monetary and Financial Systems Department.”



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## GLOSSARY

AML	Anti-Money Laundering
ARG	Audit and Regulatory Group
BBL	Banking Business (Jersey) Law 1991 as amended
BCA	Basel Capital Accord
CAD	Capital Adequacy Directive
CEL	Customs and Excise (Jersey) Law 1999
CFT	Combating the Financing of Terrorism
CIF	Collective Investment Fund
CIFL	Collective Investment Funds (Jersey) Law 1988
CJFOL	Criminal Justice (Forfeiture Orders)(Jersey) Law 2001
CJL	Criminal Justice (International Cooperation) (Jersey) Law 2001
CMO	Customer Money Order
Commission	Jersey Financial Services Commission
CP	Core Principle
DTOL	Drug Trafficking Offences (Jersey) Law 1988
FSB	Financial Service Business
FSL	Financial Services (Jersey) Law 1998
FSCL	Financial Services Commission (Jersey) Law 1998
FATF	Financial Action Task Force
F&E	Finance and Economics
FSA	U.K. Financial Services Authority
FT	Financing of Terrorism
GAAP	Generally Accepted Accounting Principles
GAD	Government Actuary's Department in London
GPO	General Provisions Order
IAIS	International Association of Insurance Supervisors
IAE	Independent Anti-Money Laundering Expert
IBL	Insurance Business (Jersey) Law 1996
IOSCO	International Organization of Securities Commissions
JCRA	Jersey Competition Regulatory Authority
JFCU	Joint Financial Crimes Unit
LEG	Legal Department
MER	Mutual Evaluation Report of the Offshore Group of Banking Supervisors of 1999
MFD	Monetary and Financial Systems Department <sup>1</sup>
MLO	Money Laundering (Jersey) Order 1999
MLRO	Money Laundering Reporting Officer
MOU	Memorandum of Understanding
MSB	Money Service Business
NCCT	Non Cooperative Countries and Territories

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<sup>1</sup> 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.

OECD	Organization for Economic Cooperation and Development
OGBS	Offshore Group of Banking Supervisors
POCL	Proceeds of Crime (Jersey) Law 1999
PFL	Police Force (Jersey) Law 1974
SRO	Self Regulatory Organization
SEC	Securities and Exchange Commission
STR	Suspicious Transaction Report
States	Parliament of Jersey
TL	Terrorism (Jersey) Law 2002

## **I. BASEL CORE PRINCIPLES FOR EFFECTIVE BANKING SUPERVISION**

### **A. General**

1. This assessment of Jersey's compliance with the Basel Core Principles for Effective Banking Supervision has been completed as part of the IMF offshore financial sector (OFC) assessment program.<sup>2</sup> Completion of a formal assessment serves several purposes. First, it benchmarks the current state of banking 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 (CP). The assessment team expresses its thanks to the staff Commission who cooperated in the completion of the assessment.

#### **Information and methodology used for assessment**

2. This assessment of the effectiveness of banking supervision was based on an examination of the legal framework, both generally and as specifically related to the financial sector, the self-assessment of the CPs, and extensive discussions with the staff of the Jersey Financial Services Commission (Commission), the external auditors, and the management of commercial banks.

#### **Institutional and macro prudential setting, market structure**

3. Jersey's financial 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 secure legal environment; a convenient location close to the main European financial markets; and experienced private sector professionals and firms accustomed to providing wealth-management services. At the end of June 2002, 62 banks were registered compared with 70 a year earlier. The decrease reflects the continuing consolidation in the international industry, and the ongoing pressure within groups to streamline operations and reduce duplication. There are 38 subsidiaries and 24 branches of banks from 16 different countries.

4. The Commission is a statutory body corporate, set up under the Financial Services Commission (Jersey) Law 1998 (FSCL). 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 Parliament also known as States of Jersey through the Finance and Economics Committee (F&E).

5. The legislation relating to banking is the Banking Business (Jersey) Law, 1991 (BBL). 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

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<sup>2</sup> The Basel Core Principle assessment was conducted by Jack Heyes and Marcel Maes (Consultants MFD)

conditions on licensees and provides for penalties for breaches of the legislation and for the revocation of licenses.

### **General preconditions for effective banking supervision**

6. Jersey has a sound and generally effective framework for the regulation and supervision of banking activity. Jersey's effective licensing authority is supplemented by comprehensive criteria to ensure a consistent understanding of permissible activities and requirements.
7. The Commission prescribes that banks maintain minimum risk based capital requirement of 10 percent and where appropriate a higher minimum requirement can be imposed on individual institutions.
8. The Commission has developed guidance in the form of route planners to ensure a consistent approach for conducting its inspections. Route planners have recently been developed for corporate governance and credit risk.
9. 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 FSC 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.
10. The legislation and secondary regulations, which govern bank accounting, represent a valid basis for the supervisory authority. Jersey incorporated banks must produce "true and fair" audited accounts to the Commission.
11. 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.
12. The Commission has wide gateways for the sharing of information with home and host country supervisors.

## B. Detailed Assessment

Table 1. Detailed Assessment of Compliance with the Basel Core Principles

<b>Principle 1</b>	<p><b>Objectives, Autonomy, Powers, and Resources</b></p> <p>An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks. Each such agency should possess operational independence and adequate resources. A suitable legal framework for banking supervision is also necessary, including provisions relating to the authorization of banking establishments and their ongoing supervision; powers to address compliance with laws, as well as safety and soundness concerns; and legal protection for supervisors. Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.</p>
<b>Principle 1(1)</b>	<p>An effective system of banking supervision will have clear responsibilities and objectives for each agency involved in the supervision of banks.</p>
Description	<p>The Commission, through its Board of Commissioners, is responsible for the supervision of the banking industry of Jersey. The Commission took over the responsibilities of the Financial Services Department on July 1, 1998. The Commission is the sole regulator of banks in Jersey.</p> <p>The FSCL and the Banking Business (Jersey) Law (BBL) lay out the Commission's objectives and responsibilities with respect to banking supervision.</p> <p>Article 7 of the Commission Law states that the Commission shall in particular have regard to:</p> <p>The reduction of risk to the public of financial loss due to dishonesty, incompetence or malpractice by, or the financial unsoundness of, persons carrying on the business of financial services in or from within Jersey;</p> <p>The protection and enhancement of the reputation and integrity of Jersey in commercial and financial matters; and</p> <p>The best economic interests of Jersey. This is supplemented by Article 5 of the Commission Law that states, "The Commission shall be responsible for:</p> <ul style="list-style-type: none"> <li>the supervision and development of financial services provided in or from within Jersey;</li> <li>providing the States of Jersey (the States), any Committee of the States or any other public body with reports, advice, assistance and information in relation to any matter connected with financial services;</li> <li>preparing and submitting to the F&amp;E Committee recommendations for the introduction, amendment or replacement of legislation appertaining to financial services, companies and other forms of business structure; and</li> <li>such functions in relation to financial services or such incidental or ancillary matters."</li> </ul> <p>The BBL is based upon the U.K. Banking Act 1987. It is scheduled for replacement in 2003 via an extension of FSL, which currently extends to investment and trust company business.</p> <p>Article 6 of the BBL states that the Commission is responsible for the supervision of persons registered under that law.</p> <p>In addition to this, the Commission's annual report states that its key purpose is "to maintain Jersey's position as an international finance center with the highest regulatory standards by: reducing risk to the public;</p> <ul style="list-style-type: none"> <li>• protecting and enhancing Jersey's reputation and integrity;</li> <li>• safeguarding Jersey's best economic interests; and in pursuit of the above</li> <li>• contributing to the fight against financial crime."</li> </ul>

	<p>Article 9 of the BBL (which deals with the refusal and revocation of registration) together with the Commission's published Guide to the Banking Business (Jersey) Law 1991 (guidance notes) and policy statements set out minimum criteria for the licensing of banks.</p> <p>The nature of the banking environment within Jersey reflects the fact that the vast majority of banks are branches or subsidiaries of major international banks with parents operating from other jurisdictions such as the United Kingdom, France, Germany, Canada, and the United States.</p> <p>In the case of a Jersey incorporated bank, the Commission has the power to apply to the royal court under the Companies (Jersey) Law 1991 for the winding up of the company, where there are just and equitable grounds to do so. The Commission has never had to exercise this power.</p> <p>In addition to this, the BBL provides the Commission with a range of powers to deal with banks that fail to meet regulatory requirements. The key powers are:</p> <ul style="list-style-type: none"> <li>• the issue of a condition on a license under Article 10 of the BBL;</li> <li>• the removal of an existing shareholder/controller under Article 14 of the BBL;</li> <li>• the removal of a director or manager under the Third Schedule of the Business Banking (General Provisions) (Jersey) Order 1991 (GPO);</li> <li>• a restriction on the sale of shares under Article 16 of the BBL;</li> <li>• the appointment of reporting accountants under Article 25 of the BBL;</li> <li>• the appointment of inspectors under Article 27 of the BBL; and</li> <li>• revocation of registration under Article 9 of the BBL.</li> <li>• the issue of a public statement under Article 45B.</li> </ul> <p>The BBL was introduced in 1991 and has been amended on seven occasions since, most recently in March 2002.</p> <p>It is expected that banking legislation will be further amended in 2003. An amendment is proposed to consolidate the Commission's existing regulatory structure, as well as to ensure that Jersey legislation remains effective and relevant to changing international standards concerning banking supervision. This amendment will be achieved via revoking the BBL and expanding the FSL to encompass deposit-taking business.</p> <p>As a result of this change, the Commission will be able to petition the royal court to appoint managers to take over the operation of a registered person (licensed bank). The Commission will also have powers to issue Codes of Practice in relation to banking activities, which can be updated without the need for amendment of primary legislation. All powers to collect information and to take enforcement actions will be identical for banks, investment business, and trust company business.</p>
Assessment	Largely compliant
Comments	<p>On November 19, 1999, the Report on the Review of Financial Regulation in the Crown Dependencies (the "Edwards Report") was published. Mr. Edwards had been asked by the Home Secretary to review with the Insular Authorities their laws, systems and practices regulating their financial centers including collaborating with overseas regulators, dealing with financial crime and registering companies. A Task Force was set up and asked the Commission to consider all of the Report's conclusions, take action in areas within its own competence and give advice to the Task Force on other matters. Much has been done to establish the recommendations arising from the report.</p> <p>One of the Report's recommendations addressed the need of the Commission to be, and perhaps just as importantly be seen to be entirely independent of the government. It has therefore agreed that there should be no political representative on the Board of Commissioners. The Task Force has</p>



	<p>also accepted that the Commission should not be responsible for the promotion of Jersey's finance industry.</p> <p>However, Article 5 of the Commission Law confers on the Commission the responsibility, among other things, to develop the financial services provided in or from within Jersey. The Commission has interpreted this as permitting it to develop legislation and procedures to allow it to adequately carry out its supervisory role.</p> <p>Notwithstanding this, the objective is capable of being interpreted in a way that would clearly not be pursued by any supervisory authority. Furthermore, its presence could be perceived as impairing the judgment and independence of the supervisor, though there is no evidence that it has done so.</p> <p>The BBL empowers the Commission to set supervisory policy and to provide administrative guidance notes. Compliance with these guidance notes is directly relevant to a bank's regulated status and any assessment of the fitness and properness of its principals. Noncompliance with the guidance notes is regarded by the Commission as an indication of improper conduct under Article 9 of the BBL. However, unlike Codes, failure to follow any part of the guidance notes does not itself provide the Commission with express power to revoke registration or to issue a public statement (though these powers are available to the Commission within the context of improper conduct). The Mission welcomes the Commission's initiative to develop and implement Codes of Practice for deposit taking.</p> <p>The planned extension of the FSL to deposit-taking business will provide the Commission with a firm legal basis upon which to issue Codes of Practice for deposit-takers.</p>
<b>Principle 1(2)</b>	<b>Each such agency should possess operational independence and adequate resources.</b>
Description	<p>The Commission operates independently from the government and industry. The Commission's Board of Commissioners is composed of nine non-executive members and they include practitioners from within the finance industry, users of the industry, and representatives of the public interest. The director general is the only executive member of the Commission.</p> <p>The States appoints Commissioners. Vacancies are advertised and the Commission makes its recommendation to the Finance and Economic Committee (F&amp;E). Commissioners must have the necessary qualifications set out in Article 3 of the Financial Services Commission Law(FSCL). The process of appointing Commissioners is overseen by the independent Commission of Appointments.</p> <p>Commissioners are appointed for a period of three years. This appointment is renewable. The First Schedule of the Commission Law provides that Commissioners' appointments can be terminated in only very specifically defined circumstances.</p> <p>In order to prevent any conflicts of interest, commissioners are required to disclose outside activities and investment holdings, on appointment and subsequently on any change. Commissioners must not participate in decisions where they have a conflict of interest.</p> <p>Under Article 11 of the Commission Law, the F&amp;E Committee may give guidance and directions to the Commission. "Guidance" is not binding and "directions" can only be "general." It is likely that guidance and directions given to the Commission in relation to other policies of the States, which the Commission is expected to have regard to or follow, such as those relating to population and immigration policies. The Committee has as yet given no guidance or directions. The Committee has no role in respect of regulatory decisions by the Commission.</p> <p>The Board is accountable, through the F&amp;E Committee, to the States for the performance of the Commission. The chairman and director general regularly meet the president of the F&amp;E Committee, or his representative, and the Committee as a whole.</p> <p>The Board prepares an annual report and a business plan. These are submitted to the Committee and the Committee's assessment of them is discussed at an annual meeting of the Board and Committee. The Committee has recently appointed an executive officer to assist it with this process.</p>

	<p>The business plan is primarily a working document, identifying the task for the year ahead, so that each member of staff knows what is expected of them and how they contribute to meeting the Commission's objectives.</p> <p>It also acts as a key tool for the Commissioners to check that the executive is focusing on the overall Commission strategy, as well as to enable the Commissioners to monitor efficiency and effectiveness.</p> <p>Commission's staff has significant experience and holds a range of professional qualifications, including those offered by the Institute of Chartered Secretaries; Association of Chartered Certified Accountants; Institute of Bankers; Institute of Chartered Accounts of England and Wales and the Securities Institute. A number have worked within the Commission for many years. Divisions generally consist of staff with a range of complimentary skills, and mechanisms have been put in place to ensure the efficient transfer of skills between staff where necessary.</p> <p>However, reference must be made at this point to the comments under BCP 16 as to the presence of a significant qualitative and quantitative resource deficit.</p> <p>All employees are subject to the Commission's staff handbook. This covers, inter alia, guidelines on gifts and hospitality, confidentiality, and conflicts of interest. All employees are required to complete and sign a declaration concerning confidentiality and conflicts of interest, and this includes a confirmation that an unauthorized disclosure of information is an act of gross misconduct that could result in instant dismissal.</p> <p>In order to ensure its salary scales are competitive, the Commission recently undertook a job evaluation exercise. This exercise led to the development of job hierarchies where jobs are grouped by skill requirement. This has resulted in the creation of pay bands for different groups of staff. The precise level of remuneration of a member of staff in that pay band is dependent upon individual performance. To ensure that the Commission's pay structure remains competitive it has access to local surveys of salaries in the finance industry. The annual review is conducted to ensure that both the job hierarchies and pay bands remain up to date.</p> <p>The Commission makes use of secondees that have expertise in particular areas. In addition, it is able to hire or consult with outside experts should the need arise. An arrangement currently exists with KPMG International in the U.K. for a secondment of four weeks per year where the specialist resource provided can be used to address relevant projects where a need has been identified. A statistician from Ernst &amp; Young has recently finished a secondment for 12 months during which time she worked on the analysis of the quarterly prudential returns and large exposure reports. Two external consultants have recently been appointed to assist in the re-writing of the anti-money laundering (AML) guidance notes.</p> <p>The Commission may, and often does, require the appointment of one or more competent persons under Article 25 of the BBL to investigate and produce a report for submission to the Commission. Those appointed, typically lawyers and accountants are given wide powers to collect information on the institution or individual which is the subject of the investigation.</p> <p>The Commission's approach to training is proactive. Skills gap analysis has been conducted for all staff and the results compared to a list of the skills and qualifications considered desirable for the different divisions.</p> <p>Staff are actively encouraged to obtain relevant professional qualifications and as at March 31, 2002, 26 members of staff held professional qualifications and 10 members of staff held technical qualifications. A further six staff members were studying for professional qualifications. Staff also has the opportunity to be seconded to other relevant positions. This may be as a placement with an entity in the finance sector in Jersey, to enable them to gain relevant experience, or to entities outside of Jersey. For example, a member of staff has recently been seconded to the</p>
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	<p>Financial Services Audit group of Deloitte &amp; Touche in London, where he is gaining experience to be used when he returns to the Commission.</p> <p>Staff regularly attend conferences and seminars and attendees are required to share the knowledge that they gain from attending with other members of staff. Staff are required to evaluate training courses to assess their desirability for others.</p> <p>The Commission has a yearly training budget covering in house courses, professional qualifications and conference fees.</p> <p>In-house training courses partly address banking issues. Other training courses offered include FSA regulation of banking, AML, on-site/off-site supervision, banking supervision leadership, capital adequacy and risk regulation, and risk management.</p> <p>All staff have personal development reviews which assess them against the core competencies for their role and from which a developmental action plan can be developed. This action plan is reviewed every six months.</p> <p>The Commission is audited annually by PricewaterhouseCoopers, external auditors, who were appointed by the F&amp;E Committee in accordance with Article 20 of the Commission Law. The Board has also recently instigated an audit committee to enhance still further its adherence to the principles of corporate governance.</p> <p>Fees paid by the finance sector fund the Commission. The F&amp;E Committee, on the recommendation of the Commission, sets the level of fees paid by the industry.</p> <p>As a rule, the F&amp;E Committee has always concurred with the Commission's recommendations. However, the last time the Commission approached the F&amp;E Committee for approval of fee increases related to just one regulated sector the F&amp;E Committee suggested that it would prefer to see an annual review of all areas for which the Commission is responsible.</p> <p>The Commission will therefore be carrying out an exercise during 2002 to review all regulatory fees and the basis upon which they are calculated, with a view to moving to an annual, industry-wide adjustment in the future.</p> <p>The Commission has an objective to build up its own reserves to an amount equal to six months' costs.</p> <p>A negotiated contribution is paid to the States' Treasury. In 2001, the Commission's contribution to the states amounted to £3.5 million.</p> <p>The Commission's annual report, which is a public document, is also laid before the States each year. These provide the essential element of the accountability framework that governs the relationship between the Commissioners and the F&amp;E Committee.</p> <p>Statistics on the size of the Jersey banking sector are published on a quarterly basis. The Commission participates in the ongoing collection and provision of data for international initiatives of the Bank for International Settlements (BIS).</p> <p>Banks are required to produce publicly available audited accounts.</p>
Assessment	Largely compliant
Comments	<p>As noted above, one of the report's recommendations addressed the need of the Commission to be, and perhaps just as importantly, be seen to be entirely independent of government.</p> <p>However, Article 11 of the Commission Law confers the F&amp;E Committee the authority to give guidance and give in writing directions to the Commission in relation to supervision, development and promotion of financial services in Jersey and the manner in which any function of the Commission is to be carried out.</p>

	<p>Article 11 also stipulates that it shall be the duty of the Commission in carrying out any of its functions to have regard to any guidance and to act in accordance with any directions given to it by the F&amp;E Committee under this article.</p> <p>Although these directions can only be of a general nature and have never been formulated in the past Article 11 potentially impairs the independence of the supervisory and regulatory body.</p> <p>The Commission has to be commended for the consolidation of the regulatory legislation that has been undertaken as well as for the substantial progress that has been realized in order to develop and enhance the supervisory process.</p> <p>However, these developments represent a heavy burden in terms of resources. The annual business plan identifying the upcoming task as well as the necessity to continue the development of an adequate on-site and off-site supervisory approach illustrate the need to strengthen the resources of the Commission . This view is also corroborated by the analysis of the Commission costing information regarding its five supervisory responsibilities (i.e., without the registrar function, which has been historically allocated to the Commission).</p> <p style="text-align: center;">Commission Direct Costing of Supervisory Responsibilities (In percent)</p> <table><tr><th>Total</th><th>Funds</th><th>Trust Companies</th><th>Inv. Bus</th><th>Banks</th><th>Insurance</th></tr><tr><td>100</td><td>30</td><td>28</td><td>18</td><td>16</td><td>8</td></tr></table> <p>The case for additional resources should benefit from an in-depth analysis of the supervisory objectives and the means needed to fulfill those objectives. A review of the business process of prudential supervision should be organized in order to enhance its efficiency and an appropriate change process should be agreed upon in the near future. The diversification and growing complexity of the financial products should thereby be acknowledged.</p> <p>The Mission welcomes the Commission's recent review of its resource requirements undertaken in the development of the business plan for 2003 and notes that to meet these resource requirements the staff complement of the Compliance Division has been increased to 40 staff, with 35 currently in post, one of whom is an additional senior manager with significant banking industry experience.</p> <p>Jersey will also need to continue to have due regard to other developments in international standards, whether arising from pronouncements by the international regulatory bodies or through other international initiatives.</p>	Total	Funds	Trust Companies	Inv. Bus	Banks	Insurance	100	30	28	18	16	8
Total	Funds	Trust Companies	Inv. Bus	Banks	Insurance								
100	30	28	18	16	8								
Principle 1(3)	A suitable legal framework for banking supervision is also necessary, including provisions relating to authorization of banking establishments and their ongoing supervision.												
Description	<p>Under Article 6 of the Commission Law the Commission is solely responsible for the granting of and withdrawal (revocation) of banking licenses.</p> <p>The BBL empowers the Commission to set policy and to provide administrative guidance without the need to amend primary legislation. Where guidance is not followed, then Article 10 of the BBL provides for conditions to be imposed on registration (which are enforceable), and Article 9 for revocation of registration, where circumstances exist which are likely to lead to the improper conduct of business.</p> <p>Inter alia, guidance notes, which are to be superseded by Codes of Practice for deposit-taking activities, address the following areas:</p> <ul style="list-style-type: none"><li>• information to be supplied on application for registration;</li><li>• financial risk, including capital adequacy, large exposures, and liquidity; and</li><li>• operational risk assessment, including corporate governance and internal controls.</li></ul>												

Assessment	Largely compliant
Comments	<p>The banking industry has been subject to regulation for many years, allowing a body of guidelines to build up (modeled on the U.K.'s requirements).</p> <p>The BBL empowers the Commission to set supervisory policy and to provide administrative guidance notes. Compliance with these guidance notes is directly relevant to a bank's regulated status and any assessment of the fitness and properness of its principals. Noncompliance with the guidance notes is regarded by the Commission as an indication of improper conduct under Article 9 of the BBL. However, unlike Codes, failure to follow any part of the guidance notes does not itself provide the Commission with express power to revoke registration or to issue a public statement (though these powers are available to the Commission within the context of improper conduct). The Mission welcomes the Commission's initiative to develop and implement Codes of Practice for deposit-taking.</p> <p>However, the planned extension of the scope of the Financial Services (Jersey) Law 1998 (FSL), in order to include deposit-taking activities, and to repeal the BBL will provide the Commission with a firm legal basis upon which to issue and enforce prudential rules, all of which are currently in the form of guidance notes. The latter will be transferred into a number of proposed Codes.</p> <p>The opportunity has also been taken to review the existing guidance notes against current best practices, and, in particular, international requirements laid down by the Basel Committee in order to reflect current international best practice.</p> <p>Under the FSL the Commission would also be expressly enabled to refuse or revoke a registration if it had reason to believe at any time that there has been a failure on the part of an applicant or a registered person to follow a Code of Practice issued under that Law.</p>
<b>Principle 1(4)</b>	A suitable legal framework for banking supervision is also necessary, including powers to address compliance with laws, as well as safety and soundness concerns.
Description	<p>Article 6 of the BBL states that "the Commission shall have the powers conferred on it by this Law and the duty generally to supervise the persons registered by it in the exercise of those powers." It does this through a combination of on and off-site supervisory techniques, using a power to obtain information under Article 25 of the BBL.</p> <p>The Compliance Division takes responsibility for both on-site visits and off-site prudential analysis of banking returns. The Enforcement Division investigates suspected breaches of the BBL. Furthermore, the Commission can appoint others to conduct investigations on its behalf (Article 27 of the BBL).</p> <p>Article 9(1)(b) of the BBL allows the Commission to refuse to grant an application or to revoke registration where it suspects that business may be improperly conducted.</p> <p>Article 25 of the BBL provides the Commission with unfettered access to all banks' files.</p> <p>There are a number of actions that the Commission may take (or may require registered persons to take) in order to remedy a particular situation. The response will be measured against the perceived gravity of the noncompliance.</p> <p>The taking of prompt remedial action may include:</p> <ul style="list-style-type: none"> <li>• the issue of a condition on the license under Article 10 of the BBL;</li> <li>• the removal of an existing shareholder/controller under Article 14 of the BBL;</li> <li>• a restriction on the sale of shares under Article 16 of the BBL;</li> <li>• the appointment of inspectors under Article 27 of the BBL;</li> <li>• the ability to make public statements under Article 45B of the BBL; and</li> <li>• revocation of registration under Article 9 of the BBL.</li> </ul>
Assessment	Largely compliant

Comments	<p>The range of sanctions that can be administered by the Commission is to be completed by the power to impose civil or administrative money penalties. The mission has been informed that the Commission will seek powers to fine.</p> <p>Other missing powers are:</p> <p>the issuance of directions, though license conditions can have the same effect;</p> <p>the appointment of a temporary manager to oversee the affairs of the bank, though it is unlikely that such a power would be used, given the strict criteria applied to licensing.</p> <p>The ongoing review of the banking legislation will also address the introduction of modern procedures enabling business rescue rather than insolvency.</p>
<b>Principle 1(5)</b>	A suitable legal framework for banking supervision is also necessary, including legal protection for supervisors.
Description	<p>Article 8A of the Commission Law and Article 6A of the BBL provide that “no person or body to whom this Article applies shall be liable in damages for anything done or omitted to be done in the discharge or purported discharge of any functions under this Law or any enactment made, or purportedly made, under this Law unless it is shown that the act or omission was in bad faith.”</p> <p>The Commission has adequate insurance arrangements to cover the cost of defending any actions, which have occurred during the discharge of its duties. This includes actions taken against members of staff in breach of Article 8A of the Commission Law or Article 6A of the BBL so long as they have acted in the proper performance of their duties.</p>
Assessment	Compliant
Comments	
<b>Principle 1(6)</b>	Arrangements for sharing information between supervisors and protecting the confidentiality of such information should be in place.
Description	<p>There are high levels of cooperation between the Commission and law enforcement bodies, including police and customs. Specifically, it has formed a Jersey Financial Fraud Information Network consisting of representatives of the Commission, the Law Officers’ Department (which is headed by the attorney general), the Joint Financial Crimes Unit (Jersey’s financial intelligence unit), the Viscount’s Department (the viscount, if the executive officer of the royal court), the Regulation of Undertakings Department (a government department), and the Comptroller of Income Tax (also a government department).</p> <p>The Commission has appropriate gateways under both the Commission Law and the BBL to cooperate with foreign regulators.</p> <p>Article 8 of the Commission Law allows the Commission, in connection with the carrying out of its functions, to:</p> <ul style="list-style-type: none"> <li>• seek and exchange information relating to the supervision, development and promotion of financial services in Jersey, and the supervision and development of similar services carried on outside Jersey;</li> <li>• consult and seek the advice of such persons or bodies whether inside or outside Jersey as it considers appropriate;</li> <li>• publish, in such manner as it considers appropriate, such information relating to its functions as it thinks fit; and</li> <li>• provide advice, assistance or services to any person with a view to securing the efficient and effective provision of financial services in or from within Jersey.</li> </ul> <p>In furtherance of this, Article 45A of the BBL allows the Commission to exercise a number of powers in order to assist another supervisor, including the power to obtain information and documents under Article 25 of the BBL and to undertake investigations under Article 27 of the BBL.</p>

	<p>In addition to these powers, the Commission has entered into a number of MOUs with overseas regulatory bodies conducting similar activities to those of the Commission. There is not, however, a requirement for an MOU to be in place before information can be shared.</p> <p>Where information is exchanged there are specific requirements to maintain confidentiality of restricted information as set out in Article 41 of the BBL (see below for details). Pursuant to any disclosure under Article 45A, undertakings as to the confidentiality and use of information provided are sought, where appropriate, prior to the disclosure of the information. Typically, MOUs in place will contain confidentiality provisions.</p> <p>Article 44(2) of the BBL states that information disclosed for the purposes of criminal investigation/prosecution may be passed by the Commission to a police officer in Jersey or the Attorney General; the police may disclose information to overseas authorities for the purposes of prosecution with the prior permission of the Attorney General.</p> <p>Article 41 of the BBL sets out the restrictions on the disclosure of restricted information. These are that unless gateways exist:</p> <p style="padding-left: 40px;">no person who under or for the purposes of this Law receives information relating to the business or other affairs of any person; and</p> <p style="padding-left: 40px;">no person who obtains any such information directly or indirectly from a person who has received it as aforesaid, shall disclose the information without the consent of the person to whom it relates and (if different) the person from whom it was received as aforesaid.</p> <p>The penalty for failing to comply is imprisonment for a term not exceeding two years, or a fine, or both.</p> <p>In addition to this, the Commission has the power to deny requests for information where it considers the information will be used inappropriately or will not be held confidentially.</p>
Assessment	Compliant
Comments	
<b>Principle 2</b>	<p><b>Permissible Activities</b></p> <p>The permissible activities of institutions that are licensed and subject to supervision as banks must be clearly defined, and the use of the word “bank” in names should be controlled as far as possible.</p>
Description	<p>The activity of a concern that brings it within the scope of the BBL (in effect the definition of a bank) is “deposit-taking business.” This is clearly defined in Articles 2 and 3 of the BBL. These definitions are based upon the U.K. Banking Act 1987.</p> <p>The intended activities of an applicant are considered by the Commission as part of the licensing process. Subsequent to registration, the GPO requires any licensee wishing to undertake any new activity in Jersey to obtain the prior consent of the Commission.</p> <p>Article 37 of the BBL sets out the detailed restrictions on the use of certain names and descriptions. The term “bank” or “banking” can only be used by a registered person, unless expressly authorized by the Commission under Article 38 of the BBL. Similar provisions also exist in the Companies (Jersey) Law 1991 and the Registration of Business Names (Jersey) Law 1956.</p>
Assessment	Compliant
Comment	<p>The Commission does not intend to continue to restrict use of sensitive words such as “bank,” “banker,” or “banking” through regulatory legislation. Instead, it proposes to rely on powers available to:</p> <p style="padding-left: 40px;">the registrar of companies under the Companies (Jersey) Law 1991, which restrict the use of sensitive words that might indicate that a person is conducting a financial services business; and the registrar of business names under the Registration of Business Names (Jersey) Law 1956</p> <p>Following the revocation of the BBL and the inclusion of banking activities in the FSL, it is proposed that the current duplication will be removed.</p>

<p><b>Principle 3</b></p>	<p><b>Licensing Criteria</b></p> <p>The licensing authority must have the right to set criteria and reject applications for establishments that do not meet the standards set. The licensing process, at a minimum, should consist of an assessment of the banking organization's ownership structure, directors and senior management, its operating plan and internal controls, and its projected financial condition, including its capital base; where the proposed owner or parent organization is a foreign bank, the prior consent of its home country supervisor should be obtained.</p>
<p>Description</p>	<p>Article 9 of the BBL (which deals with the refusal and revocation of registration) together with the Commission's published Guide to the Banking Business (Jersey) Law 1991 (guidance notes) and policy statements set out minimum criteria for the licensing of banks.</p> <p>Article 9 states that the Commission can refuse to grant an application where, inter alia:</p> <ul style="list-style-type: none"> <li>the applicant has not provided the information required of it;</li> <li>it appears that there are circumstances which are either likely to lead to improper conduct of business by, or which reflect discredit on, the applicant (or any employee of it);</li> <li>it is not in the best interests of depositors or Jersey; or</li> <li>the applicant has provided false or misleading information.</li> </ul> <p>Appendix VII of the guidance notes contains the policy towards new banks. This includes the policy of only granting licenses to financial institutions of international status and reputation. These are the subsidiaries or branches of the world's largest 500 banks by reference to capital base, or financial conglomerates with equivalent own funds. This policy has been reaffirmed by policy recently approved by the Board of Commissioners.</p> <p>Other policy requirements include that the applicant:</p> <ul style="list-style-type: none"> <li>maintains a real presence on Jersey:</li> <li>is subject to appropriate consolidated supervision by a satisfactory supervisory body, which is responsible for the whole financial institution in its country of origin. The home country supervisor will be asked to confirm its agreement to the applicant bank setting up in Jersey;</li> <li>is able to supply a "letter of comfort" from its parent confirming that it accepts full responsibility for the liabilities of the Jersey subsidiary/branch; and</li> <li>is able to confirm that, in the case of a Jersey incorporated subsidiary, the subsidiary will have sufficient capital and reserves to maintain a risk asset ratio of at least 10 percent calculated in accordance with Basel Committee guidelines.</li> </ul> <p>The criteria used for both issuing licenses and ongoing supervision are consistent as the same principles are applied to both, although additional requirements, such as reporting obligations, are required as part of ongoing supervision. Where a licensee no longer fulfils the criteria applied to their application then action would be taken to bring them into compliance or revoke their license.</p> <p>The grounds for refusal to grant a registration are set out in Article 9 of the BBL and provide full opportunity for the Commission to reject an application. Failure to provide information is a reason for refusing a license. Where an application is refused, written confirmation is given to the applicant.</p> <p>The Commission also has in place an appeals procedure covering refusal to grant a registration under Article 9 of the BBL or a revocation under Article 10, and the terms of this procedure are set out under Article 17 of the BBL.</p> <p>In determining whether a license should be granted, the Commission considers the applicant's ownership and control structure. Opaque structures are not permitted. Furthermore, it is important to note that, given the Commission's licensing policy, the applicant's group will already be subject to regulatory supervision and therefore structural issues will already have been addressed by the</p>



	<p>consolidated supervisor.</p> <p>The Commission has a policy of licensing only the world's top 500 banks as measured by capital, or conglomerates with equivalent funds. Notwithstanding this, Article 23 of the BBL provides the Commission with a basis for determining the suitability of major shareholders. Furthermore, the Commission has detailed its position with regard to dominant shareholders (controllers) within a policy statement published in 2000. This is detailed in Principle 4 below. This policy statement also requires that any bank making an application for a license under the BBL must notify the Commission of the identity of its shareholder/controllers. In addition, the guidance notes state that "an applicant has to disclose its beneficial ownership and intermediate shareholders" to the Commission.</p> <p>The Commission requires all controllers, directors and senior managers to complete personal questionnaires (PQs) at the time of the original application, or on their subsequent appointment within the organization. These PQs are assessed to determine whether the individual can be considered "fit and proper."</p> <p>PQs cover a number of areas including qualifications and experience, whether the individual has been subject to any criminal or regulatory action, and provide the Commission with the authority to perform a police check. The Commission can and does require that there are controllers with sufficient skills and expertise in place.</p> <p>In the case of a branch, the Commission also requires that a senior officer in the jurisdiction where the bank is headquartered completes a PQ. This senior officer acts as the Commission's point of contact outside Jersey. In addition, Article 13 of the BBL covers the notification requirements for someone wishing to take control of a registered person. This states that "No person shall become a minority, majority or principal shareholder controller or an indirect controller of a Registered Person which is a company incorporated in Jersey unless he has notified the Commission in writing of his intention to become such a controller and the Commission has notified him in writing that there is no objection to his becoming such a controller."</p> <p>All banks must be part of an international group, which will be the source of initial capital.</p> <p>The guidance notes, as updated, state, "The minimum requirement for the capitalization of a Jersey incorporated deposit-taker will normally be £5 million or equivalent in another currency. However, this could be higher depending upon the nature of the business plan, and the level of capital required to support an acceptable risk asset ratio."</p> <p>Nine licensed banks currently have a capitalization below this figure as the licenses were granted prior to these requirements coming into effect. Nevertheless, all of these institutions have capital at or in excess of £2.5 million and a capital ratio in excess of the 10 percent requirement.</p> <p>The guidance notes address Article 9 of the BBL, stating that "Registration may be refused if it appears to the Commission that the applicant is not 'a fit and proper person to be registered', by reason of any person employed by the applicant having been convicted for fraud or dishonesty." In addition to this, Article 9(1)(b) allows the Commission to refuse to grant registration where it appears that any circumstances exist which are either likely to lead to the improper conduct of business, or reflect discredit on the method of conducting business, of the applicant or any person employed by or associated with the applicant.</p> <p>The guidance notes recommend that a detailed business plan and application form should be submitted to and approved by the Commission prior to it registering an applicant. In practice, the Commission makes the provision of a business plan a requirement.</p> <p>The business plan must cover the first three years of operation and must contain details of the source and types of business envisaged, balance sheet and profit and loss projections for each year, and staffing of the organization. Control of the institution and assumptions underlying business projections must also be stated. Through these, corporate governance issues can be assessed.</p>
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	<p>Where the information supplied is insufficient to make such an assessment then further information is requested.</p> <p>In addition to the matters referred to in the response to essential criteria 8 above, the Commission conducts meetings with representatives of the applicant to establish that operational policies/procedures, internal controls and oversight are adequate and reflect the nature of the proposed activities of the bank.</p> <p>Regarding external oversight, the Commission engages in detailed dialogue with the consolidated regulator to confirm that there are no regulatory issues.</p> <p>This process helps the Commission determine whether operational structure reflects the scope and degree of sophistication of the proposed activities of the bank. The Commission can also impose any conditions on a license as it deems appropriate such as restricting the undertaking by the bank of new activities.</p> <p>As stated above, under the guidance notes, an application requires a three-year projection of estimated profits/tax and a three-year projection of the balance sheet. Also required are the latest audited accounts of the parent bank (shareholder) and (if applicable) of the ultimate parent organization and details of external funding.</p> <p>All of these will be analyzed by the Commission as part of the application process.</p> <p>The application is dealt with by the Commission's Authorization Division and ongoing supervision by the Commission's Compliance Division.</p> <p>The guidance notes state that the Commission will obtain written consent from the parental supervisor and confirmation that the parental supervisor will exercise consolidated supervision. Furthermore, as stated above, the Commission actively liaises with the home supervisor to ensure that there are no regulatory issues, and that the applicant has a satisfactory track record with the home regulator.</p> <p>Article 21 of the BBL states that it is an offence if a person "makes a statement which to his knowledge is false." In addition, Article 9 of the BBL allows the Commission to revoke the registration where false or misleading information has been provided.</p>
Assessment	Compliant
Comments	
<b>Principle 4</b>	<p><b>Ownership</b></p> <p>Banking supervisors must have the authority to review and reject any proposals to transfer significant ownership or controlling interests in existing banks to other parties.</p>
Description	<p>There are three main categories of dominant shareholder/controller as defined by Article 1 of the BBL:</p> <p style="padding-left: 40px;">an executive controller. This covers the managing director or chief executive officer of an institution or any of its holding companies;</p> <p style="padding-left: 40px;">a shareholder controller. This is defined as someone who alone or with any associate holds voting power. The thresholds for fitness and propriety are 15-50 percent minority, 50-75 percent majority, and over 75 percent principal. All thresholds relate to voting power; and</p> <p style="padding-left: 40px;">an indirect controller. This is a person on whose instructions the directors act.</p> <p>Approval is required pursuant to Article 13 of the BBL, which states that "No person shall become a minority, majority or principal shareholder controller or an indirect controller unless he has notified the Commission in writing of his intention to become such a controller and the Commission has notified him in writing that there is no objection to his becoming such a controller."</p>

	<p>This is supported by the Commission's policy statement "Dominant Shareholder (Controllers)," which states that in respect of all controllers a PQ will be required, which covers:</p> <ul style="list-style-type: none"> <li>• probity;</li> <li>• competence;</li> <li>• soundness of judgment; and</li> <li>• diligence.</li> </ul> <p>The policy statement also provides for a check on what mechanisms are in place in a bank to prevent the use of undue influence for personal benefit.</p> <p>The full requirements for notification are contained in Article 13 of the BBL.</p>
Assessment	Compliant
Comments	
<b>Principle 5</b>	<p><b>Investment Criteria</b></p> <p>Banking supervisors must have the authority to establish criteria for reviewing major acquisitions or investments by a bank and ensuring that corporate affiliations or structures do not expose the bank to undue risks or hinder effective supervision.</p>
Description	<p>The GPO requires a bank to notify the Commission prior to undertaking any new activity in Jersey that has a significant effect on its business or profitability. The GPO defines a new activity to be one that has a significant effect on a bank's business or profitability. Furthermore, the Fourth Schedule of the GPO states that a registered person shall not establish or acquire a representative office, branch or subsidiary outside Jersey without the prior consent of the Commission.</p> <p>Article 10 of the BBL also provides for the Commission to set any requirements it deems appropriate and to set any limits according to the circumstances by conditions on registration.</p>
Assessment	Compliant
Comments	<p>Given the nature of the banking industry in Jersey, the Commission has not found it necessary to publish criteria but would, in practice, ensure that new acquisitions did not expose the bank to undue risks or hinder effective supervision. The Commission would also consider financial and organization resources.</p> <p>Moreover, if appropriate, this would be part of the ongoing process carried out by the Commission in its monitoring of a bank and is subject to review along with other prudential factors on an ongoing basis.</p> <p>This is not an issue as pre-notification under the GPO is required where new activity is undertaken in Jersey, or a representative office, branch or subsidiary is acquired or established outside Jersey.</p>
<b>Principle 6</b>	<p><b>Capital Adequacy</b></p> <p>Banking supervisors must set minimum capital adequacy requirements for banks that reflect the risks that the bank undertakes, and must define the components of capital, bearing in mind its ability to absorb losses. For internationally active banks, these requirements must not be less than those established in the Basel Capital Accord (BCA).</p>
Description	<p>The guidance notes prescribe a minimum risk asset ratio of at least 10 percent for all Jersey incorporated subsidiaries, calculated by the method established in the BCA.</p> <p>Under Article 25 of the BBL, all banks are required to submit quarterly prudential returns, which allow the Commission to monitor maintenance. Guidelines for the measurement of the ratio are provided in the Reporting Guide to the BBL (the Reporting Guide).</p> <p>The capital ratio is significantly in excess of that required under the BCA (8 percent). Where appropriate, the Commission is able to set a higher rate, which reflects the financial position of the parent and activities undertaken. While no banks currently have a higher minimum ratio, a ratio of 12 percent has been applied historically to one bank.</p> <p>Risk-weightings are assigned to both on-balance sheet and off-balance sheet assets. The interpretation of individual risk asset ratio weightings used by the Bank of England are generally</p>

	<p>used but may in certain circumstances be adjusted either upwards or downwards to take account of special factors relating to a specific institution.</p> <p>Components of capital are defined clearly in the quarterly prudential return required by the Commission and are calculated using the formula laid down by Basel.</p> <p>Capital adequacy ratios are calculated on a consolidated bank basis.</p> <p>Article 10(1) of the BBL allows the Commission to attach conditions to a registered person's license. This power has been used on one occasion to set a capital ratio of 12 percent (as opposed to 10 percent). Article 9(d) of the BBL also allows the Commission to revoke registration of a bank where it believes this to be in the best interests of depositors.</p> <p>If capital falls below the minimum required the Commission expects to be notified. If this occurs, or indeed a bank consistently approaches the minimum level, the Commission will meet with management, establish if there are any reasonable explanations, and decide what remedial action, if any, is required.</p> <p>Guidance notes expect management to have accurate and reliable management information systems in place, so that it is able to monitor the adequacy of capital.</p> <p>The Commission's corporate governance route planner or examination methodology assesses whether or not a bank has an effective management and organization structure that ensures that operations are conducted in a sound, efficient, and effective manner. As part of the route planner, the Commission considers whether management is continually aware of a bank's operational and financial position in respect of qualitative and quantitative risks.</p> <p>The guidance notes suggest that every Jersey legal entity must meet the 10 percent minimum risk asset ratio. As such, if a bank were to establish a subsidiary, then both solo and consolidated risk asset ratios would have to be calculated.</p> <p>The Commission's policy, as detailed in the guidance notes, as updated, is for new applicants to have at least £5 million (or an equivalent amount in another currency) in capital.</p>
Assessment	Largely compliant
Comments	<p>Capital requirements have been introduced on the basis of a guidance note. As noted above under BCP 1.3, guidance notes, unlike Codes, have no force of law, and a breach does not carry with it any express penalty.</p> <p>As noted and commented under BCP12 and 13 there is no market risk related capital requirement at present.</p>
<b>Principle 7</b>	<p><b>Credit Policies</b></p> <p>An essential part of any supervisory system is the independent evaluation of a bank's policies, practices, and procedures related to the granting of loans and making of investments and the ongoing management of the loan and investment portfolios.</p>
Description	<p>The Commission places emphasis on a licensee's own standards of Corporate Governance, which in part would address the existence, and sustainability of sound credit risk policies and, procedures. Existing Guidance notes cover risk management at a high level and recent efforts have been directed at enhancing the existing guidance through the development of Code of Practice, which is currently in "draft" form and will be issued for consultation in 2003. The Commission has acknowledged that the introduction of the Code of Practice and the enhancement of policy guidance statements and route planners (examination techniques and practices) will aid in adding a further degree of discipline to the Commission's ongoing assessment process.</p> <p>At the present time, there is no formal program or established substantive and compliance tests designed to carry out an independent assessment of a bank's credit risk policies, practices and procedures. The Commission has stated, however, that where an internal analysis reveals that credit risk is significant it can use the BBL legislation through Commissioning an article 25 report which involves the use of Reporting Accountants to complete a "Special Purpose" audit. This facility has</p>

	<p>been utilized once for credit risk-assessment purposes, where lending activities have been assessed as high risk.</p> <p>The Commission has assessed credit risk as not being material to the majority of its banks. The lending activities of a large proportion of its banks are limited, with most banks placing deposits with parent or other group entities (lending to customers accounts for less than 15 percent of total assets for 75 percent of all banks). As a result, the Commission has not carried out extensive reviews of credit policies. Within the context of not having a formal program of assessing a bank's credit risk policies, practices and procedures, it has taken some comfort from:</p> <ul style="list-style-type: none"> <li>• its strict licensing policy, which emphasizes that only the top 500 banks in the world are considered for a banking license and that as part of the licensing process a "letter of comfort" is obtained in respect of Jersey subsidiaries and branches;</li> <li>• its minimum capital adequacy requirement of 10 percent; and the fact that banks will have applied group credit policies.</li> </ul> <p>The Commission has developed a route planner directed at credit risk. This route planner is utilized to review credit risk when credit risk is deemed to be significant.</p>
Assessment	Largely compliant
Comments	<p>To date no guidance/guidelines or orders covering generally accepted credit risk policies and procedures has been provided to the industry. The "draft" Code of Practice does make reference to the need for sound policies and procedures governing amongst other risks, credit risk. The Code of Practice does not however crystallize and differentiate between the fiduciary responsibilities of the Board and senior management in ensuring that credit policies and procedures receive the desired degree of review and oversight. In addition, the onsite visitation programs do not make reference to the need to confirm or otherwise the existence and sustainability of sound credit risk practices, policies and procedures.</p> <p>We were advised in discussions with industry representatives that licensees are actively seeking ways to diversify their asset base through lending opportunities as the growth potential of historical off balance sheet products services may be reaching a peak.</p> <p>The reinforcement of the need for sound credit risk practices, policies and procedures by supervisors is a primary requirement of supervisors. To balance the Commission's assessment that credit risk is not material to the majority of banks, the Commission may want to consider the possibility of reinforcing the need for international credit risk practices, policies and procedural "best practices" by providing a copy of the Basel guidance to all licensees. A covering letter would likely be needed to indicate that the Commission supports the content of the guidance and will be seeking compliance with the guidance during its onsite visitation program.</p>
<b>Principle 8</b>	<p><b>Loan Evaluation and Loan-Loss Provisioning</b></p> <p>Banking supervisors must be satisfied that banks establish and adhere to adequate policies, practices, and procedures for evaluating the quality of assets and the adequacy of loan-loss provisions and reserves.</p>
Description	<p>Refer to CP 7 description for commentary on the Commission's position relating to the emphasis placed on the licensing process, licensee's reputation, letter of comfort, which is obtained and the relative low percentage of customer loan assets (15 percent) and the prescribed capital requirements (10 percent). The "draft" corporate governance route planner also makes reference to the need for credit risk policies and procedures to ensure day to day control over the business.</p> <p>Where the Commission identifies, through off-site supervision, that lending is a higher risk area, a "special focus" Article 25 review may be Commissioned in order to verify the accuracy of the loan evolution and loan provisioning of the bank. The Commission has Commissioned such a report. The Commission also considers the existence and application of a sound corporate governance regime and the other techniques and practices mentioned in the comments under CP 7 to be appropriate to address the essential criteria associated with required assessment of the strength of guarantees and the appraisal of collateral.</p>

	<p>Article 10(1) of the BBL states that “the Committee... may attach conditions to the registration and may from time to time vary any general condition” - Article 10 (2)(b) states “impose limitations on the acceptance of deposits, the granting of credit or the making of investments.” This provision allows the Commission to require the strengthening of credit-granting policies and procedures as well as where required loan-loss provisions. To date, the Commission has not considered it necessary to impose limitations on the granting of credit.</p> <p>Total provisions are reported in the quarterly prudential returns to the Commission. Credits are classified by sector and split between domestic and nondomestic exposure. An analysis is provided of security held against such credits. Assets are split by type: cash, market loans, certificates of deposits, investments, loans and advances, debtors, prepayments and fixed assets.</p> <p>To date, no specific guidance to the industry has been provided covering the identification and recording of impaired assets nor the valuation of collateral to reflect the net realizable value. The Commission has stated that an appendix to the “draft” Codes of Practice will be developed to specifically address the identification of impaired loans and the valuation of collateral.</p>
Assessment	Largely compliant
Comments	<p>To date, the Commission has not placed significant emphasis on the assessment of the credit risk policies, credit quality assessment and loan loss provisioning techniques and practices. The rationale being the perceived materiality of credit risk assets, its minimum capital adequacy requirement of 10 percent and the strength of the parent bank. The historical pattern may be shifting as industry participants pointed out that beside being a provider of funds to the licensee’s group, increased emphasis is being placed on the optimization of the liabilities through the funding of credit risk assets and participation in other capital market funding opportunities.</p> <p>No reference is made in the existing credit risk and “draft” corporate governance route planner to the need for an assessment of the licensee’s resources to ensure that credit risk policies and procedures are adequate.</p> <p>The Commission has developed a Credit Risk route planner. The existence of such a route planner is a constructive step to balance the general assessment indicated in the corporate governance route planner. The Mission welcomes the action taken by the Commission to revise its route planners and highlights the importance of a regular review of route planners to ensure that route planners contain relevant references to generally accepted assessment credit risk techniques. The Commission should review route planners on an ongoing basis to ensure that they reflect the Commission’s desire to ensure that sufficient techniques and practices are carried out during visitations in order to verify management representations.</p> <p>In our review of the Credit Risk route planner we noted the following areas where 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.</p> <p><b>Credit process</b></p> <p>Are credit risk policies and procedures (P&amp;P) reflective of the risk appetite of the licensee and have they been confirmed by the Board of Directors?</p> <p>Are P&amp; P in place for all credit risk products and are they reviewed at least annually to ensure they remain up to date and relevant?</p> <p>Are credit risk exposure limits reasonable considering the risk appetite and the ability of the licensee’s resources?</p> <p>Have clearly defined and articulated policies and procedures been established to reporting and monitoring out of order conditions?</p>

	<p>Has a risk-rating system been put in place to allow for the management and the Board of the licensee to monitor asset quality trends in a timely and anticipatory manner?</p> <p><b>Credit assessment/quality</b></p> <p>Paramount to the successful asset quality review process is to ensure that Commission staff have sufficient knowledge and understanding of credit risk assessment processes</p> <p>The Commission may want to establish an internal credit risk rating system that could be applied on a consistent basis for all credit risk assessments. The Commission credit risk rating system could be used to assess the integrity of the licensee's own credit risk rating system; and</p> <p>A sample of loans would be selected for review to confirm or otherwise the licensee's own credit risk policies and lending activities including the methodology and accuracy of possible adverse trends and out of order reporting processes.</p> <p><b>Loan-loss provisioning</b></p> <p>The independent credit review would also assess the process in place to identify deteriorating situations in a timely manner to ensure that not only appropriate provisioning is applied to known loss positions but also to reflect deteriorating situations in the performing portfolio.</p> <p>We recognize that in developing a more prescriptive approach to loan evaluation and provisioning due consideration has to be given to ensuring that the Commission has staff capable of carrying out this type of specialized review.</p>
<b>Principle 9</b>	<p><b>Large Exposure Limits</b></p> <p>Banking supervisors must be satisfied that banks have management information systems that enable management to identify concentrations within the portfolio, and supervisors must set prudential limits to restrict bank exposures to single borrowers or groups of related borrowers.</p>
Description	<p>Closely related groups are defined in the guidance notes as follows:</p> <p style="padding-left: 40px;">where one party has direct or indirect control over the other or others; or</p> <p style="padding-left: 40px;">are connected in such a way that if one fails it would cause the others to also fail.</p> <p>All such parties should be counted as one facility for the purposes of measuring large exposures.</p> <p>The nature of the Commission's guidance notes is such that the Commission has discretion to interpret this definition on a case by case basis. It has the power, ultimately resting on its ability to impose a condition on a license, to insist that a bank acts in accordance with its interpretation.</p> <p>The large exposure policy of the Commission is set out in the guidance notes. An exposure is defined to include any loan and specifically includes inter bank placements, guarantees, and off-balance sheet items as per the EU Large Exposures Directive.</p> <p>A large exposure is defined as an exposure to a counter party or group of closely related counterparties that is equal to or greater than 10 percent of capital base. Using powers available under Article 25 of the BBL, the Commission requires details of all loans in excess of 10 percent of capital base to be supplied at quarterly intervals. A general overall limit on the total value and number of large exposures over 10 percent has been set by the Commission which is an equivalent total value of 800 percent of the capital base.</p> <p>Under the Fourth Schedule of the GPO, banks are required to obtain prior consent from the Commission for all exposures in excess of 25 percent of capital base.</p> <p>In addition, all banks are required to report exposures over 10 percent of capital base to the Commission on a quarterly basis. The 10 largest interbank exposures must also be reported quarterly. Returns are required within 20 working days on the reporting period end.</p>

	<p>All deposit takers are required to report large exposures to the Commission on a quarterly basis. In addition, under the GPO, any exposure over 25 percent of capital must be reported to the Commission prior to making the exposure. These exposure reports are logged by the Commission on a database and reviewed by a manager within the Compliance Division to ensure that they are in accordance with the Commission's procedure for large exposures.</p> <p>Information on sectoral exposures is also obtained via quarterly prudential returns. Information on geographic exposure is not obtained other than to establish the breakdown between domestic and nondomestic lending. Lending is not a major activity for most banks in Jersey and it is the exposure to the local market that most concerns the Commission in its role as host regulator.</p> <p>The Commission adopts a risk-based approach to supervision and, in the light of its licensing policy, the limited extent of lending by banks, and the 10 percent minimum risk asset ratio, it does not consider that geographic exposure is a sufficient risk to a bank or Jersey to require quarterly reporting of geographic exposure on a more detailed basis.</p>
Assessment	Compliant
Comments	<p>Compliance Department staff reviews the regulatory reports on a quarterly basis as part of their ongoing offsite review process. Unusual or exception conditions are follow-up as part of the ongoing monitoring procedures.</p> <p>External auditors are required to certify the complete and accurate extraction of data in the prudential returns from underlying accounting and other records, and to confirm that the returns have been prepared and presented in accordance with current reporting instructions issued by the Commission.</p> <p>A complementary control and an effective supervisory process and assessment process would be available should the Commission implement the credit review process recommended in the comments provided in CP 8.</p>
<b>Principle 10</b>	<p><b>Connected Lending</b></p> <p>In order to prevent abuses arising from connected lending, banking supervisors must have in place requirements that banks lend to related companies and individuals on an arm's-length basis, that such extensions of credit are effectively monitored, and that other appropriate steps are taken to control or mitigate the risks.</p>
Description	<p>Refer also to description provided in CP 7, which describes the emphasis that is placed upon the Licensee's Corporate Governance regime and the process of licensing. In addition, the CP 7 description outlines the Commission's position with regard to the perceived risk mitigators that are associated with the applied capital adequacy and the Commission's belief that exposure to credit risk is not material.</p> <p>The Commission's approach to connected lending is to define "associate" in the BBL and "connected parties" in the guidance notes. Article 1 of the BBL defines an "associate" in relation to a person entitled to exercise or control the exercise of voting power in relation to the holding of shares, and Article 4 defines a "holding company," "subsidiary company" and "wholly owned subsidiary." Assets and liabilities in respect of associated, holding and subsidiary companies are reported on the quarterly returns.</p> <p>In the context of large exposures, the guidance notes define connected parties of the lender as being subsidiaries, sister companies, or companies with common directors.</p> <p>There are no provisions, which address the terms or specified amounts or otherwise posing special risks dealing with which exposures may be extended. Section 2 of the draft Codes of Practice, however, requires a registered person (licensee) to avoid any conflicts of interest, or where conflicts arise, to address them by disclosure, internal rules of confidentiality, declining to act, or otherwise as appropriate. Emphasis is placed on the expectation that management will provide appropriate oversight and to have clearly stated limits of exposure in place.</p>



	<p>Section 2 of the “draft” Codes of Practice provides guidance wherein a registered person is expected to avoid any conflicts of interest, or where conflicts arise, to address them is disclosure, internal rules of confidentiality, declining to act, or otherwise as appropriate. Article 10 of the BBL gives the Commission the power to require a given bank to set limits for loans to connected and related parties, to deduct such lending from capital when assessing capital adequacy, and to require collateralization of such loans.</p> <p>An issue that may become a more prominent is one that for particular business purposes some major international banks are establishing global liquidity management pools in off shore jurisdictions. In discussions with a major bank during the course of the mission we were advised that the Jersey licensee had assumed this role for the bank’s global operations. Assuming this role will bring about material connected and large lending implications albeit at limited risk to the jurisdiction.</p> <p>The guidance notes expect management to have accurate and reliable management systems in place, and to monitor the quality of assets. Banks are required to adhere to U.K. Accounting Standards, or equivalent, which require them to maintain adequate records and to provide for the disclosure of all material related party transactions and balances.</p> <p>Section 3 of the draft Codes of Practice requires banks to maintain records to enable management to identify, monitor and control exposures by related counterparties across all products.</p>
Assessment	Largely compliant
Comments	Refer to comments in CP 9. Formalization of the Code of Practice for Banks will make the Commission compliant with this CP. An enhanced onsite credit assessment process should also be able to address the specific risks posing special risks. The Commission may also want to consider the implications of the introduction of global liquidity pools on the existing legislation and guidance covering connected and large exposures.
<b>Principle 11</b>	<p><b>Country Risk</b></p> <p>Banking supervisors must be satisfied that banks have adequate policies and procedures for identifying, monitoring, and controlling country risk and transfer risk in their international lending and investment activities, and for maintaining appropriate reserves against such risks.</p>
Description	<p>Refer also to description provided in CP 7, which describes the emphasis that is placed upon the Licensee’s Corporate Governance regime and the process of licensing. In addition, the CP 7 description outlines the Commission’s position with regard to the perceived risk mitigators that are associated with the applied capital adequacy and the Commission’s belief that exposure to credit risk is not material. The Commission’s existing guidance note outlines the need for an effective risk management practices and the “draft” Codes of Practice section 3.2.1.6 states “management is able to identify and regularly assess liquidity, credit, country, transfer and market risk.” Section 3.5.2.3 outlines the need for maintaining the details associated with the aforementioned risks and section 3.5.2.4 outlines the need for exposure limits associated with the same risks.</p> <p>As part of the licensing process, the Commission considers any significant areas of country risk. Any specific issues arising from country risk would be raised during on-site visits. The adequacy of information systems is reviewed as part of the proposed procedures to be included in the revised corporate governance route planner.</p> <p>The Commission does not set prescribed provisioning levels nor does it conduct independent asset quality assessments. It considers that it is more appropriate for individual banks to set provisioning levels themselves, as they will often be required to follow the guidance and regulation of their group’s ultimate home regulator.</p> <p>However, Article 10 of the BBL gives the Commission the power to require a given bank to set provisioning percentages if considered necessary. The guidance notes require banks to make provision against both on and off-balance sheet risks, and a statement of provisions is made on a quarterly basis to the Commission.</p>

	<p>As part of the corporate governance route planner, the Commission considers whether or not management is continually aware of a bank's operational and financial position in respect of qualitative and quantitative risks. On an annual basis, external auditors are required to report whether, in their view, a bank's financial statements provide a "true and fair" view at the balance sheet date. Such an audit will extend to consideration of the quality of assets.</p> <p>The following are reported quarterly to the Commission:</p> <p>A breakdown of deposits by country/geographic or political region:</p> <ul style="list-style-type: none"> <li>• an analysis of domestic and nondomestic lending; and</li> <li>• an analysis of market loans, highlighting group loans (those with head office and fellow subsidiaries), OECD banks, and the public sector.</li> <li>• a breakdown of deposits by country/geographic or political region;</li> <li>• an analysis of domestic and nondomestic lending; and</li> <li>• an analysis of market loans, highlighting group loans (those with head office and fellow subsidiaries), Organization for Economic Cooperation and Development (OECD), banks, and the public sector.</li> </ul> <p>The guidance notes require banks to make provision against both on and off-balance sheet risks, and a statement of provisions is made on a quarterly basis to the Commission.</p> <p>Where the Commission deems it appropriate to do so, it will contact other regulators to discuss country risk, either on a consolidated or individual exposure basis.</p>
Assessment	Compliant
Comments	Refer also to comments in CP 9.
<b>Principle 12</b>	<p><b>Market Risks</b></p> <p>Banking supervisors must be satisfied that banks have in place systems that accurately measure, monitor, and adequately control market risks; supervisors should have powers to impose specific limits and/or a specific capital charge on market risk exposure, if warranted.</p>
Description	<p>The Commission insists on standards of corporate governance that ensure that the management of a bank assesses and manages all its principal risks. The Commission's existing guidance notes cover risk management and this guidance is enhanced in the draft Codes of Practice. Moreover, the Commission's route planner for corporate governance ensures that this issue is considered carefully during on-site visits by Commission staff. In particular, the Commission investigates the management information systems and the internal procedures for assessing, monitoring, and controlling risks.</p> <p>The Commission's licensing policy means that only banks in the world's top 500 are present in the Island, and that the Commission has a "letter of comfort" in respect of Jersey subsidiaries. Moreover, the Commission insists on a 10 percent risk asset ratio to provide an additional margin of safety.</p> <p>The Commission adopts a risk-based approach to supervision and, in the light of its licensing policy, the nature of banking business and the 10 percent minimum risk to asset ratio, does not consider that, in general, market risks amount to a significant risk to a bank or the Island.</p> <p>Specific concerns of the Commission arising from market risk would be raised during on-site visits.</p> <p>Foreign exchange exposures are also reported quarterly to the Commission through quarterly prudential returns.</p> <p>The Commission is given wide powers under Article 10 of the BBL to impose conditions on the registration of any bank, where it believes this to be in the interest of depositors or potential depositors. To date, the Commission has not considered it necessary to impose a specific capital charge for market risk or specific limits on market risk exposure.</p>

	As a general principle, the Commission will ensure that it has sufficient expertise, in-house or resourced externally, to supervise activities conducted by regulated persons.
Assessment	Materially noncompliant
Comments	<p>The Commission relies rather unilaterally on the need for the banks to have in place corporate governance standards that ensure that their management assesses and manages all its principle risks.</p> <p>The September 1995 Guidance Note to the Banking Business Law 1991 acknowledges the Capital Adequacy Directive (CAD), including the measurements required for inclusion of trading risk in the risk asset ratio calculation. However, before implementing the CAD in Jersey, the Department in charge of supervision and regulation at that time, wished to consider its implications.</p> <p>However, no specific market risk related capital requirement has been imposed yet. Neither has the Commission issued specific guidelines or best practice papers on how to manage these risks. The presence in Jersey of a number of banks for which the Commission acts as home supervisor enhances the need for the Commission to act in this area without further delay.</p> <p>The growing diversification and complexity of financial intermediation in Jersey has become a strong argument to address this gap. The introduction of a specific capital requirement for market risk should not confront the Jersey banking industry with insurmountable logistic or administrative problems given their international group related character. As a matter of fact their market exposure is already addressed in the consolidated position of their parent banks, which means that at present they have to manage two different capital requirements calculations.</p> <p>The introduction of a market risk based capital charge will at the same time enhance the Commission's staff understanding of a number of appropriate risk assessing techniques.</p>
<b>Principle 13</b>	<p><b>Other Risks</b></p> <p>Banking supervisors must be satisfied that banks have in place a comprehensive risk management process (including appropriate Board and senior management oversight) to identify, measure, monitor, and control all other material risks and, where appropriate, to hold capital against these risks.</p>
Description	<p>Refer also to description provided in CP 7, which describes the emphasis that is placed upon the Licensee's Corporate Governance regime and the process of licensing. In addition, the CP 7 description outlines the Commission's position with regard to the perceived risk mitigators that are associated with the applied capital adequacy and the Commission's belief that exposure to other significant risks are not material. The existence of Letters of Comfort and MOUs are deemed to be appropriate.</p> <p>As indicated in the description comments of aforementioned CP s the Commission has developed a "draft" Code of Practice for banks and to complement the Code of Practice a revised Corporate Governance Route Planner has also been developed to direct the supervisory assessment process. The "draft" Code of Practice also establishes minimum management practices for liquidity and interest rate risk. As part of the pre-visitation material the licensee is requested to provide the Commission with a copy of its liquidity policy. The referred to Corporate Governance route planner will provide the suggested assessment techniques and practices that will be applied to assess the risk management practices over a licensee's significant risks.</p> <p>The Commission has not established standards related to liquidity, operational, interest rate and foreign exchange risks. Guidance notes are planned to be developed through the "draft" Codes of Practice.</p> <p>In addition, and as noted under CP 6 Capital adequacy requirements and CP12 market risks the Commission has not established a capital charge for market or other risks.</p>
Assessment	Largely compliant
Comments	<p>The assessment is primarily associated with the degree of progress the Commission has made in identifying the need for enhanced industry guidance concerning sound risk management practices. The needs analysis has also resulted in the completion of the "draft" code of practice, which refers to the need for an effective risk management process to be put in place covering all significant risks.</p>

	<p>The development of the corporate governance route planner will provide guidance to the Compliance staff to ensure that the assessment of the risk management process is consistent.</p> <p>It will be incumbent on the Commission to continue the development of appropriate guidance documents and ensure that the development of the guidance documents is complemented by an effective on and offsite visitation program that is capable of carrying out a critical assessment of the risk management practices and procedures. The Commission should also consider applying a capital charge for market risk.</p>
<b>Principle 14</b>	<p><b>Internal Control and Audit</b></p> <p>Banking supervisors must determine that banks have in place internal controls that are adequate for the nature and scale of their business. These should include clear arrangements for delegating authority and responsibility; separation of the functions that involve committing the bank, paying away its funds, and accounting for its assets and liabilities; reconciliation of these processes; safeguarding its assets; and appropriate independent internal or external audit and compliance functions to test adherence to these controls, as well as applicable laws and regulations.</p>
Description	<p>The Commission's approach to supervision requires that it pay close attention to the internal controls applied by a bank. Article 9 of the BBL makes the improper conduct of a business grounds for the revocation of a license. The Commission also has powers to attach conditions on a license.</p> <p>The Commission's route planners for compliance visits ensure that compliance staff focus on the Corporate Governance regime of which the process of control is an important element when conducting on-site visits. The focus includes an assessment of the structure, management and supervision, segregation of duties and functions, personnel and training, compliance and external review, operational controls (including business resumption), and management information.</p> <p>Under Article 23 of the BBL, no person shall become a director or manager (defined as a person who is responsible for the overall control and administration or having effective control of the day-to-day business of a bank) without the approval of the Commission (each person must first complete a PQ). The experience and qualifications of such persons are important factors in judging their ability to understand risks arising from business lines and products.</p> <p>As part of the "draft" corporate governance route planner, the Commission considers whether an entity has procedures in place to ensure that only "fit and proper" persons are employed, and whether management is continually aware of the bank's operational and financial position in respect of qualitative and quantitative risks.</p> <p>The Commission may refuse or revoke a bank's license if it considers that the persons concerned with the management or control of a bank are not "fit and proper," or have conducted business in an improper way.</p> <p>The Third Schedule of the GPO states that the Commission may require the removal of any director, controller or manager of a registered person appointed under Article 23(1) of the BBL if he or she is not considered to be a "fit and proper" person to hold such office. This power could be exercised if the Commission considered that a person did not have the competence to assess, monitor, or control the risks of a business.</p> <p>As part of the processes identified in the "draft" corporate governance route planner, the Commission considers compliance and audit functions.</p> <p>The Commission considers whether or not there is a compliance function, and, if so, whether its accountability framework addresses independence, reporting structure, capabilities and experience, access to records and whether there is a disciplined and consistent assessment program in place. Similarly the Commission takes into consideration when dealing with an internal audit function its independence, access to senior management and the Board, its risk assessment and quality control processes and technical experience and training programs made available to incumbents.</p> <p>In addition to this, copies of internal audit reports are requested from management as part of the</p>

	<p>Commission's pre-visit work, and it regularly meets with internal auditors (indeed, where based off-Island, internal audit is expected to meet with the Commission as and when it visits Jersey). The draft Codes of Practice establish minimum standards for compliance and internal audit.</p> <p>The Commission ensures that there is an adequate external audit function for all banks incorporated in Jersey. Commission policy is for the audit of banks to be conducted by one of the 'big four' accounting firms. Under Article 25 of the BBL, the Commission has access to the reports of the audit function.</p>
Assessment	Largely compliant
Comments	<p>The acknowledged need for an industry wide Code of Practice document is a constructive step for the Commission as is the further development of the corporate governance route planner. Both of these documents are presently in a "draft" format. The completion and distribution of the Code of Practice should be expedited to ensure the fiduciary responsibilities of management and the Boards of licensees are reinforced.</p> <p>While the development and distribution of the Code of Practice document covering corporate governance expectations is a sound supervisory approach it is also recommended that consideration be given to seeking confirmation from senior management and the Board that they understand and acknowledge their fiduciary responsibilities through confirming on an annual basis that their bank has in place a corporate governance regime that is appropriate for the risk appetite and business operations of their entity.</p> <p>The reinforcement of the need for a sound internal control environment should be emphasized in industry guidance notes. The guidance required could be obtained in Basel Committee documents on the subject.</p>
<b>Principle 15</b>	<p><b>Money Laundering</b></p> <p>Banking supervisors must determine that banks have adequate policies, practices, and procedures in place, including strict "know-your-customer" rules that promote high ethical and professional standards in the financial sector and prevent the bank being used, intentionally or unintentionally, by criminal elements.</p>
Description	<p>The AML/CFT assessment reflects a detailed description and assessment of the AML/CFT.</p> <p>Jersey has extensive legislation designed to combat ML and the financing of terrorism (FT). This includes:</p> <ul style="list-style-type: none"> <li>• Proceeds of Crime (Jersey) Law 1999 (POC Law);</li> <li>• Money Laundering (Jersey) Order 1999 (the MLO);</li> <li>• Drug Trafficking Offences (Jersey) Law 1988; and</li> <li>• Prevention of Terrorism (Jersey) Law 1996 (an updated law is expected to come into force during 2003.)</li> </ul> <p>The MLO provides for the development of internal AML procedures, verification of customer identity, record keeping, and staff training on the identification of suspicious activity. Financial institutions are also required to have internal procedures in place to designate a money laundering reporting officer (MLRO) to whom all reports of suspicious activity must be made. Banks are subject to all of these requirements.</p> <p>Banks are also expected to follow guidance on identification and due diligence procedures contained in the AML guidance notes, which are updated periodically. In recent months, updates have covered "introduced" business and politically exposed persons. Furthermore, the recently issued Position Paper on "overriding principles" indicates best practice in respect of verification of identity for existing business, although this has not yet been translated into guidance.</p> <p>The Commission checks banks' compliance with the above AML provisions as part of its ongoing supervisory activity, primarily through completion of an AML route planner on on-site inspection</p>

visits. Assessment of AML procedures has been given a high priority by the Commission. All banks were subject to a focused AML assessment over the past two years.

By law, all financial services businesses (including banks) are required to obtain satisfactory evidence of identity for all applicants for business and to retain documents and records of individual transactions for prescribed periods.

The Commission verifies banks' compliance with the MLO and the AML guidance notes as part of its ongoing visit program. The AML route planner considers whether or not clear written acceptance policies are in place, including the use of written checklists to ensure that identity has been properly verified.

Banks are required to have internal reporting procedures in place and to have systems and procedures to highlight suspicious transactions or groups of transactions. Examples of suspicious transactions are given in the AML guidance notes.

During its on-site visits, the Commission verifies banks' compliance with the Order and AML guidance notes. Particularly, it considers:

- the status, autonomy, quality, reporting line, and resources of the MLRO;
- the volume of reports;
- the quality of reporting;
- training;
- procedures for handling cash;
- hold all mail procedures; and
- identification of unusual transactions.

The Commission also reviews suspicious transaction reports that have been submitted to the JFCU to highlight reporting trends and activity (banks that report and those that do not report).

The AML guidance notes state that the MLRO should be registered with the Commission.

Depending on the scale of the bank's business the role of MLRO might be combined with its internal audit, fraud or compliance departments. In smaller organizations the role might be assigned to the operations manager or similar person.

The draft Codes of Practice provide for the appointment of a compliance officer, who will have responsibility for ensuring that policies and procedures are in accordance with all legal and regulatory requirements, including AML provisions.

As part of the AML route planner, the Commission considers whether all members of staff are aware of the identity of the MLRO, whether there is a formal written AML policy that is communicated to staff, and whether staff have received appropriate training.

The AML guidance notes recommend that reporting lines to the MLRO are as short as possible to ensure speed, confidentiality and accessibility to the MLRO. However, the AML guidance notes acknowledge that in some organizations it may be preferable for suspicions to be reported to supervisory management in the first instance to ensure that there are no known facts that may negate the suspicion, before it is passed on to the MLRO.

As part of the AML route planner, the Commission examines internal reporting procedures.

Suspicious transactions are reported to the JFCU. There are gateways to the Commission from the JFCU, so that the Commission may be kept aware of any issues or trends. In addition, the Commission is provided with an analysis of all suspicious transaction reports received by the JFCU and has access to original reports. The Commission meet with the JFCU as and when required and is a member of Jersey's Financial Fraud Information Network that meets on a quarterly basis to discuss fraud and other related issues. This group includes the police, customs, law officers, and other interested parties.

As far as fraud or any other issue relating to the safety, soundness or reputation of a bank is concerned,

registrants are expected immediately to advise the Commission of any significant matters. The draft Codes of Practice establish a formal requirement to deal with the Commission and other authorities in an open and cooperative manner.

Any member of staff making a disclosure is protected from liability pursuant to Articles 32(5) and 33(8) of the POC Law.

Similar provisions exist in respect of drug trafficking and anti-terrorist legislation.

As part of the AML route planner, the Commission considers whether AML controls are sufficient. Fraud is implicitly covered as part of the corporate governance route planner.

Where a bank fails to comply with its AML obligations, then the Commission can:

- Revoke registration under Article 9 of the BBL;
- Set conditions on the grant of registration under Article 10 of the BBL, requiring something to be done, or omitted to be done; and
- Issue a public statement under Article 45B of the BBL, summarizing a failure to comply with AML requirements (the Commission has done so on one occasion).

Criminal prosecution is reserved for Jersey's attorney general.

If the suspected or actual criminal activities are conducted by a customer of the bank and subject to an STR by the bank, these activities will be handled by the JFCU. Upon application to the Bailiff (chief judge) access to relevant accounts of the bank is given to the JFCU. It can use these powers to conduct investigations on behalf of foreign law enforcement agencies where appropriate. The Commission has the necessary gateways to share any information it may possess with the police in connection with such investigations.

The Commission does consider, in parallel with such investigations, the extent to which the bank's own internal systems were at fault in allowing its facilities to be abused for the purpose of actual or suspected criminal activities. Several such situations have been assessed by the Commission. The Commission routinely shares its conclusions as to the facts and its conclusions regarding the appropriate regulatory action with home state supervisory authorities of the banks concerned. It can also respond to requests for assistance or information from such authorities.

The Commission would inform the home state supervisor of the facts and its conclusions as to the appropriate regulatory action.

As part of the AML route planner, the Commission considers whether there is a formal written AML policy that is communicated to staff.

Section 1 of the draft Codes of Practice requires banks to act with integrity, and failure to do so "will be considered amongst the most serious of breaches of the Codes." The draft Codes require banks to have a policy statement on ethics and professional behavior.

All of the relevant laws are reviewed at regular intervals with the aim of maintaining the highest level of compliance with international standards, including the relevant Forty FATF Recommendations. The Position Paper on "overriding principles" manifests this commitment.

The Order requires the ongoing training of all those involved in the conduct of financial business. In addition, the guidance notes provide details of the AML/CFT training expected of staff.

As part of the AML route planner, the Commission considers whether training has been provided to all staff, the frequency of such training, the appropriateness of training, and the quality of training.

Under Article 10 of the ML Order, the supervisor has an obligation to report suspicions to the JFCU.

The Commission can share information on suspected or actual criminal activities with Jersey's Law Officers' Department (which is headed by the attorney general) and the JFCU. Both can then share this

	<p>information with foreign law enforcement and judicial authorities, where appropriate.</p> <p>The Enforcement Division is responsible, inter alia, for the investigation of alleged insider dealing offences and suspected weaknesses in AML controls. The Division has been involved in a large number of investigations of suspected insider dealing offences and has cooperated with a number of overseas regulators in relation to this, including the Department of Trade and Industry in the U.K., the SEC in the U.S.A, the British Columbian Securities Commission, and authorities in France, Germany and South Africa. The Commission has investigated a number of AML issues including those relating to Saní Abacha.</p> <p>Where additional resources are required, then external assistance is sought. For example, the Commission has recently appointed two consultants to assist in re-writing the AML guidance notes. One, a lawyer, has extensive experience of Jersey's existing AML legislation, and the other is responsible for issuing similar guidance in the U.K. and elsewhere.</p> <p>The Commission has also recently formed an AML Steering Group, which comprises of lawyers, practitioners, and compliance officers to assist in the re-write of the guidance notes.</p> <p>The Commission meets regularly with other regulators to discuss AML issues. In recent weeks, meetings have been held with regulators in Guernsey, Jersey, the U.K., and Switzerland. In addition, the Commission is a member of a working party set up to consider the application of FATF Special Recommendation VII in the U.K.. This consists of members of the British Bankers Association, the FSA, and HM Treasury.</p> <p>The Commission's chairman attends all FATF meetings, representing the Offshore Group of Banking Supervisors (OGBS). Through that Group, each of the Crown Dependencies has been represented on the three working groups considering revisions to the FATF's 40 Recommendations. The Commission's chairman also co-chaired the Basel Committee's Working Group on Cross-border Banking which issued a paper on customer due diligence for banks.</p>
Assessment	Largely Compliant
Comments	<p>The Commission should be commended for the development of an AML compliance program.</p> <p>Jersey would become compliant depending on:</p> <ul style="list-style-type: none"> <li>• the adoption of the codes;</li> <li>• the enhancement of the visitation process.</li> <li>• reference must also be made to the fact that there is no legal requirement to register an MLRO with the Commission.</li> </ul>
<b>Principle 16</b>	<p><b>On-Site and Off-Site Supervision</b></p> <p>An effective banking supervisory system should consist of some form of both on-site and off-site supervision.</p>
Description	<p>The Compliance Division carries out both on and off-site supervision.</p> <p>Historically, off-site supervision has been the core of the supervisory assessment process. At the time of the mission the Compliance Department was in a transitory state wherein the onsite visitation process was evolving. We were satisfied the process underway will be beneficial when fully implemented.</p> <p>The Compliance Division in accordance with the route planners conducts on-site visits. The route planners developed programs which highlight specific control objectives, common risk areas, and areas to consider in advance of and at the time of a visit. Planning for, and conduct of, on-site visits is assisted by completion of a pre-visit questionnaire by each bank, which is issued some 6–8 weeks prior to the on-site visit.</p> <p>Route planners are currently in extensive use for on-site visits of banks:</p> <ul style="list-style-type: none"> <li>• corporate governance: (currently in draft) This considers a number of areas relevant to the</li> </ul>



	<p>overall management structure of the bank, including development and review of internal controls and risk management systems. This program also considers the organization and effectiveness of the functions of personnel and training, compliance and internal audit:</p> <ul style="list-style-type: none"> <li>• AML: This considers the role of the MLRO, the reporting of suspicious transactions, the training of staff, client identification procedures, general controls and the retention of records; and,</li> <li>• Other route planners have been developed including for collective investment funds (CIF) and investment business. Two others are for credit ( see comments below) and the treasury route planner. There is however reference being made to documents relating to compliance with UN and EU sanctions, and information technology.</li> </ul> <p>In addition, where a bank also conducts trust company or investment business, the route planners are also used to assess compliance with Codes of Practice issued under the FSL.</p> <p>Pre-visit questionnaires are designed to provide an overview of a bank's operations as well as considering general areas, where a bank conducts investment or fund business, then high level information is also requested for these activities. Inter alia, a bank will be requested to provide:</p> <ul style="list-style-type: none"> <li>• group and staff structure charts;</li> <li>• an activity schedule, including any internet services;</li> <li>• details of internal and external reviews undertaken;</li> <li>• compliance and procedures manuals; and</li> <li>• a copy of its complaints register.</li> </ul> <p>The Commission's business plan for 2002 has set a number of performance measurements in respect of on-site visits. These include that all regulated entities will be visited, on average, every two years and that the report of a visit will be issued within three weeks of completion of the visit. The number of visits is monitored weekly within the Compliance Division and is reported to the Board.</p> <p>Off-site supervision includes the analysis of:</p> <ul style="list-style-type: none"> <li>• quarterly prudential returns.</li> <li>• large exposure reports as and when they are made.</li> <li>• suspicious transaction reports (made to the JFCU) in respect of ML.</li> <li>• annual financial statements.</li> </ul> <p>The analysis of the above is used by the Commission to determine if further enquiry should be made of a bank and to provide early signals of potential issues. Where necessary, meetings with a bank's management or an on-site visit will be arranged to discuss issues raised by the information provided or to obtain more information as necessary.</p> <p>A checklist is completed for each prudential return to assist in highlighting potential issues. Inter alia, the following are considered:</p> <ul style="list-style-type: none"> <li>• whether financial instruments used by a bank are consistent with the Commission's understanding of activities;</li> <li>• any significant movements in deposits;</li> <li>• whether large exposures in excess of 25 percent of capital base have been approved by the Commission;</li> <li>• the make-up of the loan book (including sector concentration);</li> <li>• loan/deposit mismatch;</li> <li>• risk asset ratio; and</li> <li>• number of internal suspicious transactions reports.</li> </ul>
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	<p>The checklist also includes a risk indicators sheet, which identifies key areas and establishes a "model" figure or ratio for a particular area. Each bank is compared against this "model" to highlight any significant deviations, which will be investigated to ensure that they are in line with expectations and knowledge of the bank. For example unexpectedly high-risk asset ratios, general loan provisions, and staff vacancies will be reviewed.</p> <p>The annual financial statements are subject to external audit, as is one quarterly prudential return each year.</p> <p>In the case of off-site work, analysis is made of quarterly prudential returns and audited accounts. This provides the information necessary to check that banks are complying with their requirements. A review of the supervisory process was made when the Commission was restructured in 1998 and the current regime that includes both on and off-site supervision was devised as a result. This regime is in the process of being reviewed again and any amendments considered necessary will be made.</p>
Assessment	Largely Compliant
Comments	<p>The Commission's Compliance Department is responsible for on and offsite supervision. The department has made progress in developing and implementing a mandate that would be complementary and supportive to the essential criteria identified in the CP. The Commission is to be commended for the efforts extended to enhance the structure and approach to on and offsite supervision. Contributing factors to the enhanced supervisory process include:</p> <ul style="list-style-type: none"> <li>• An organizational structure is being introduced which when fully implemented and staffed will focus on a portfolio approach to supervision;</li> <li>• A risk rating system has been introduced which was and will be, going forward, applied against predetermined factors. The integrity of the initial risk assessment which was developed based upon offsite data is tested through the enhanced on and offsite supervisory program;</li> <li>• Route planners are being developed or existing ones enhanced to allow for a more consistent approach to be applied to the supervisory process;</li> <li>• The technology platform provides for statistical comparisons to be made and exception items highlighted for follow up; and</li> <li>• Reporting formats are being standardized.</li> </ul> <p>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 CP.</p> <p>When implementing the aforementioned program consideration should be given to the following comments that were offered by the industry during the mission.</p> <ul style="list-style-type: none"> <li>• There were differing opinions concerning the benefits associated with the trilateral meetings between individual banks, external auditors and Commission personnel.;</li> <li>• In general, the industry feedback concerning the quality of Commission personnel was positive however some concerns were registered regarding the Commission's ability to assess in a competent manner some of the new products and services and the required control practices being provided by the industry especially in the treasury, credit and structured product areas;</li> </ul> <p>While the Commission's is to be commended for the progress it has made since its inception, it would now benefit from adding a further degree of discipline to the on and offsite supervisory process. Examples of the types of additional discipline that would add value to the process and allow for the process to be more effectively monitored and controlled would include the following:</p> <ul style="list-style-type: none"> <li>• prioritize the completion of the methodology being developed (route planners) and ensure that the methodology in place is reassessed to ensure that it provides for a consistent approach and clearly defined deliverables for compliance department staff. For example, refer to the comments</li> </ul>

	<p>and recommendations contained in CP 8 loan evaluation and loan loss provisioning. In addition there is no route planner designed to assess the specific attributes of the Process of Control that exists within each bank. Such a route planner could include an assessment of internal controls, compliance and internal audit. This type of route planner could form the necessary building blocks required to come to an opinion on the effectiveness of the bank's corporate governance regime;</p> <ul style="list-style-type: none"> <li>• training programs focusing on the documentation and preparation of visit findings would be of benefit to all new and existing staff;</li> <li>• a quality control or assurance process be developed, articulated and put in place to ensure that the supervisory process is applied in a consistent and effective manner with evidence available to support assessment opinions; and</li> <li>• a time accounting process should be put in place that would provide quantitative and where appropriate qualitative data on how the department allocates its time. This type of reporting will become more important October 1, 2002, when the structuring of the on and offsite supervisory activities for the banking and trust services are integrated.</li> </ul> <p>The development of on and offsite methodology can be expedited through the use of international "best practice" documents available through websites such as the Basel Committee of Banking Supervision, the Federal Reserve Bank Examination Manual and other well respected regulatory regimes. We would suggest these facilities be used to provide for a base of information with which to develop the content of route planners that have a specific use in this jurisdiction.</p> <p>In general, we are concerned that unless the Compliance Department is adequately resourced and has the tools and techniques to effectively assess licensees the progress made to date will not be sustained.</p> <p>Subsequent to the mission the Commission has taken steps to crystallize the on and offsite supervision, methodology and approach to supervision.</p>
<b>Principle 17</b>	<p><b>Bank Management Contact</b> Banking supervisors must have regular contact with bank management and a thorough understanding of the institution's operations.</p>
Description	<p>The frequency of on-site visits and ongoing meetings depends upon the risk profile of the bank concerned and will be influenced by the bank's size and the activities undertaken. As well as on-site visits, the Commission will also meet with banks on a periodic basis to discuss strategic objectives and, in particular, whether there is likely to be any significant change in activities, outstanding regulatory issues (those highlighted by on-site inspections, prudential returns, or annual audited financial statements), and common areas of interest. Commission staff are in regular contact with the industry, enhanced by a regular visit program and supervisory returns.</p> <p>The GPO requires a bank to obtain the consent of the Commission before undertaking any new activity in Jersey. Furthermore subsidiaries are also prevented from establishing or acquiring a representative office, branch or a subsidiary outside Jersey without the prior consent of the Commission.</p> <p>Article 13 of the BBL also requires a bank to advise the Commission of any change to a minority, majority, or principal shareholder, or an indirect controller (all of these terms are defined in the BBL).</p> <p>Where a bank does not report a matter which is, or is likely to be, a matter of material significance in relation to the Commission's powers and functions under the BBL, then Article 14 of the GPO requires a bank's auditors (and where applicable any reporting accountant) to communicate that matter directly to the Commission.</p> <p>Under Article 23 of the BBL, no person shall become a director or manager (defined as a person who is responsible for the overall control and administration or having effective control of the day-to-day business of a bank) without the approval of the Commission (each person must first complete a PQ). The experience and qualifications of such persons are important factors in judging their ability to</p>

	<p>understand risks arising from business lines and products.</p> <p>As part of the draft corporate governance route planner, the Commission considers whether an entity has procedures in place to ensure that only “fit and proper” persons are employed, and whether management is continually aware of the bank’s operational and financial position in respect of qualitative and quantitative risks.</p> <p>The Commission may refuse or revoke a bank’s license if it considers that the persons concerned with the management or control of a bank are not “fit and proper,” or have conducted business in an improper way.</p> <p>The Third Schedule of the GPO states that the Commission may require the removal of any director, controller, or manager of a registered person appointed under Article 23(1) of the BBL if he or she is not considered to be a “fit and proper” person to hold such office. This power could be exercised if the Commission considered that a person did not have the competence to assess, monitor, or control the risks of a business.</p> <p>The Commission has regular meetings with “home” and “host” representatives as well as the related supervisors to discuss issues of common interest.</p>
Assessment	Largely Compliant
Comments	<p>The Commission is in general, respected by the banking industry and professional organizations. Discussions with the industry revealed that with limited and understandable exceptions there is ongoing and useful dialogue with the industry participants and the Commission.</p> <p>The discussion comments contained in other CP commentary outline the quality of the supervised industry and the constructive methodology used as part of the licensing process. The enabling legislation provides the Commission with sufficient tools and actions items to deal with adverse situations in a timely manner.</p> <p>Coupled with the tools and action items identified in the discussion comments the introduction of a more intrusive and effective on and offsite supervisory process needs to complement the historical communication channels and provide additional information to the Commission.</p>
<b>Principle 18</b>	<p><b>Off-site Supervision</b></p> <p>Banking supervisors must have a means of collecting, reviewing, and analyzing prudential reports and statistical returns from banks on a solo and consolidated basis.</p>
Description	<p>The Commission has legal authority under Article 25 of the BBL to require the completion of quarterly returns by all banks (on a solo or consolidated basis). The data provided is based on that required under Basel.</p> <p>The Fourth Schedule of the GPO requires each bank to provide audited financial statements to the Commission, in line with generally accepted accounting standards. Typically, U.K. accounting standards are followed, which establish techniques and norms regarding the consolidation of accounts. Jersey does not issue its own accounting standards.</p> <p>Article 25(13) of the BBL states that a person who fails to supply information requested by the Commission will be guilty of an offence and liable to imprisonment for a term not exceeding 6 months or a fine not exceeding £2,000 or both.</p> <p>The Reporting Guide states that the accurate and timely filing submission of quarterly reports is viewed as an indication of management control, and consistent late submission of the form could result in a request for a report from the bank’s accountants under Article 25(1)(b) of the BBL. Two directors (or one director and a manager where there are not two directors resident in Jersey) must sign off the quarterly prudential return. For branches, the manager must sign the report, and, in the case of the year-end report, by the senior officer approved by the Commission under Section A (1) of the Fourth Schedule to the GPO.</p> <p>The Commission has prescribed to the industry that a series of regulatory reports be provided. A significant number of regulatory reports are required on a quarterly basis. For ease of comparisons,</p>

	<p>calendar quarter are used for reporting purposes and where fiscal years are different from the calendar quarter ends, fiscal year-end reports are required. The prescribed reports are standardized prudential reports that include details of balance sheet assets and liabilities, off-balance sheet exposures, risk asset ratio calculation, profit and loss account, provisions, loans, fiduciary accounts, total deposit liabilities, lending by sector analysis, maturity analyzes, foreign currency exposure, parent/group accounts, directors' details, directors' interests, statement of large exposures, large deposits, interest rate and exchange rate contracts, and analysis of placements. Any other reports specifically requested by the Commission are also attached. There are separate reporting formats for branches, clearing banks and subsidiaries.</p> <p>Other required reports include:</p> <ul style="list-style-type: none"> <li>• large exposure reports as and when they are made. Large exposures that are expected to exceed 25 percent of the bank's capital base must be notified to the Commission before the exposure is made. A standard form is used to submit the required information.</li> <li>• annual financial statements. Audited annual financial statements are required to be prepared in accordance with generally accepted accounting standards (typically U.K. or those followed by its parent) and submitted to the Commission. Schedule 4 of the GPO states that these must include a profit and loss account and balance sheet.</li> </ul> <p>Article 25 of the BBL provides the Commission with the authority to request and receive information from a bank whenever it needs it to fulfill its regulatory responsibilities. Article 25(6) extends this authority, inter alia, to a bank's holding company, subsidiaries, related companies, and fellow subsidiaries.</p> <p>The Commission performs analytical tests of the information provided in the quarterly prudential returns. "Model Bank" comparisons are used for the assessment process. Any deviations from the established standard are investigated and follow-up is provided where warranted.</p>
Assessment	Compliant
Comments	<p>A review of the reporting guide and technology based reporting formats confirmed that in general the information provided allows the Commission to assess the operational activities of banks in an appropriate manner. Exception conditions are followed up with the individual banks. Article 25 of the BBL provides the Commission with the necessary authority to receive ad hoc information when required. This facility will likely have to be used more frequently going forward to ensure the Commission remains cognizant of the risk potential of banks who have or are in the process of introducing new and possibly proprietary products and services.</p>
<b>Principle 19</b>	<p><b>Validation of Supervisory Information</b></p> <p>Banking supervisors must have a means of independent validation of supervisory information either through on-site examinations or use of external auditors.</p>
Description	<p>The Commission has established an objective of carrying out an onsite visit program that requires every bank to be visited at least once every two years. Procedures for the planning of an on-site visit include agreeing a date for the visit with the entity concerned some 6–8 weeks in advance. At this point pre-visit information is requested. Pre-visit information is expected at least one week before the date of the visit at which time it is reviewed.</p> <p>The visit commences with an opening meeting that sets out the agenda, introduces the Commission's staff, and identifies the staff of the entity concerned that will be required for interview. The visit is undertaken by completing the route planners, interviewing staff and reviewing all relevant documentation</p> <p>A closing meeting to discuss the initial findings of the visit is generally held within one week of the visit. A further objective was established that would seek to have a draft report covering regulatory, best practice and observation issues is usually issued within 3 weeks of the visit. Once a response has been received from the entity concerned, the final report is issued detailing outstanding issues and giving deadlines for completion. A letter to the directors is also issued. The report also suggests that a copy of the report be provided to external auditors. Outstanding issues are then followed up with the</p>

	<p>entity to ensure that they are cleared within pre-determined timeframes. The Commission also meets annually with those for which it acts as “home” state regulator and others where it considers it appropriate to do so, to discuss the external audit.</p> <p>Where the Commission has requested a report under Article 25 of the BBL, meetings will be held with the reporting accountant and bank to discuss the scope of the examination. Further meetings will be held once the Commission has received the report to discuss the issues arising.</p> <p>Article 25 of the BBL gives the Commission power to nominate or approve the person appointed to provide any report requested.</p> <p>The Commission does not have explicit powers to oppose an auditor’s appointment under Articles 31 to 33 of the BBL in respect of the annual financial statements. However, if necessary, the Commission could insist on the auditor’s removal using its power under Article 10 of the BBL to impose a condition on a banking license.</p> <p>The power to appoint reporting accountants or others to conduct an investigation is provided in Articles 25 &amp; 27 of the BBL. Normally the appointees will be lawyers or chartered accountants. To support the reporting accountant process Articles 6 and 25 of the BBL provide the Commission with the legal right of access to bank records, and to any director, manager or staff member.</p> <p>To complement the visitation process external auditors are required to certify the complete and accurate extraction of data in the prudential returns from underlying accounting and other records, and to confirm that the returns have been prepared and presented in accordance with current reporting instructions issued by the Commission.</p> <p>The auditor is also required to report:</p> <ul style="list-style-type: none"> <li>Any departures in the quarterly return from the accounting policies used for the latest published accounts.</li> </ul> <p>The treatment of transactions not fully or clearly catered for by the Commission’s reporting instructions.</p> <ul style="list-style-type: none"> <li>The extent to which information in a consolidated report has been extracted from records and systems not examined by the auditor / reporting accountant, because the records and systems relate to a group company and not those of the bank.</li> </ul> <p>The Commission has also established an Audit and Regulatory Group (ARG), which meets periodically to discuss issues of regulatory and market interest.</p>
Assessment	Largely compliant
Comments	<p>Refer also to assessment comments and recommendations related to on and offsite supervision CP 16 and CP 17 relating to contact with bank management.</p> <p>The Commission has no authority to monitor the work of external auditors under the present legislation. The legislation does state in Article 1(1) that an auditor must be a member of the Institutes of England and Wales, Scotland, Ireland or the Association of Certified Accountants or is otherwise approved by the Commission. While the individual qualification requirements are sound and the Commission has the power to remove an auditor under Article 10 of the BBL there is no legislative reference available referring to the need for a specific level of industry experience to complement the professional qualifications when an appointment of an auditor is made. This is mitigated by the Commission’s policy for the audit of banks to be conducted by one of the “big four” accounting firms. In view of the Commission’s lack of authority to monitor the work of external auditors it does not place excessive reliance of the work of external auditors with the result that it does not view that access to auditing working papers is necessary. The Commission has however recognized that a more in-depth on-site program is now appropriate.</p> <p>For particular business reasons, the Commission will engage one or more competent persons to carry out Article 25 reviews. The review engagement exists between the bank and the competent person.</p>

	<p>while the scope of the review is set by the Commission. As the Article 25 reviews are commissioned for particular regulatory reasons we would recommend that the Commission consider an approach wherein that, as part of the acceptance of the report findings, a review of supporting working papers be carried out.</p>
<b>Principle 20</b>	<p><b>Consolidated Supervision</b>  An essential element of banking supervision is the ability of the supervisors to supervise the banking group on a consolidated basis.</p>
Description	<p>The size and structure of the Commission allows for the staff responsible for supervising the banks to have access to the activities of other regulated disciplines. Access to regulatory issues will be enhanced shortly further by the inclusion of fiduciary supervision within the remit of the Compliance Division.</p> <p>The Commission maintains contact with home state supervisors (and host supervisors where the Commission acts as home regulator) to ensure that the Commission is kept aware of relevant regulatory issues occurring outside the Bailiwick.</p> <p>All activities of banks are considered in advance of, and discussed during, on-site visits, including investment and fund operations (where applicable), and nonregulated activities. Any investment, insurance, or fiduciary business conducted will require separate authorization from, and will be regulated by, the Commission.</p> <p>By virtue of Article 25(6) of the BBL the Commission has the legal authority to review all activities, including those conducted in other jurisdictions. There is, as detailed above, full scope to share regulatory information with other regulatory authorities. Where appropriate this may be facilitated through entering into MOUs, although the absence of such an agreement does not restrict the ability of the Commission to share information.</p> <p>Article 25 of the BBL provides the Commission with authority to request and receive information from a bank. Article 25(6) extends this authority, inter alia, to a bank's holding company, subsidiaries, related companies, and fellow subsidiaries. The Commission has the authority by virtue of Section 25(6) of the BBL to impose prudential standards on a consolidated basis.</p> <p>Under the Third Schedule to the GPO, a bank is required to obtain the consent of the Commission to undertake any new activity within Jersey. Under the Fourth Schedule, Jersey incorporated banks are also required to obtain the Commission's consent to acquire or establish a representative office, branch, or subsidiary outside Jersey. Compliance with prudential standards can also be applied as a condition for granting that consent. Consolidated financial information is collected through the prescribed quarterly and other regulatory returns.</p> <p>Under Article 10 of the BBL, the Commission may impose conditions on a bank's operations.</p>
Assessment	Compliant
Comments	<p>The Commission is strongly supportive of consolidated supervision. It also has the legislative authority to request access to all books and records and as a complementary control any new products and services must be approved by the Commission.</p> <p>The licensing practices emphasis that licenses will only be granted to the 500 largest banks and to complement the licensing process efforts are made to meet with "home" regulators on a regular basis. MOU have been established with approximately 13 "home" supervisors of which, a significant number regulate banks having material banking representation in Jersey.</p> <p>Effective October 1, 2002 the Commission will itself enhance it consolidated supervisory activities through the integration of banking and trust service supervisory activities.</p> <p>Refer also to comments provided in CP comments on Capital adequacy and Large exposures.</p>

<b>Principle 21</b>	<p><b>Accounting Standards</b></p> <p>Banking supervisors must be satisfied that each bank maintains adequate records drawn up in accordance with consistent accounting policies and practices that enable the supervisor to obtain a true and fair view of the financial condition of the bank and the profitability of its business, and that the bank publishes on a regular basis financial statements that fairly reflect its condition.</p>
Description	<p>The Fourth Schedule to the GPO 1991 establishes a legal basis for the external verification of financial statements. According to Article 11(2) and paragraph 4 of schedule 4, registered persons shall provide “True and Fair View” audited accounts in accordance with generally accepted accounting principles. Such accounts must be published within three months of the date of the balance sheet. Quarterly prudential returns are also subject to external review on an annual basis. It is an offence not to comply with such a requirement.</p> <p>Should management not be able to present financial statements for external audit, then the GPO would allow the Commission to require the removal of any director, controller or manager of a bank.</p> <p>There is regular and open communication between the Commission and external auditors. The establishment of an ARG manifests this.</p> <p>The Sixth Schedule of the GPO establishes circumstances in which auditors or reporting accountants are required to communicate matters to the Commission (e.g., loss of confidence in the competence or integrity of the bank officers). Article 33 of the BBL protects the auditors from breach of confidentiality.</p> <p>The GPO states that generally accepted accounting standards must be used. While this is normally those of the U.K., the Commission also permits a bank to use the accounting standards relevant to its parent (where those standards are considered equivalent).</p> <p>Audits must be conducted in accordance with the Auditing Guideline – Banks, issued by the U.K. Auditing Practices Committee of the Consultative Committee of Accounting Bodies.</p> <p>Article 25 of the BBL enables the Commission to scope an external review of any particular aspect of a bank’s operation, and Article 10 of the BBL allows the Commission to impose a condition concerning prior approval of financial statements.</p> <p>A notice issued under Article 25 of the BBL provides for the publication of financial statements for public distribution. Jersey incorporated subsidiary banks must produce “true and fair” audited accounts to the Commission but have a choice of either publishing those full accounts or producing summarized financial statements with limited disclosure based on IAS30 and U.K. standards. A number of minimum requirements are summed up in the notice.</p> <p>The Commission has the right to revoke the appointment of an external auditor. This would be achieved by imposing a condition on a bank under Article 10 of the BBL.</p> <p>However, and like the U.K. authorities, the Commission does not rely on the work of external auditors. Where auditors are required to provide reports, such reporting accountants will be approved by the Commission, which will consider skills and independence.</p> <p>The Commission also uses its website and other publications to communicate information. For example, it publishes public statements under Article 45B of the BBL (and equivalent provisions under other regulatory legislation) on its website.</p> <p>The Commission does not issue guidelines specifically covering the scope and conduct of audits. As noted above audits are typically conducted in accordance with Auditing Standards issued by the U.K. Auditing Practices Board (including U.K. Auditing Guideline– Banks).</p> <p>These provisions are incorporated within the Sixth Schedule to the GPO and Article 33 of the BBL.</p>
Assessment	Compliant



Comments	The descriptive comments support the key elements of the essential criteria of this CP. The comments provided in CPs 16, 18 and 19 outline areas where the Commission's level of cooperation with, and understanding the work of, external auditors could be enhanced and the comments also provide recommendations to achieve those results.
<b>Principle 22</b>	<p><b>Remedial Measures</b></p> <p>Banking supervisors must have at their disposal adequate supervisory measures to bring about timely corrective action when banks fail to meet prudential requirements (such as minimum capital adequacy ratios), when there are regulatory violations, or where depositors are threatened in any other way. In extreme circumstances, this should include the ability to revoke the banking license or recommend its revocation.</p>
Description	<p>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 under the BBL, including powers to impose conditions, appoint inspectors and to revoke registration.</p> <p>To date, two inspectors have been appointed under Article 27 of the BBL. A further 13 reports have been carried out under Article 25 of the BBL.</p> <p>The Commission also has power under Article 45B of the BBL to issue a public statement. To date, one such statement has been made for a licensed bank; three others have been issued in respect of other regulated activities and 11 have been made concerning the banks claiming to be carrying on deposit taking activities in Jersey.</p> <p>These powers could be used in respect of any matters relating to a bank's suitability to be registered under the BBL, and this would include consideration of prudential requirements and violations of legislation.</p> <p>The Commission has the power to take any of the actions described in this criteria:</p> <ul style="list-style-type: none"> <li>• the bank's activities could be restricted by imposing a condition under Article 10 of the BBL;</li> <li>• the GPO requires a bank to seek prior approval from the Commission of new activities and acquisitions, and this permission can be denied;</li> <li>• restriction or suspension of payments to shareholders or share repayments could be achieved by the imposition of a condition under Article 10 of the BBL;</li> <li>• restriction of asset transfers could be achieved by the imposition of a condition under Article 10 of the BBL;</li> <li>• under the GPO, the Commission can require the removal of any director, controller or manager and could make it clear that it would not consider such a person to be "fit and proper" for any other comparable post in the banking sector;</li> <li>• under the GPO, the Commission can ensure the replacement of managers, directors, or controllers, and could restrict their powers by the imposition of a condition under Article 10 of the BBL;</li> <li>• the Commission could use its power to impose a condition under Article 10 of the BBL to achieve a takeover or merger with a healthier institution; and</li> <li>• the Commission 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 is subsumed within the FSL, the Commission will also have the ability to petition the royal court to appoint a manager to a bank.</li> </ul> <p>An appropriate period of time is set for the completion of remedial action. Each one is reflective of the nature, complexity and volumes concerned.</p> <p>The supervisor applies penalties and sanctions not only to the bank, but when and if necessary, also to management and / or the Board of Directors. Under Article 10 of the BBL, the Commission may</p>

	<p>impose conditions on an institution that could include the removal of one or more senior individuals. Furthermore, under the Third Schedule to the GPO the Commission may require the removal of any director, controller or manager.</p> <p>In addition to the above, Article 49 of the BBL states that where an offence committed under that law by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, controller, manager, secretary or other similar officer of that body corporate or any person purporting to act in any such capacity, he, as well as the body corporate shall be guilty of the same offence and liable in the same manner to the penalty provided for that offence.</p> <p>Only to the extent that it could be considered to be acting in “bad faith,” the Commission could be the subject of a petition to the royal court if it unnecessarily delayed corrective actions.</p>
Assessment	Compliant
Comments	
<b>Principle 23</b>	<p><b>Globally Consolidated Supervision</b></p> <p>Banking supervisors must practice global consolidated supervision over their internationally active banking organizations, adequately monitoring and applying appropriate prudential norms to all aspects of the business conducted by these banking organizations worldwide, primarily at their foreign branches, joint ventures, and subsidiaries.</p>
Description	<p>Article 25 of the BBL provides the Commission with authority to request and receive information from bank. Article 25(6) extends this authority, inter alia, to a bank’s holding company, subsidiaries, related companies, and fellow subsidiaries.</p> <p>The Commission is responsible for 14 banks that have overseas activities, the majority of which operate in Guernsey and Jersey. All are part of larger groups, which are themselves subject to overall consolidated supervision outside of Jersey.</p> <p>Of these 14, two are particularly significant, one having operations throughout the Middle East. In the case of the latter, on-site visits are made to a number of overseas branches on average every 18 months (including the group’s regional head office). The Commission also makes use of reporting accountants in the relevant jurisdictions to provide it with other information that it requires.</p> <p>The Commission meets formally to discuss the supervision of hosted operations with its counterparts in Guernsey (on average twice annually) and Jersey (once in the last 18 months). Given the strong links between regulators in all three jurisdictions, issues are also discussed informally on a more frequent basis.</p> <p>As part of the corporate governance route planner, the Commission considers the adequacy of management information reporting, the effectiveness of compliance and audit functions, and whether management is aware of the bank’s operational position.</p> <p>The Fourth Schedule to the GPO requires a bank to obtain the consent of the Commission before establishing or acquiring a representative office, branch or a subsidiary outside Jersey. The Commission would not grant this consent unless it was satisfied with the quality of host supervision.</p> <p>Under Article 10 of the BBL, the Commission has the power to require the closing of an overseas office, or impose limitations on its activities through the imposition of a condition on its license.</p> <p>Under Article 25(6), the Commission has the authority to conduct overseas on-site visits, in line with those undertaken in Jersey, and its basis for selecting whether or not to conduct overseas on-site examinations is risk-based.</p> <p>There is a budget that permits such visits to take place and there is a history of them having been undertaken.</p> <p>Where foreign activities have a higher risk profile, and differ from those conducted in Jersey, or are conducted at remote locations, then they will be the subject of on-site visits. Visits are arranged</p>

	<p>periodically, and frequency is determined by size and risk profile.</p> <p>For those operations hosted by Guernsey and Jersey, the Commission visits only the local supervisor.</p> <p>As a rule, meetings are held with regulators of jurisdictions in which banks have material operations, to consider the scope and quality of host regulation.</p>
Assessment	Compliant
Comments	
<b>Principle 24</b>	<p><b>Host Country Supervision</b></p> <p>A key component of consolidated supervision is establishing contact and information exchange with the various other supervisors involved, primarily host country supervisory authorities.</p>
Description	<p>The Commission has wide gateways for the sharing of information with home and host country supervisors. MOUs have been established with some 13 home supervisors, including banking regulators in Germany, Gibraltar, Guernsey, the Isle of Man, Mauritius, South Africa and the U.K.. In addition, the Commission meets periodically with regulators in other host countries, such as the United Arab Emirates, to discuss hosted operations and the overall framework of supervision and group issues.</p> <p>A number of home supervisors also visit Jersey on a regular basis and meetings are held with the Commission to discuss issues of mutual interest. Formal gateways are used regularly to exchange information. Home supervisors are encouraged to provide relevant information to the Commission. Bilateral meetings are held with host (and home) country supervisors. The Commission will discuss the implications of information received from another supervisor and, as far as possible, keep them informed of any relevant developments.</p> <p>Under the Fourth Schedule to the GPO, Jersey incorporated banks are required to obtain the Commission's consent to acquire or establish a representative office, branch, or subsidiary outside Jersey.</p>
Assessment	Compliant
Comments	
<b>Principle 25</b>	<p><b>Supervision Over Foreign Banks' Establishments</b></p> <p>Banking supervisors must require the local operations of foreign banks to be conducted with the same high standards as are required of domestic institutions and must have powers to share information needed by the home country supervisors of those banks for the purpose of carrying out consolidated supervision.</p>
Description	<p>Local branches and subsidiaries of foreign banks are subject to the same prudential, inspection, and regulatory reporting requirements as domestic banks.</p> <p>A letter is always sent to the home country supervisor before registering an institution, requiring the home country supervisor to confirm knowledge of and agreement with the operation proposed in Jersey, and its role as consolidated supervisor.</p> <p>Under Article 45A, the Commission can and does share such information with home country supervisors. This may be offered spontaneously and on the request of another supervisor.</p> <p>Home country supervisors are given on-site access to local offices and subsidiaries for safety and soundness purposes.</p> <p>The Commission advises the home country supervisor as soon as practicable whenever it takes any material action regarding the operations of a bank from that country.</p> <p>The Commission gathers information by monitoring market information, by obtaining copies of group annual accounts, by visiting head offices and, where appropriate, by holding bilateral meetings with home country supervisors.</p>
Assessment	Compliant
Comments	

Table 2. Summary Compliance with the Basel Core Principles

Core Principle	C <sup>1/</sup>	LC <sup>2/</sup>	MNC <sup>3/</sup>	NC <sup>4/</sup>	NA <sup>5/</sup>
1. Objectives, Autonomy, Powers, and Resources					
1.1 Objectives		X			
1.2 Independence		X			
1.3 Legal framework		X			
1.4 Enforcement powers		X			
1.5 Legal protection	X				
1.6 Information sharing	X				
2. Permissible Activities	X				
3. Licensing Criteria	X				
4. Ownership	X				
5. Investment Criteria	X				
6. Capital Adequacy		X			
7. Credit Policies		X			
8. Loan Evaluation and Loan-Loss Provisioning		X			
9. Large Exposure Limits	X				
10. Connected Lending		X			
11. Country Risk	X				
12. Market Risks			X		
13. Other Risks		X			
14. Internal Control and Audit		X			
15. Money Laundering		X			
16. On-Site and Off-Site Supervision		X			
17. Bank Management Contact		X			
18. Off-Site Supervision	X				
19. Validation of Supervisory Information		X			
20. Consolidated Supervision	X				
21. Accounting Standards	X				
22. Remedial Measures	X				
23. Globally Consolidated Supervision	X				
24. Host Country Supervision	X				
25. Supervision Over Foreign Banks' Establishments	X				

<sup>1/</sup> C: Compliant

<sup>2/</sup> LC: Largely compliant

<sup>3/</sup> MNC: Materially noncompliant

<sup>4/</sup> NC: Noncompliant

<sup>5/</sup> NA: Not applicable.

## C. Recommended Actions

### Recommended actions

Table 3. Recommended Actions to Improve Compliance with the Basel Core Principles

Reference	Recommended Action
Each such agency should possess operational independence and adequate resources (CP 1(2))	<p>Conduct a review of the Finance and Economic Committee's power of direction and the Commission's development function.</p> <p>An in-depth analysis of the resources required to fulfill the supervisory objectives and as a consequence establish a change plan.</p>
Credit Policies, Loan evaluation and loan loss provisioning (CP 7and 8)	Develop guidance/guidelines or orders covering generally accepted credit risk policies and procedures
Market Risks (CP 12)	Impose market risk capital requirements.
Other Risk (CP 13)	Develop guidance and "best practice" documents.
Internal Control and Audit (CP 14)	<p>Systematic confirmation by senior management and Board regarding their fiduciary responsibilities.</p> <p>Introduce a "best practice" paper on internal controls and internal audit.</p>
On-Site and Off-site Supervision (CP16)	Establishment of a full scope on-site examination program supplemented by formalized quality control procedures.

## D. Authorities' Response to the Assessment

### Basel Core Principles for Effective Banking Supervision

#### Overview

13. The authorities welcome the Fund's confirmation that Jersey is compliant or largely compliant with 29 of the 30 Basel 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.

14. 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 ML risk. Nevertheless, as noted below, the Commission will be addressing the particular prudential risks referred to in the Fund's assessment.

15. The authorities note that there is only one CP that the Fund assesses as materially noncompliant—and that refers to the provisions to deal with market risk. The authorities note that their approach to the management of market risk has been determined by the Commission's risk assessment, as noted above. However, the Commission will consider the introduction of market risk capital requirements as part of its assessment of the second Basel Capital Accord.

16. A consolidated action plan, prepared by the authorities, is appended to Volume I of the assessment.

### ***Objectives, autonomy, powers, and resources***

#### ***Resourcing (CP 1(2))***

17. 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.

### ***Market and other risks***

#### ***Credit, market, and other risks (CPs 7,8,12 and 13)***

18. 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 ML risk.

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

### ***Internal control and audit***

#### ***Management declaration on internal controls (CP 14)***

20. 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 AML legislation and Codes of Practice (Article 6 of the Financial Services (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000).

21. 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 proposed changes would then be subject to a period of consultation and legislative approval.

### ***On-site and off-site supervision***

#### ***Scope of supervision and quality control (CP 16)***

22. The authorities note that 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 which will allow it to more accurately identify higher risk operations, 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 internal review procedures.

### ***Body of assessment***

#### ***Operational independence (CP 1(2))***

23. The authorities' response to the fund's comments on operational independence are set out in Volume 1 (page 21).

#### ***Legal framework for banking supervision (CP 1(3))***

24. The authorities note that, while the Commission has still to issue Codes of Practice for deposit-taking business, failure to follow existing banking guidance notes may indicate that a business is not "fit and proper" and can attract regulatory sanctions. In addition, where necessary, conditions can be set on a license, which do have force of law, and which will attract a penalty where there is failure to comply.

25. Notwithstanding this, Codes of Practice for deposit-taking business will be issued by the Commission for consultation in 2003. Codes will, inter alia, lay out capital adequacy requirements and it is intended that they will come into force during 2004.

26. In addition, the Commission is seeking to consolidate all of Jersey's existing regulatory legislation into the FSL, which provides an explicit legal basis for issuing Codes and attaches penalties for failing to comply with them. The authorities point out that the Commission will recommend legislation, subject to consultation and legislative approval to transfer regulation of deposit-taking to the FSL. Such a consolidation was under consideration at the time of the Fund's assessment.

*Powers to address compliance with laws (CP1(4))*

27. The authorities response to the recommendation that the Commission be provided with civil monetary penalties and fining powers is in Volume 1 (page 43).

28. The authorities accept that there is no power under the Banking Business (Jersey) Law 1991 (BBL) for the Commission to issue directions or to appoint a manager. However, the law does provide the Commission with wide powers to impose conditions on the license of regulated institutions, equivalent to the power of direction, and the absence of such a power has not caused difficulty to date. The Commission also considers it unlikely that it would use a power to appoint a manager to a Jersey licensed bank, given the top 500 status of banks operating in Jersey.

29. Notwithstanding this, 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 (the FSL), which provides for the ability to direct, to appoint a manager, and for restitution on behalf of customers. Subject to consultation and legislative approval, the Commission will recommend that the regulation of deposit-taking be transferred to the FSL in 2004. Such a consolidation was under consideration at the time of the Fund's assessment.

*Credit policies (CP 7)*

30. The authorities do not accept that the Commission places undue reliance on home supervisors to mitigate credit risk. Credit risk is assessed by the Commission as being low risk from information collected in prudential returns, and is mitigated, instead, by its higher capital requirement (10 percent risk capital requirement), licensing policies, and requirement for a letter of comfort from the parent company.

31. Notwithstanding this, Codes of Practice for deposit-taking business, will, subject to consultation, introduce best practices for credit risk and will ensure that responsibilities of the Board and senior management for credit risk are adequately addressed. Best practice will be determined by the Basel paper: Principles for the Management of Credit Risk. It is intended that these Codes will come into force during 2004.



32. The authorities point out that revised on-site visit programs have also been prepared and adopted which require review of management policies on credit quality and provisioning levels and the application of policies and procedures to manage all other core banking risks.

*Loan evaluation and loan loss provisioning (CP 8)*

33. The authorities do not accept that the Commission places undue reliance on audited financial statements to evaluate loans and loan loss provisioning. As explained above, it is the Commission's view that credit risk is not a significant risk for the majority of Island banks and, instead, the Commission has focused on corporate governance, detailed conduct of business, and on ML risk.

34. Notwithstanding the above, a revised on-site credit risk program (route planner), which is risk-based, is in use which now:

- Specifies testing to be carried out during visits to verify management representations.
- Requires evaluation of the appropriateness of credit risk and provisioning policies and procedures.

The Commission will also review the merits in developing a credit risk rating system.

*Connected lending (CP 10)*

35. The authorities note that Codes of Practice for deposit-taking business, which will incorporate requirements governing connected lending, will be issued for consultation in 2003 and it is intended that they will come into force during 2004.

36. 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 risk model has been enhanced, a comprehensive set of on-site visit work programs (route planners) has been developed, and improved quality control checks are being incorporated into the on-site visit process.

37. As required by the Banking Business (Jersey) Law 1991, banks proposing to introduce global liquidity pools have notified the Commission and met with it to determine the impact of such operations.

*Validation of supervisory information (CP 19)*

38. The authorities note that the Commission intends to review whether it should be permitted to approve the appointment (and continued appointment) of auditors of all licensed persons (subject to consultation and legislative approval). 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.

39. The Commission is to review the use of external experts in the validation of supervisory information, including its access rights to the working papers of such experts, and any consequential amendments to regulatory legislation that may be required. Any proposed changes would then be subject to a period of consultation and legislative approval.

## **II. ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM**

### **A. General**

#### **Information and methodology used for the assessment**

40. A detailed assessment of the AML and combating the financing of terrorism (CFT) regime of Jersey was prepared by a team of assessors that included staff of the International Monetary Fund (IMF) and an independent expert (IAE) not under the supervision of IMF who was selected from a roster of experts in the assessment of criminal law enforcement and nonprudentially regulated activities.<sup>3</sup> IMF staff reviewed the relevant AML/CFT laws and regulations, and supervisory and regulatory systems in place to deter ML and FT among prudentially regulated financial institutions. In addition, the Fund reviewed the transitional regulatory arrangements in place for trust and company service providers. The IAE reviewed the capacity and implementation of criminal law enforcement systems.

#### **Overview of measures to prevent money laundering and terrorism financing**

41. Information used for the assessment was obtained from the Money Laundering (Jersey) Order 1999 (the “MLO”); the Proceeds of Crime (Jersey) Law 1999 (the “POCL”); the Terrorism (Jersey) Law 2002<sup>4</sup> (the “TL”); the Terrorism (United Nations Measures) (Channel Islands) Order 2001 (the “Terrorism Order”); the Al-Qa’ida and Taliban (United Nations Measures) (Channel Islands) Order 2002 (the “Al-Qa’ida Order”); the Drug Trafficking Offenses (Jersey) Law 1988 (the “DTOL”); the Collective Investment Funds (Jersey) Law 1988 (the “CIFL”); the Banking Business (Jersey) Law 1991 (the “BBL”); the Insurance Business (Jersey) Law (the “IBL”); the Financial Services (Jersey) Law (the

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<sup>3</sup> The mission’s work was undertaken over two visits. The first visit (September 11-25, 2002) was undertaken by Ross Delston (Consulting Counsel LEG) and Richard Carpenter (MFD expert), with Washington-based assistance from Stuart Yikona (Technical Assistance Officer LEG). The second visit (January 13–21, 2003) was undertaken by Ian Carrington (MFD) and Detective Chief Superintendent, Felix McKenna, of Ireland’s Criminal Assets Bureau (IAE). The work of the IAE appears in italics.

<sup>4</sup> Due to come into force during 2003.

“FSL”) (formerly Investment Business (Jersey) Law); the Financial Services Commission (Jersey) Law 1998 (the “Commission Law”); the Criminal Justice (International Cooperation)(Jersey) Law 2001 (the “CJL”); the Criminal Justice (Forfeiture Orders)(Jersey) Law 2001 (the “CJFOL”); the U.K. Extradition Act 1989 (the “Extradition Act”); the Police Force (Jersey) Law 1974 (the “PFL”); the Customs and Excise (Jersey) Law 1999 (the “CEL”); the Investigation of Fraud (Jersey) Law 1991 (the “Fraud Law”); the Interception of Communications (Jersey) Law 1993; the Interpretation (Jersey) Law 1954; the Companies (Jersey) Law 1991 (the “Companies Law”); the Borrowing (Control)(Jersey) Law 1947, (the “Borrowing Control Law”); the AML guidance notes for the finance sector (the “Notes”);<sup>5</sup> the Investment Business Codes of Practice (the “Investment Codes”); Codes of Practice for Trust Company Business (the “Trust Company Codes”); the Mutual Evaluation Report of the OGBS of 1999 (the “MER”); Joint Action dated June 19, 1998, of the Council of the European Union on the creation of a European Judicial Network (the “EU Decision”); and the Self-Assessment Questionnaire: FATF Special Recommendations on Terrorist Financing (April 2002); Position Paper: Overriding Principles for a Revised Know Your Customer Framework (February 2002), issued by the Commission, the Guernsey Financial Services Commission and the Isle of Man Financial Supervision Commission. See generally, [www.jerseylegalinfo.je](http://www.jerseylegalinfo.je), which contains all of Jersey’s primary and secondary legislation, along with some proposed legislation as well.

42. This assessment is also based in part on discussions on AML/CFT issues that were held with officers and other representatives of the following offices, all of whom were most helpful in the preparation of this assessment: the Commission; the Bailiff’s Chambers; the Attorney General’s Chambers; the Law Officers Department; the Police; the JFCU and Customs and Excise.

43. For the purposes of this assessment, financial institutions (FIs) are any deposit-taking business as defined in Article 1(1) of the BBL; any insurance business to which Article 4 of the Insurance Business (Jersey) Law 1996 applies; the business of being a functionary of a CIF, as defined in Article 1(1) of the CIFL; any investment business, as defined in Article

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<sup>5</sup> For the purposes of this assessment, the Notes were not considered to be within the defined term ‘law,’ which appears in Section 2 of the Methodology, as including “legislation, decree, regulation or other rule that is in force, is mandatory, and for which there are sanctions for noncompliance.” This conclusion is based on the Notes being neither mandatory nor subject to direct sanctions explicitly linked to violation of the Notes. Finally, the legal basis for the issuance of the Notes by the Commission is grounded in its power to publish information about its functions and to provide advice, assistance or services relating to the financial sector. Hence, there is no explicit legal basis for the issuance of the Notes by the Commission, other than as information, advice or assistance to that part of the financial sector regulated and supervised by the Commission.

1(1) of the FSL; the business of providing trusteeship services (not being services as a trustee of an occupational pension scheme); the business of company formation; the business of company administration; the business of a bureau de change; the business of providing check-cashing services; the business of transmitting or receiving funds by wire or other electronic means; the business of engaging in any of the following activities within the meaning of the Annex to the Second Banking Coordination Directive (No. 89/646/EEC) (not being a business specified above (inclusive): the acceptance of deposits and other repayable funds from the public; lending; financial leasing; money service business (MSB); the issuing and administering means of payment (such as credit cards, travelers' checks and bankers' drafts); guarantees and commitments; trading for one's own account or for the account of customers in money market instruments (such as checks, bills, and CDs); foreign exchange; financial futures and options; exchange and interest rate instruments; or transferable securities; participation in securities issues and the provision of services related to such issues; advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings; money broking; portfolio management and advice; the safekeeping and administration of securities; credit reference services; and safe custody services, see generally Article 36(1) and Schedule 2 of the POCL. Jersey has a strong legal and institutional framework generally, particularly with respect to implementation of the major treaties, including measures to combat terrorism and terrorist financing; confiscation of the proceeds of criminal conduct; law enforcement and prosecution powers; customer identification; and international cooperation.

44. The main institutions in Jersey in the AML/CFT area are the JFCU, which is a unit of the Jersey Police and is the FIU for Jersey; the Police and the Customs and Excise Department, which investigate criminal activities; the Attorney General's Office which prosecutes ML and FT; and the Commission, which is the financial regulator and responsible for monitoring compliance for FIs that are regulated.

45. The broad regulation of the financial sector, including banking, insurance, investment companies and trust companies in a single independent and effective regulator, the Commission, is another strength. However, a number of improvements to Jersey's legal and institutional framework are recommended: First, with respect to the JFCU, consideration should be given to augmenting its permanent compliment of human resources, and its powers, particularly with respect to its ability to obtain information from reporting entities, and its access to public and nonpublic databases, strengthened. Second, the legal framework with respect to originator information remaining with the transfer through the payment chain, and enhanced scrutiny to wire transfers that do not contain complete information, needs to be strengthened, taking into account the two-year period referred to by FATF. Finally, the framework with respect to Jersey's role as a home regulator, although applicable only to a limited a limited number of financial institutions, and the screening of applicants for employment by banks, insurance companies and CIFs, should be improved.

### Assessing criminal justice measures and international cooperation

Table 4. Detailed Assessment of Criminal Justice Measures and International Cooperation

I—Criminalization of ML and FT (compliance with criteria 1–6)
Description
<p>1. According to the authorities, in general, conventions are ratified by the U.K. on Jersey's behalf and with its consent. This is only done after Jersey has first determined that Jersey law is in place to enable the treaty to be implemented. The Vienna Convention was ratified by the U.K. on behalf of Jersey in July 1997. The Convention for Suppression of the Financing of Terrorism has not been ratified on behalf of Jersey, since the implementing legislation is due to be brought into force in 2003. The Council of Europe and Palermo Conventions have not been ratified on Jersey's behalf since the implementing legislation was not in place at the time of the ratification by the U.K., but the implementing legislation is due to come into force in 2003. The 1959 Council of Europe Convention on Mutual Legal Assistance has the same status as these. Jersey has fully implemented the provisions of these conventions relevant to AML/CFT through its domestic law.</p> <p>2. 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 recommendations (Articles 32, 33, and 34 of the POCL, and Article 16, 16A, 17, and 17A of the DTOL). 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 (Articles 2, 3, 13, 15, 16, and 17 of the TL).</p> <p>The offense of ML extends to both laundering and the predicate offense (Articles 32–34 and 40 of the POCL; Articles 16, 16A, 17, and 17A of DTOL; and Articles 15–18 of TL, paragraphs 4 and 5 of Terrorism Order). It is not necessary that a person be convicted of a predicate offense to establish that assets were the proceeds of criminal conduct. Predicate offenses extend to any criminal conduct, as follows: Drug trafficking under 16, 16A, 17, and 17A of DTOL; FT under Articles 15–18 of TL; and all other crimes with a punishment of more than one year under Articles 32–34 and the First Schedule of the POCL.</p> <p>Money laundering extends to all assets that represent the proceeds of criminal conduct. Criminal conduct includes those crimes committed extraterritorially but should constitute an offense if the criminal conduct had occurred in Jersey (Article 1(1) of the POCL, definition of "drug trafficking" in Article 1 of DTOL; and the definition of "terrorism" in 2(4)(a) of the TL).</p> <p>3. FT is criminalized on the basis of the Convention for the Suppression of the Financing of Terrorism (Articles 15–18 of the TL).</p>

4. The offenses of ML and FT apply to individuals or entities that knowingly engage in ML and FT (Articles 32–34 of the POCL; Articles 15–18 of the TL; and 16, 16A, 17, and 17A of DTOL). The offenses of ML and FT extend to legal entities under Article 9 of the Interpretation Law, which states that the definition of person shall "...unless the contrary intention appears, include any body of persons corporate or unincorporated."

5. With respect to criminal offences, both individuals and FIs are subject to criminal laws relating to AML/CFT, including unlimited fines and imprisonment of up to 14 years (Articles 32–35, and 37 of POCL; Articles 12–18, 20, 23, and 35 of TL; Articles 16A, 17, 17A, 18A, 18B, and 21 of DTOL). Article 63 and paragraph 8 of Schedule 6 of the TL make provision for offenses of legal entities to flow through to directors, as does Article 37(5) of the POCL.

(For further discussion of sanctions see Section VIII, Criterion 64.)

6. *The legal means and resources that are available to the Jersey Authorities enable them to implement ML and FT laws; however in order to investigate ML/FT effectively the Jersey Authorities are required to supplement their existing manpower. There is legislation in Jersey to effectively combat, investigate and prosecute ML and the FT. On the prosecutorial side there are a number of lawyers permanently attached to the attorney general's Office which allocates them to manage and direct ML investigations. The Jersey Authorities are currently carrying on a number of investigations into suspected ML, which involve millions of pounds in assets. In order to service these ongoing ML investigations, Jersey is assisted by a number of lawyers from the U.K., supported by Forensic Accountants/Analysts. The use of these additional professionals is financed by the States of Jersey and is under the control of the attorney general. There is on going assessment on the demands imposed on the attorney general's staff by the volume of work carried out and if the trend of increased workload continues at the current rate it may result in an increase of staff. The Jersey authorities recognize the complexities involved in the investigation of ML/FT and thus the reason for financing the employment of outside Professionals namely Lawyers, Forensic Accountants and Financial Investigators (U.K. Police/Customs and Excise Officers).*

*Within the attorney general's office there are two strands of investigation. The first deals with International cooperation/Mutual Legal Assistance and the second concentrates on Jersey based operations.*

*The Jersey Joint Financial Crimes Unit (JFCU) has 15 permanent staff positions, consisting in the main of police officers supported by customs officers and civilian staff. The approved strength of this unit is 17.5 positions. This unit has an additional seven persons currently, consisting of U.K. police officers and civilians attached to ongoing major ML investigations (total manpower operating in Jersey re ML/FT is 22 people). The IT systems available within the JFCU consist of a number of databases, which are currently under evaluation to be streamlined.*

#### Analysis of Effectiveness

Jersey has a generally adequate legal framework for the criminalization of ML and terrorism financing, but the Convention for Suppression of the Financing of Terrorism, the Council of Europe Convention and the Palermo Convention have not been extended to the jurisdiction. (See reference to UNSC Resolution in response to criterion 1.)

*The legal resources available in Jersey enable the authorities to effectively implement AML and CFT laws.*

#### Recommendations and Comments

The Convention for Suppression of the Financing of Terrorism, the Council of Europe Convention and the Palermo Convention should be extended to Jersey.

#### Implications for compliance with FATF Recommendations 1, 4, 5, SR I, SR II

Full compliance will be achieved when the Convention for Suppression of the Financing of Terrorism is ratified on Jersey's behalf.

II—Confiscation of proceeds of crime or property used to finance terrorism (compliance with criteria 7–16)
Description
<p>7. Laws provide for the confiscation of proceeds and instrumentalities of criminal conduct. Laws also provide for the freezing or seizure of assets subject to confiscation prior to the issuance of a confiscation order or where there are reasonable grounds in the case of ML and FT (Articles 15 and 16 of the POCL; Schedule 3, Paragraphs 4–7 of Schedule 4 and Paragraphs 1–3 of Schedule 5 of the TL; Articles 3–6, 16B and 16C of DTOL). In addition, laws provide once a criminal conviction has been obtained, for the confiscation of assets of organizations that are found to be primarily criminal in nature (Articles 3, 38, and 39 (the latter two for external confiscation orders) of the POCL and Article: Articles 16C and 18 (the latter for external confiscation orders) of the DTOL; and Articles 2, 26, and 27 of the TL)).</p>
<p>With respect to confiscation of property of corresponding value, AML laws in Jersey provide for the appointment of the Viscount, who is the executive officer of the Royal Court of Jersey, as receiver for all property owned by a defendant pursuant to a court order known as a 'saisie judiciaire,' and for the sale of such property to satisfy a confiscation order (POCL Articles 3 - 5, 15 - 21 and DTOL Articles 3 - 12). However, the TL does not contain comparable provisions. Civil forfeiture is not available under current Jersey law, except with respect to cash used in connection with FT (Article 27 and Schedule 4 of the TL). Discussions are taking place for an appropriate civil forfeiture law for the jurisdiction.</p>
<p>8. Orders may be made to identify and trace assets suspected of being proceeds of criminal conduct or used for FT (Articles 40 and 41 of the POCL; Articles 19 and 20 of the DOTL; Schedule 5, Paragraph 6 of Schedule 6 and Paragraph 15 of Schedule 4 of the TL; Article 5 of the CJL; and Article 2 of the Investigation of Fraud Law).</p>
<p>9. The rights of innocent or bona fide third parties are protected (Article 16(7) of POCL; Article 9(7) of DTOL; Article 26(7) of the TL). In addition, the authorities have indicated that under Jersey rules of civil procedure, a third party intervener may assert legal rights over property.</p>
<p>10. The authorities have indicated that courts will not enforce illegal contracts as a matter of common law.</p>
<p>11. <i>The JFCU records all statistics relating to amounts of property frozen, seized and confiscated relating to ML, the predicate offences and FT.</i></p>
<p>12. <i>All police officers and Customs Officers attached to the JFCU have undergone training in a number of areas including company and trust law, the U.K. national model for training in relation to standard and advanced financial investigation courses, compliance procedures and have received training from the home office and obtained Centre of Excellence Certificates.</i></p>
<p><i>The prosecutorial and judicial personnel that are engaged in the fight against ML are experienced lawyers, some of whom are regarded as experts within the ML field. These professionals and the members of the JFCU regularly attend international conferences on the subject matter of ML and FT which enables them to carry out their functions to an advanced standard.</i></p>
<p>13. Laws provide for freezing of funds or other property of terrorists in accordance with the United Nations resolutions (Part 2, Schedule 4 of TL; Article 6 of the Terrorism Order).</p>
<p><i>The JFCU keeps statistics relating to this matter and have made them available to the evaluator.</i></p>
<p>14. There is power to identify and freeze the property of suspected terrorists, whose names may not appear on the list(s) maintained by the relevant committees of the UN Security Council (Schedules 4, 5 and 6 of TL; and Article 6(1) of the Terrorism Order).</p>
<p>15. Jersey has established two funds, the Criminal Offences Confiscations Fund and the Drug Trafficking Confiscations Fund. (Article 24, POCL; Article 14A of DTOL, see also Schedule 4, paragraph 10 of TL). There is no comparable terrorism fund, since such assets go to the budget of the government.</p>
<p>16. Jersey has recourse to asset-sharing mechanisms to share property confiscated from crimes generally and from drug trafficking crimes with other jurisdictions. (Article 24 of POCL; and Article 14A of DTOL). There is</p>

no comparable provision with respect to terrorist assets, since there is no confiscation fund established under the TL, nevertheless Jersey has reached agreements on a case by case basis with other jurisdictions on the sharing of assets confiscated under terrorism legislation.
<b>Analysis of Effectiveness</b>
Jersey has a generally adequate legal framework relating to confiscation, freezing and seizure of assets; orders to identify and trace assets; and protecting the rights of innocent third parties to such assets. While the confiscation of property of corresponding value can be achieved under AML Laws, the TL does not contain comparable provisions. Civil forfeiture is not available under current Jersey law, except with respect to cash used in connection with FT. Discussions are taking place for an appropriate civil forfeiture law for the jurisdiction.
<b>Recommendations and Comments</b>
Consideration should be given to amending the Terrorism Law to provide for the appointment of a receiver for all property owned by a defendant to satisfy a confiscation order.
<b>Implications for compliance with FATF Recommendations 7, 38, and SR III</b>
<b>III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels (compliance with criteria 17–24)</b>
<b>Description</b>
<p>17. There is a Joint Financial Crimes Unit (JFCU) consisting of staff from the States of Jersey Police and Customs. The JFCU also includes the serious fraud unit of the police. Police and officers may be assigned to the JFCU for a period of time, typically up to six years.</p> <p>With respect to terrorism, terrorist financing and drug crimes reporting parties are required to disclose all suspicious reports to a police or customs officer; Articles 21 and 34 of the TL. In addition, The Commission is required to report to the police where they have information relating to ML (Article 10 of the MLO). However with respect to other crimes all that is required is that procedures be maintained for securing that the information contained in a report is disclosed to a police officer (MLO ART. 9(d)). Although there is no provision in the law or regulation indicating the manner in which suspicious transaction reports are to be made, the Notes do provide a standard format in the reporting of disclosures and what information should be disclosed with regard to the nature and reason for the suspicion (Paragraphs 9.23–9.26 of the Notes). However, the Commission has authority only to require regulated FIs to comply with the Notes.</p> <p>18. There is no authority in the law requiring reporting parties to provide additional documentation to the 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, for all serious crimes and drug trafficking (Article 40 of the POCL and Article 19 of the DTOL), and for terrorist acts and terrorist financing, a production order, customer information order or an account monitoring order (under Articles 32 and 33, and Schedules 5, 6 and 7 of the TL). Such a showing is not always possible at the early stages of analysis of an STR.</p> <p>19. The JFCU does not have access to other databases on a real time basis, but rather sends its officers to obtain publicly available information from other agencies.</p> <p>The JFCU does not have access to other nonpublic databases on a timely basis other than through a production order, which would require a suspicion of criminal activity. The relevant laws should be amended to provide for such access on a real-time basis.</p> <p>20. Although Article 37(1) of the POCL and Article 9 of the MLO provide for ML offences, there is no explicit provision for an offence of failure to report with respect to predicate crimes other than drugs or terrorism. Article 18(a) of the DTO creates such an offence with respect to the reporting of drug ML. Articles 20 and 23 of the TL provides for the same for terrorist acts. The Attorney General has the authority to prosecute or failure to have adequate reporting procedures in place, and the Commission has the authority to impose regulatory sanctions on regulated FIs relating to failure to report. However, the other FIs, such as MSBs, would not be subject to the Commission's jurisdiction. See generally the response to Criterion 5, above.</p>



The legal framework does not explicitly provide that failure to report is a crime with respect to predicate crimes other than drugs or terrorism, although the POCL and MLO could be interpreted to provide for the equivalent of such an offense.

21. Information obtained from the police cannot be disclosed to any other person other than in accordance with Articles 30 and 31 of the POCL (Article 29 of the POCL: Article 2 of the PFL). A person to whom information is disclosed shall not disclose it to any other person without the prior consent of the attorney general (Article 31(2) and 31(4) of the POCL). Since there are no restrictions on disclosure in the DTOL or the TL as there are in the POCL, the police are able to disclose information to other police agencies for the purposes of investigation without reference to the attorney general.

22. With regard to the sharing of information by the JFCU with foreign counterparts, the attorney general may give his consent generally or specifically and unconditionally or subject to such conditions as he may stipulate.

23. *The Jersey FIU is staffed by police, customs and civilian staff and is known as the Joint Financial Crimes Unit and keeps records/statistics on:*

- *STRs received, analyzed and disseminated;*
- *STRs that led to investigations, prosecutions or convictions;*
- *requests for assistance and responses provided;*
- *referrals made spontaneously referrals by the JFCU to the U.K. National Criminal Intelligence Service and other competent foreign authorities; and*
- *STRs arising from large currency transactions.*

24. *The JFCU is headed by a Detective Inspector who is appointed by the Chief Officer of the Jersey Police and is answerable to him on the activities of the JFCU. The JFCU is sub-divided 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. The organizational structure of the JFCU in my opinion is sufficient to ensure that its functions are properly executed.*

*In order for the JFCU to investigate ML/FT funding is provided from the annual police budget and the attorney general's schemes.*

*Information technology facilities in use by the JFCU include a number of databases and steps have been taken to improve the efficiency of this system, because of the demands arising from a 600 percent increase in STRs over the last two years. The current systems in place are being evaluated, in order that their intelligence data bases are streamlined into a single system.*

*The JFCU is established from within the existing law enforcement agencies Jersey that are answerable to the chief officer of police and attorney general and is therefore free from unauthorized outside interference or influence in its functions and decision making. Due to this independence and autonomy the JFCU ensures that information and intelligence held by it are securely protected and disseminated in accordance with the law.*

*While the JFCU does not publish periodic reports on statistics, typologies and trends this information is regularly disseminated to the Jersey financial industry by means of lectures, presentations and broadcasts given by members of the unit. Jersey's annual Police Report includes information on the activities of the JFCU.*

#### **Analysis of Effectiveness**

The framework for reporting suspicious transactions is generally adequate, although the absence of an explicit legal requirement for reports to be made to the JFCU and the lack of real time access to public and nonpublic databases are potential weaknesses.

<p><i>The current permanent staff levels at the JFCU are less than adequate to effectively implement aggressive investigations into ML and FT in Jersey. Since 1999 the workload of the JFCU has increased 600 percent due to the increased number of STRs. The work load has also grown due to increased requests for assistance from foreign law enforcement agencies.</i></p>
<p><b>Recommendations and Comments</b></p>
<p>Consideration should be given to amending the relevant laws to require that the report be made directly to the JFCU, and that it be made in writing on a form to be issued by the JFCU. Consideration should also be given to amending relevant laws to permit the JFCU to require the submission of additional information by reporting parties, and to provide expeditious or real-time access to public and nonpublic databases without the need for a court order. Such a showing is not always possible at the early stages of analysis of an STR. Consideration should also be given to amending the relevant laws to provide explicit legal authority for the Commission to issue guidance notes.</p> <p><i>Jersey should take immediate steps to increase the permanent staffing levels of the JFCU to the approved strength of 17.5 positions.</i></p> <p><i>The JFCU's IT/Data systems should be improved to increase its benefits to users.</i></p>
<p><b>Implications for compliance with FATF Recommendations 14, 28, 32</b></p>
<p>Compliant</p>
<p><b>IV—Law enforcement and prosecution authorities, powers and duties (compliance with criteria 25–33)</b></p>
<p><b>Description</b></p>
<p>25. <i>The JFCU and the attorney general's office have responsibility for ensuring ML and FT offences 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, e.g., serious fraud or drug trafficking. The authorities are taking all necessary steps to ensure that these investigations reach a successful conclusion.</i></p> <p>26. There is an adequate legal basis in the Interception of Telecommunications Law for the interception of telephone communications under a warrant issued by the attorney general (Article 3). Jersey authorities indicated that a number of lawful undercover operations were currently taking place with the knowledge and approval of the attorney general. The police also use a wide range of investigative techniques including controlled delivery.</p> <p>A Regulation of Investigatory Powers proposal has been drafted and is expected to be placed before the States Assembly (Island Parliament) shortly. Although this law will give statutory authority for the first time to covert activity going beyond the interception of telecommunications, the authorities have indicated that the Court has discretion under existing law to allow the prosecution to rely on illegally obtained evidence.</p> <p><i>The JFCU uses the techniques of controlled delivery and other undercover operations in its pursuit of the investigation of ML and FT offences. The interception of telephone communications is permitted under warrant issued by the attorney general.</i></p> <p>The Police and the Customs and Excise Office are responsible for investigating ML and FT offences.</p> <p>27. Law enforcement authorities are able to compel production of bank account records, financial transaction records, customer identification records, and other records maintained by financial institutions and other entities or persons, through lawful process (for example, subpoenas, summonses, search and seizure warrants, or court orders), as necessary, to conduct investigations of ML, FT, and predicate offences (POCL Articles 40 and 41; DTOL Articles 19 and 20; TL Articles 31 and 32 and Schedules 5 and 6; Fraud Law, Article 2) .</p> <p>28. <i>Jersey's on going major investigations use a task force format with personnel from Police, Customs, lawyers from Jersey and the U.K., as well as forensic accountants. The management of these major investigations is under the control of the Detective Inspector in charge of the JFCU and a representative of the attorney general's office to ensure the fullest cooperation and information sharing to bring their enquiries to a successful conclusion.</i></p>

<p>29. (See response to Criterion 24). The JFCU and the other investigation teams are provided with a reasonable standard of IT facilities, for example enabling them to scan documentary material seized, which gives easy access to all of the investigators. Jersey's law enforcement and prosecution services are taking all reasonable steps to provide whatever resources are necessary to carry out their functions regarding the investigation and prosecution of ML and FT.</p> <p>30. The JFCU is responsible for keeping statistics on ML and FT. It maintains records and statistics of all investigations, prosecutions and convictions on ML/FT cases and its statistics database enables it to identify investigations originating from STRs or from other sources. Their database establishes the statistics on any criminal, civil or administrative sanctions. The only civil/administrative sanctions available to the Jersey authorities to attack the profits of suspected criminal activity is the use of Revenue powers, i.e. Income Tax. The JFCU database identifies STRs which have been referred to Revenue however due to a lack of feedback their statistics are silent on any Revenue action taken (tax collected).</p> <p>31. The JFCU actively disseminates the above information to all persons/agencies concerned through seminars, conferences and their police information databases.</p> <p>32. Jersey has taken all reasonable actions to ensure that the personnel tasked with the responsibilities as outlined above are adequately trained.</p> <p>Jersey has provided special training/certification for its police and customs investigators attached to the JFCU, thus enabling them to achieve the recommended standard of excellence required by the U.K., to conduct their investigations of ML, FT and the predicate offences.</p> <p>33. Jersey's law enforcement agencies are making reasonable efforts to meet demands to successfully investigate, prosecute, convict, freeze, seize and confiscate the proceeds of crime or property to be used to finance terrorism. A number of STRs received by the JFCU were generated by suspicion of terrorism related activities. The JFCU has dedicated a number of personnel to work closely with the American authorities on this matter. Any problems encountered are addressed by the attorney general's office. Jersey has enacted numerous pieces of legislation to attack and combat the financing of terrorism. The JFCU is in regular contact with U.S. investigators with regard to FT.</p>
<b>Analysis of Effectiveness</b>
<i>The States of Jersey law enforcement agencies are making reasonable efforts to investigate, prosecute, convict, freeze, seize and confiscate the proceeds of crime or property to be used to finance terrorism.</i>
<b>Recommendations and Comments</b>
A Regulation of Investigatory Powers proposal has been drafted and passage of the bill should occur without delay.
<i>Jersey's law enforcement agencies should prepare a 3-5 year corporate action plan to enable them to continue to investigate and prosecute ML and FT, setting goals, targets, strategy, implementation plans, etc.</i>
<b>Implications for compliance with the FATF Recommendation 37</b>
Compliant
<b>V—International Cooperation (compliance with criteria 34–42)</b>
<b>Description</b>
<p>34. There are laws and procedures for mutual legal assistance in ML and FT 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 (Articles 4, 5, 6 and 7 of CIL, Articles 31 – 34 of the TL, and Article 2 and Schedules 5, 6, and 7 of the Fraud Law).</p> <p>34.1 Seizure and forfeiture by way of enforcement of external confiscation orders is possible (Article 16B and Article 18, DOTL; Articles 15 and 16 and 39 of POCL; and Schedule 3 of TL). Asset sharing is authorized with respect to drug trafficking and serious crimes, but there are no explicit provisions concerning asset sharing in terrorism legislation. Sharing of assets confiscated under terrorism legislation currently takes place on a case-by-case basis, and consideration is being given by the authorities to an asset sharing agreement with the U.S. Department of Justice and with the Canadian authorities.</p>

*Jersey requires that requests for assistance from foreign jurisdictions as outlined above be processed through mutual legal assistance in accordance with their laws and procedures.*

*35. In Jersey there is no dual criminality test to affect their ability to provide mutual legal assistance.*

*35.2 Jersey has structures in place to allow for timely and effective follow up to be given to requests for mutual legal assistance.*

*35.3 Statistics are kept on all requests, made or received, for mutual legal assistance relative to ML/FT and the predicate offences. The requests are categorized by Fraud Notices, International Cooperation Notices, Evidence Orders, Proceeds of Crime Orders, Terrorism Orders, Drug Trafficking (Confiscation Order) and Saisies Judiciaire Orders. The records include details of the nature and result of the request.*

*36. International cooperation is supported through bilateral and multilateral means. Articles 29–31 of the POCL and Article 3 of the Fraud Law allow for informal disclosure with the consent of the attorney general. There are no restrictions on informal information exchange other than such consent, which, according to the authorities, occurs on a regular basis. Jersey has a treaty on information exchange with Belgium, and is in discussions on five other treaties as well. Pursuant to the EU Decision, Jersey is included within the European Judicial Network, which is a network of judicial contact points to facilitate judicial cooperation within member states of the EU. Jersey also has regular access to U.K. liaison magistrates in EU member states.*

*37. The Jersey Police use the facilities of INTERPOL to communicate with their counterparts in other jurisdictions. Although there is no formal treaty or MOU in place, according the authorities, information is also exchanged by the attorney general with other law enforcement agencies including in particular the Serious Fraud Office in the United Kingdom, the U.S. Department of Justice and the District Attorney's Office in New York.*

*The authorities record the number, source, and purpose of the request for such information exchange, as well as its resolution.*

*38. Cooperative investigations take place through the exercise by the attorney general of powers conferred upon him by Article 3 of the Fraud Law and by Article 5 CJL, and subject to the safeguards thereunder. According to the authorities, active cooperation in investigations between Customs and the Jersey Police and their counterparts in the United Kingdom and France takes place informally on a regular basis.*

*39. The arrangements for coordinating seizure and forfeiture actions are dealt with on a case by case basis. Where an international dimension or aspect is identified in the initial stages of the investigation, it is policy of the States of Jersey to work in a joint investigation with other jurisdictions.*

*Under Jersey's terrorism legislation there is no legal basis for asset sharing. However experiences have proven that on a case by case basis Jersey has reached agreements with other jurisdictions on asset sharing.*

*40. The procedure adopted for extradition from Jersey is the same as that adopted for extradition from the U.K.. It is therefore possible to extradite individuals charged with ML or FT offenses (Articles 7–15 of the Extradition Act).*

*41. Jersey does not provide a safe haven for individuals charged with FT due to the restrictions placed on persons seeking residency, employment or housing on Jersey of Jersey. Extradition procedures are in place so that individuals sought on charges relating to ML/FT can be extradited. As a result of developing a partnership approach with other jurisdictions in particular the U.S.A, on the sharing of information on movement of suspected terrorists, law enforcement takes an aggressive approach to locating these individuals.*

*42. (See response to Criterion 24) As pointed out previously, the work load of the JFCU has increased significantly in the last two or three years. The human resources attached to the JFCU have remained static and in order to service the workload additional personnel have been seconded. . With the secondments the JFCU has an adequate level of resources. These are however not permanent positions within the FCU.*

#### **Analysis of Effectiveness**

The legal framework is generally adequate in that there are laws and procedures for mutual legal assistance in ML and FT 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.

<i>Jersey has structures in place to effectively follow-up to requests for mutual legal assistance.</i>
<b>Recommendations and Comments</b>
<i>Jersey authorities should consider revising terrorism legislation to allow for the sharing of confiscated assets with those jurisdictions that have contributed to the investigation leading to confiscation.</i>
<b>Implications for compliance with FATF Recommendations 3, 32, 33, 34, 37, 38, 40, SR I, SR V</b>
Compliant

## Assessing preventive measures for financial institutions

46. In order to assess compliance with the following criteria assessors must verify that:  
(a) the legal and institutional framework is in place, and (b) there are effective supervisory/regulatory measures in force that ensure that those criteria are being properly and effectively implemented by all financial institutions. Both aspects are of equal importance.

Table 5. Detailed Assessment of the Legal and Institutional Framework for Financial Institutions and its Effective Implementation

<b>I—General Framework (compliance with criteria 43 and 44).</b>
Description
<p>43. Where a person discloses to a police officer a suspicion or belief that any property represents another person's proceeds of criminal conduct, the disclosure is not treated as a breach of any restriction upon disclosure imposed by any statute or contract or otherwise and will not give rise to any liability of any kind against the person making the disclosure (Articles 32(3) and 33(5) of the POCL, Articles 21 ad 24 of the TL, and Articles 17, 17A, and 18A of the DTOL.) In addition, disclosure of information related to terrorism financing is not to be taken to breach any restriction on the disclosure of information however imposed (Article 34(7) of the TL).</p> <p>44. The Commission has authority to ensure effective implementation of AML/CFT policies (Article 6, Commission L) for all regulated FIs. However, the Commission does not currently have the authority to regulate (except to the extent that a bank or other regulated financial institution engages in such activities) or to monitor compliance of businesses that engage in bureau de change activities, check cashing and money transmitters although MSBs are covered by the relevant AML/CFT laws. The Commission has written to all of the MSBs that it is aware of, in particular the banks and bureaux de change, to develop accurate statistics on these activities, and intends to propose in the next six months to the relevant committee of the States Assembly (Island Parliament) a law to regulate these businesses. According to the Commission, statistics collected by them indicate that there are less than ten MSBs that are not regulated and whose turnover is more than £10,000. The Commission has indicated that it has undertaken a consultation process which proposes legislative changes to address this issue. In addition, companies that engage in lending or financial leasing, such as finance houses, are covered under the AML/CFT framework but are not regulated or monitored for compliance by the Commission, except to the extent that the activity is performed by a regulated entity. Finally, there are seven activities that fall within the definition of trust company business under the FSL that do not appear to be covered by the definition of 'financial service business' under the MLO: acting as a partnership formation agent; arranging for another person to act as a director (assuming that acting as a director falls within the definition of company administration in the Proceeds of Crime Law; acting as of fulfilling the function of or arranging for another person to act as or fulfill the function of a partner of a partnership; providing a registered office for a partnership; providing an accommodation, correspondence or administrative address for a partnership (and possibly a company if it does not fall within the definition of company administration); arranging for another person to act as trustee of an express trust; acting as (or arranging for another) to act as nominee shareholder or unit holder. The definition of financial service business in the MLO should be amended to cover these activities.</p>

<b>Analysis of Effectiveness</b>
Although the Commission has authority to ensure effective implementation of AML/CFT policies (Art. 6.FSCL) for all regulated FIs it does not currently have the authority to regulate (except to the extent that a bank or other regulated financial institution engages in such activities) or to monitor compliance of businesses that engage in bureau de change activities, check cashing and money transmitters. However, the authorities have indicated that MSB activity outside of the regulated sector is minimal. In addition, companies that engage in lending or financial leasing, such as finance houses, are covered under the AML/CFT framework but are not regulated or monitored for compliance by the Commission, except to the extent that the activity is performed by a regulated entity.
<b>Recommendations and Comments</b>
Consideration should be given to enacting a law to regulate MSBs and to monitor compliance for companies that engage in lending or financial leasing. There are seven activities that fall within the definition of trust company business under the FSL that do not appear to be covered by the definition of 'financial service business,' which should be amended to cover these activities.
<b>Implications for compliance with FATF Recommendation 2</b>
Compliant
<b>II—Customer identification (compliance with criteria 45–48 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 68–83 for the banking sector, criteria 101–104 for the insurance sector and criterion 111 for the securities sector).</b>
<b>Description</b>
<p>45. The MLO requires FIs to maintain procedures for customer identification (Article 2 of the MLO). However the MLO contains no explicit requirement that such procedures be followed by FIs, although such a requirement is clearly implied from the language of the MLO.</p> <p>Paragraph 4.13 of the Notes indicates that whenever a business relationship is to be established or a significant one-off transaction or series of linked transactions is undertaken the identity of the 'applicant for business', i.e. the prospective customer, must be obtained and verified. Paragraph 4.34 of the Notes refers to Article 5 of the MLO and indicates that a bank or building society should establish to its satisfaction that it is dealing with a real person or organization (natural, corporate or legal), and verify the identity of those persons who have power to operate any bank or investment account. These provisions relate to banks and building societies but similar provisions exist for investment firms, insurance companies and trust and company service providers.</p> <p>Some banks use numbered accounts but are required to hold identification documentation related to these accounts.</p> <p>46. FIs are required to seek satisfactory evidence of identity of a prospective customer, either occasional or usual, when establishing business relations or conducting one-off transactions (Article 3 of the MLO). However, the MLO does not specify what may or may not represent satisfactory evidence of identity. It provides that the evidence has to be reasonably capable of establishing that the customer is the person he claims to be (Article 7(1) of the MLO; see also Paragraphs 4.33 – 4.40 of the Notes). However, the Notes set out what will constitute satisfactory evidence of identity. In particular, the Notes provide that an individual's identity comprises his/her name and all other names used, the address at which he/she can be located, and date of birth. Photographic evidence is only of value for face-to-face customers (Paragraphs 4.04 and 4.35 of the Notes). In practice, most "remote" relationships (typically accounts operated for nonresidents) place reliance on certification of photographic evidence (See Sec. 4.84). There is no requirement to renew identification when doubts appear as to the identity of a customer in the course of the business relationship. There is a requirement to record the identity of all customers (Article 8 of the MLO). There are exemptions from the identification procedure under Article 3 of the MLO. No steps are required to be taken to obtain evidence of any person's identity: where there are reasonable grounds for believing that the applicant for business is a person covered by Article 2 of the MLO, by the EU Money Laundering Directive, in one-off transactions carried out with or for a third party that is regulated and based in an "equivalent" jurisdiction (Article 5(5) of MLO and Appendix D to the Notes), in long-term insurance cases where the policy contains no surrender clause and may not be used as collateral security for a loan, or the premium does not exceed 1,750 British pounds (Article 6 of the MLO).</p> <p>With respect to re-verification of identity, there is no explicit requirement under the existing framework, although Article 2 of the MLO requires a person carrying on financial services business to maintain such other procedures of internal control as may be appropriate.</p>

Article 6(1) (b) provides an exemption from the AML framework under the MLO for applicants for business who are covered under the EU AML Directive. Given that the amended directive now covers additional unregulated activities, such as legal services, accounting and high-end dealers, applicants for business who carry-on such activities would be exempt from the identification procedures under the MLO. To remedy the widening of this exemption, consideration should be given to amending the MLO to limit the availability of the exemption to entities regulated in EU states. This is consistent with Section 20 of the Position Paper, which provides that Jersey regulators “consider that it is acceptable to rely on another party to have verified the identity of an applicant for business and/or principals only in certain controlled circumstances. Even in these circumstances, ultimate responsibility for obtaining satisfactory evidence of identity continues to rest with the accepting person. Reliance may be placed on an *acceptable introducer*, defined in Appendix I as a business operating in one of the Crown Dependencies or an equivalent jurisdiction, as being regulated, and having been assessed by the accepting person as having adequate due diligence requirements in place. In order for the Position Paper to be implemented, the MLO would need to be amended. See also Sec. 4.46 of Notes and pages 26-27 of the FATF Review of the FATF 40 Recommendations, Consultation Paper (May 30, 2002).

Paragraph 4.06 of the Notes refers to Article 3 of the Order which requires that a person should seek satisfactory evidence of identity of a prospective customer at the time of opening an account or entering into a business relationship. The Article further indicates that unless satisfactory evidence of identity is obtained ‘as soon as is reasonably practicable’, the business must not proceed.

The Commission Board approved a proposal for an amendment to the MLO to require identity to be reverified where there is reason to believe that a customer’s identity is different to that established in the records held by an FSB.

Paragraph 4.119 of the Notes which refers to Jersey registered companies indicates that the following documents should be obtained in respect of clients with limited corporate form

- (i) the original or certified copy of the Certificate of Incorporation, and Memorandum and Articles of Association
- (ii) the resolution of the Board of Directors to open an account and confer authority on those who will operate it
- (iii) for established businesses - a copy of the latest report and accounts (audited where applicable)
- (iv) a search of the file at the Companies Registry or an enquiry via a business information service, or an undertaking from a firm of lawyers or accountants confirming the documents submitted to the Registrar of Companies.

Paragraph 4.121 indicates that where the company’s directors are not known to the institution the identity of at least two directors/company secretary/shareholders and/or at least two persons authorized to operate the account should be verified in line with the requirements for personal customers.

Paragraph 4.124 which relates to Non-Jersey Registered companies is similar to that for Jersey companies and further requires that attention should be paid to the place of origin of the documents and the background against which they are produced. There is no requirement that institutions check provisions regulating power to bind.

Jersey, Guernsey and Isle of Man have jointly 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. 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 AML 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.

47. Where a customer acts on the instructions of a third party, the identity of the third party must be established and verified (Article 5 of the MLO).

Paragraph 4.34 of the Notes indicates that if funds to be deposited or invested are being supplied by or on behalf of a third party that in accordance with the provisions of Article 5 of the MLO the identity of the third party (i.e. the underlying beneficiary)

should also be established and verified. Paragraphs 4.102–4.110 re. trust, nominee and fiduciary accounts).

Paragraph 4.103 requires that trustees/nominees should be asked at the outset to indicate the capacity in which they are operating. It indicates that reasonable measures for identification in the case of a trust relationship will generally mean being able to rely on an introduction certificate from a professional trustee or other financial sector business that is also regulated in a country listed as equivalent in Appendix D. One concern in this regard is the introduction certificate appearing at Appendix G2 of the Notes which offers an option under which introducers are not required to either assert that documentary evidence in support of identification is held or undertake to make such documentation available on demand.

Paragraph 4.104 indicates that banks should obtain written confirmation that the trustees/managers are aware of the true identity of the settlors/beneficiaries.

Paragraph 4.105 indicates that in the case of regulated trustees/managers enquiries should be made to determine, as far as practicable, that there are no bank secrecy or confidentiality constraints that will restrict access to the documentary evidence of identity should it be needed for a Jersey investigation. Preferably, the introduction certificate should be supported by copies of the documentary evidence of identity.

Paragraph 4.106 indicates that where the trustees are not regulated, or are not based in a country listed as equivalent in Appendix D, and the bank or building society has no current relationship with them, the identity of all the settlors/named beneficiaries should be obtained and verified by reference to appropriate independent local professional advisers, unless they have no individual authority to operate the account or to give relevant instructions concerning the use or transfer of funds.

48. There is no explicit requirement in the legal framework to include “accurate and meaningful originator information on all funds transfers and related messages” or for this information to remain with the transfer through the payment chain. Footnote 1 of the Interpretative Note to Special Recommendation VII states that “[i]t is recognized that jurisdictions will need time to make relevant legislative or regulatory changes . . . [t]his period should not be longer than two years after the adoption of this Interpretative Note.” Hence, the Notes would not be sufficient to meet the requirements of FATF VII. However, in the interim period, the Commission has advised FIs that it expects full compliance with FATF VII by December 2003 (see Update No. 5 to the Notes).

Paragraph 8.29 of Anti-Money Laundering Guidance Notes Update No 5 indicates that financial services businesses should have a program in place to meet this requirement by December 2003. This deadline has been set since SWIFT expects to have the MSB 103 message format, which has enough data fields for the required information, by November 2003.

The Commission is reviewing existing provisions relating to wire transfers following the release of the interpretative note to FATF SR VII.

Institutions visited generally had good measures in place to verify the identity of customers. All institutions had graduated customer acceptance policies on the basis of perceived risk and required senior management sign-off. Verification requirements included beneficial ownership. However some institutions visited did not have clear policies for re-verification of identity.

Visits to FSBs indicated a wide range of practices in respect of some issues related to the Position Paper. This is primarily related to the holding of identity documents by introducers and the status of the Progressive Program.

#### **Analysis of Effectiveness**

Measures in place for the verification of the identity are generally adequate although the relevant laws do not explicitly require that customer identification procedures be followed and there are some concerns relating to the re-verification of existing customers.

#### **Recommendations and Comments**

The relevant laws should be amended to explicitly require that customer identification procedures be followed. Consideration should be given to imposing a requirement for the re-verification of existing customers where doubts arise as to their previously established identity. There is currently an exemption from the AML framework for applicants for businesses that are covered under the EU AML Directive. Given that the amended directive now covers additional unregulated activities, such as law, accounting and high-end antique dealers, applicants in all such activities would be exempt from the identification procedures under the relevant law. To remedy the widening of this exemption, consideration should be given to amending the law to limit availability of the exemption to entities regulated in EU states.



<p>Within the two-year period referred to in footnote 1 of the Interpretative Note to FATF VII, 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.</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> <p>The example of an introduction certificate appearing at Appendix G of the Notes should be amended to indicate that it is mandatory for introducers to verify that they hold verification documents and that such documents will be available on demand by the service provider.</p> <p>FSBs should be required to take decisions in respect of high risk customers at senior management level.</p> <p>It should be a requirement that where claims and other payments are made to persons other than policy holders the identity of such persons should be verified.</p>
<p><b>Implications for compliance with FATF Recommendations 10, 11, SR VII.</b></p>
<p>Full compliance will be achieved when, the relevant laws are amended to explicitly require that customer identification procedures be followed and financial institutions have timely access to all customer identification records under the regime for introduced business.</p>
<p><b>III—Ongoing monitoring of accounts and transactions (compliance with Criteria 49-51 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 84-87 for the banking sector, and criterion 104 for the insurance sector)</b></p>
<p><b>Description</b></p>
<p>49. There is a reporting procedure under which an appropriate person to whom a report is made makes a final determination as to whether or not the report contains information which gives rise to a knowledge or suspicion of ML (Article 9 of the MLO). Additionally, the Notes provide guidance on how to identify suspicious transactions (Paragraphs 9.01–9.05 of the Notes).</p> <p>Article 9 of the MLO requires internal reporting procedures to be in place that would require a report to be made on any matter which gives rise to knowledge or suspicion that another person is engaged in ML. Where a transaction has no apparent or visible economic or lawful purpose, then, by implication it is suspicious.</p> <p>On a related issue, although there is no explicit requirement in the legal framework to report business that has been turned away, as stated above, Article 9 of the MLO broadly requires procedures to be in place that require the reporting of suspicious activities. However for drugs (DTOL Article 18A and terrorism (TL Article 20), there is an affirmative obligation to report suspicious activities.</p> <p>There is also no explicit requirement in legislation to scrutinize unusual or complex transactions that have no apparent economic benefit. However, paragraph 9.04 of the Notes states that identification of any of the types of transactions listed in Appendix H should prompt further investigation and should lead to making at least initial enquiries about the source of funds. Appendix H of the Notes provides examples of suspicious transactions, including transactions which are unusually large or complex and of unusual patterns of transactions, which have no visible economic or lawful purpose. The link between suspicious transactions, and unusual or complex transactions without any apparent economic benefit could be more explicit in legislation.</p> <p>Paragraph 9.02 of the Notes indicates that FSBs should know enough about a customer to recognize that a transaction or a series of transactions is unusual. Paragraph 9.05 indicates that sufficient guidance should be given to staff to enable them to recognize suspicious transactions. It also suggest that FSBs might also consider monitoring the types of transactions that give rise to suspicions by staff with a view to updating internal instructions and guidelines from time to time.</p> <p>The proposal for legislative amendments approved by the Board includes a provision for procedures to be in place for FSBs to apply special attention to unusual transactions that have no apparent economic purpose or visibly lawful purpose.</p> <p>50. There is no explicit requirement in the legislation or the body of the Notes to scrutinize transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter ML or FT. Paragraph 4.32 of the Notes</p>

<p>indicates that Commission may from time to time issue guidance on countries considered to be at risk from criminal money and where special attention is therefore required. Institutions are invited to bring to the authorities' attention any information on countries with inadequate AML legislation or legislation that is not properly enforced.</p> <p>Appendix D to the Notes does, however, incorporate the FATF 21 Recommendation that FIs should give special attention to business relations and transactions with persons (including legal entities and other financial institutions) in jurisdictions that do not have adequate systems in place to prevent or deter ML. The Notes include a list of jurisdictions about which there are concerns, including those on the FATF NCCT list.</p> <p>The Enforcement Division also issues updates to FSBs reminding them of countries under various sanctions or where specific concerns exists.</p> <p>The proposal for legislative amendments approved by the Board includes a provision for special attention to be given to transactions undertaken with designated jurisdictions.</p> <p>Updates are flagged on the Commission website and an email sent to all FSBs to advise that an update is on the website.</p> <p>51. There is no explicit requirement in the legislation that FIs should give enhanced scrutiny to wire transfers that do not contain complete originator information. Footnote 1 of the Interpretative Note to Special Recommendation VII states that "[i]t is recognized that jurisdictions will need time to make relevant legislative or regulatory changes . . . [t]his period should not be longer than two years after the adoption of this Interpretative Note." Hence, the Notes would not be sufficient to meet the requirements of FATF VII. However, in the interim period, the Commission has advised FIs that it expects full compliance with FATF VII by December 2003 (see Update No. 5 to the Notes).</p> <p>Paragraph 8 of update No. 5 of the Notes indicates that FSBs should establish a profile in respect of incoming wire transfers for their customers. They are expected to know the size of the transaction consistent with the normal activities of the customer, be satisfied that transactions are rational in this context and determine if the pattern has changed at any point in time.</p> <p>Institutions visited were aware of the need to have 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.</p>
<p><b>Analysis of Effectiveness</b></p>
<p>The legal framework is generally adequate though there are concerns with respect to enhanced scrutiny of wire transfers, the absence of legal provisions requiring special attention to be given to unusual or complex transactions that have no apparent economic or visibly lawful purpose and to business that has been turned away that is also unusual and has no apparent economic or visibly lawful purpose.</p>
<p><b>Recommendations and Comments</b></p>
<p>Within the two-year period provided by FATF, the relevant laws should be amended to require that FIs give enhanced scrutiny to wire transfers that do not contain complete originator information.</p> <p>Banks should be required to aggregate and monitor significant balances and activity on customer accounts on a fully consolidated basis.</p>
<p><b>Implications for compliance with FATF Recommendations 14, 21, and 28, SR VII</b></p>
<p>Compliant re 14, 21 and 28. Compliance re. SR VII will be determined at the end of the two year period established by FATF or at such time when required laws are in place.</p>
<p><b>IV—Record keeping (compliance with Criteria 52–54 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 88 for the banking sector, criteria 106 and 107 for the insurance sector, and criterion 112 for the securities sector)</b></p>
<p><b>Description</b></p>
<p>52. FIs are required to maintain records of a person's identity that indicate the nature of the evidence and comprise a copy of the evidence, for a period of five years commencing with the date on which the relevant business was completed (Article 8(1)(a) and (2)(a) of the MLO). Such records are available for inspection. Article 8 of the MLO requires FIs to retain records concerning customer identification and transactions for use as evidence in any investigation into ML (under Articles 40 and 41 of the POCL; and TL and DTL equivalents). The Commission has access to records and information, and the right of on-site inspection under the BBL (Articles 25 and 26), FSL (Article 29), CIFL (Article 8),</p>

and IBL (Article 9).
Paragraph 8.06 indicates that records containing evidence of identity must be kept for a period of at least five years after the relationship with the customer has ended. Paragraph 8.19 indicates that the overriding objective is for financial sector businesses to be able to retrieve relevant information without undue delay.
53. FIs are required to maintain a record containing details relating to all transactions carried out by their customers in the course of the financial service business and to keep the record for a period of five years commencing with the date on which all activities taking place in the course of the transaction in question were completed (Article 8(1) (b) and (2) (b) of the MLO). (With respect to the availability of documents to competent authorities, see response to 52, above.) The nature of the details required to be recorded is not specified in the MLO.
Paragraph 8.08 of the Notes refers to the provision of Article 8 (2) requiring records of all transactions to be retained for a period of five years commencing with the date on which all activities taking place in the course of the transaction were completed.
Paragraph 8.09 indicates that transaction records must be maintained in a form from which the investigating authorities can compile a satisfactory audit trail for suspected laundered money and establish a financial profile of any suspect account.
The proposal for legislative amendments approved by the Board includes a provision for designated information on transactions to be maintained by FSBs.
54. See 53, above.
Paragraph 8.02 indicates that records should be maintained in such a way that :
Competent third parties will be able to assess the institution's observance of ML policies and procedures, and any transactions effected via the institution can be reconstructed.
The institution can satisfy within a reasonable time any enquiries or court orders from the appropriate authorities as to disclosure of information.
Institutions visited generally had documented measures in place to maintain identification and transaction records in accordance with legal and regulatory requirements. However one institution had no documented policy on the retention of transaction records.
<b>Analysis of Effectiveness</b>
The framework is generally adequate, although existing legislation in respect of record keeping would be strengthened by adding an explicit requirement for records to be sufficient to enable the investigating authorities to compile a satisfactory audit trail.
<b>Recommendations and Comments</b>
Consideration should be given to the imposition of a requirement that records of financial institutions should be sufficient to enable the investigating authorities to compile a satisfactory audit trail for suspected ML and establish a financial profile of any suspect account.
<b>Implications for compliance with FATF Recommendation 12</b>
Compliant
V— Suspicious transactions reporting (compliance with Criteria 55–57 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 101–104 for the insurance sector)
<b>Description</b>
55. With respect to all serious crimes other than drug trafficking and terrorism, there is no affirmative obligation to report suspicious activities (POCL Articles 32–34). With respect to drug trafficking and terrorism, there is an affirmative obligation to report suspicious activities (DTOL Articles 17, 17A and 18; TL Article 23). In all cases under these three laws, the reporting to a police or customs officer of a suspicion provides a defense against Commission of a ML offence. With respect to terrorism financing, the reporting to a committee of the States Assembly (Island Parliament) or its designee, which is the JFCU (TO Article 9(b)) is a defense. There is no reference in Jersey law to the JFCU. In addition, Article 9 of the MLO requires that internal procedures be in place to require that reports are disclosed to a police officer (MLO Article 9(d)). FIs are required to identify an “appropriate person” in the FI to whom a suspicious report can be made (Article 9(a) of the MLO). The Commission is authorized to issue guidelines for the identification of complex or

unusual transactions and has done so in the form of the Notes (Articles 5, 6, 7 and 8 of the Commission L; and Article 37(1) of the POCL).

Paragraph 9.03 of the Notes indicates that a financial institution might consider whether the size of a transaction is consistent with the normal activities of the customer, whether the transaction is rational in the context of the customer's business or personal activities, whether the pattern of transactions conducted by the customer change and where the transaction is international in nature, if the customer has any obvious reason for conducting business with the other country involved.

Paragraph 9.06 of the Notes indicates there is an obligation on all staff to report suspicions of ML.

Paragraph 9.07 indicates that all financial services businesses have a clear obligation to ensure:

That each relevant employee knows to which person he or she should report suspicions; and

That there is a clear reporting chain under which those suspicions will be passed without delay to the MLRO.

The following requirements are contained in paragraphs 9.13–9.18 :

Reporting lines should be as short as possible, with the minimum number of people between the person with the suspicion and the MLRO.

Supervisors should be aware of their own legal obligations.

All suspicions reported to the MLRO should be documented.

The MLRO should acknowledge receipt of the report and provide a reminder of the obligation to do nothing that might prejudice enquiries, i.e., 'tipping off.'

All internal enquiries made in relation to the report, and the reason behind whether or not to submit the report to the authorities, should be documented.

The MLRO should be informed of all communication between the investigating officer and the branch/subsidiary concerned at all stages of the investigation.

Records of suspicions which were raised internally with the MLRO but not disclosed to the authorities should be retained for five years from the date of the transaction. Records of suspicions which the reporting authority has advised are of no interest should be retained for a similar period. Records of suspicions that assist with investigations should be retained until the financial institution is informed by the investigating officer that they are no longer needed.

The Notes outline the requirements of the Money Laundering Order and provide guidance on how these apply to financial institutions. Appendix A of the Notes contains examples of ML cases while Appendix H has examples of suspicious transactions.

The Commission reviews suspicious transaction reports submitted to the JFCU and is therefore kept informed of the activities of FSBs in this regard.

56. Where an FI discloses to a police officer a suspicion or belief that any property represents another person's proceeds of criminal conduct, the disclosure is not treated as a breach of any restriction upon disclosure imposed by any statute or contract or otherwise and will not give rise to any liability of any kind against the FI making the disclosure (Articles 32(3) and 33(5) of the POCL; Articles 17, 17A, and 18A of the DTOL; Article 21(3) of the TL).

57. FIs are prohibited from disclosing to any other person information or any other matter that is likely to prejudice an investigation or proposed investigation of a ML or terrorism (Article 35 of the POCL; Article 18B of the DTOL; and Article 35 of the TL). There is no explicit requirement in law that provides legal authority for the JFCU or any other competent authority to give instructions to FIs or to require FIs to observe those instructions.

All institutions visited had measures in place for the reporting of suspicious activity. They displayed a good awareness of the protection afforded them with regard to the filing of suspicious transaction reports and the offence of tipping off. However even making allowances for differences in business activity the level of reporting by some institutions is considered to be low in light of the nature and volume of their activity.

<b>Analysis of Effectiveness</b>
The legal framework is generally adequate except with respect to the absence of a requirement of an affirmative obligation to report suspicious transactions under the POCL.
<b>Recommendations and Comments</b>
<p>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 ML offence.</p> <p>Consideration should be given to providing the JFCU with the authority to give instructions to reporting entities and to require FIs to observe instructions of the JFCU.</p> <p>Appendix H of the Notes currently contains examples of suspicious transactions. None of the examples relate to the insurance sector. The Notes should be amended to include examples relevant to this sector.</p>
<b>Implications for compliance with FATF Recommendations 15, 16, 17, and 28</b>
Full compliance will be achieved when the POCL is amended to require an affirmative obligation to report all suspicious transactions.
<b>VI—Internal controls, Compliance and Audit (compliance with Criteria 58–61 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 89–92 for the banking sector, criteria 109 and 110 for the insurance sector, and criterion 113 for the securities sector)</b>
<b>Description</b>
<p>58. Financial institutions are required to establish procedures for internal controls and communication as may be appropriate for the purposes of forestalling and preventing ML (Article 2 of the MLO).</p> <p>Paragraph 3.01 of the Notes indicates FSBs are required by law to establish clear responsibilities to ensure that policies, procedures, and controls are introduced and maintained which deter criminals from using their facilities for ML.</p> <p>Paragraph 3.03 indicates that FSBs should:</p> <p>Have procedures for the prompt validation of suspicions and subsequent reporting to the MLRO;</p> <p>Provide the MLRO with the necessary access to systems and records to investigate and validate suspicions which have been reported to him; and</p> <p>Maintain a good working relationship with the law enforcement agencies in Jersey.</p> <p>Paragraph 3.04 recommends that FSBs should make arrangements to verify, on a regular basis, compliance with policies, procedures and controls relating to ML activities, in order to satisfy management that the requirement in the Order to maintain such procedures has been discharged.</p> <p>Paragraph 10.07 provides guidance on staff training and specifically addresses the training need of the following categories of staff:</p> <p>New Employees, MLROs, Supervisors and Managers, Processing Staff Account Opening/New Customer Personnel, Domestic and Foreign Exchange Cashiers/Dealers and Sales Persons/Advisory Staff.</p> <p>59. FIs are required to maintain procedures to identify an “appropriate person” to whom a suspicious report can be made (Article 9(a) of the MLO). However, the MLO contains no explicit requirement that such procedures be followed by FIs, although such a requirement is clearly implied from the language of the MLO. With respect to trust company and investment company business, there is a requirement for the designation of a compliance officer. (Sections 3.5 of Trust Company Business Code and 3.6 of Investment Business Code). There is no current requirement for banks, insurance companies, CIFs or MSBs to appoint a compliance officer, although Codes of Practice which have been drafted for these sectors will introduce this requirement when brought into force.</p> <p>Paragraph 3.04 of the Notes indicates that FSBs are recommended to make arrangements to verify on a regular basis, compliance with policies, procedures and controls relating to ML activities, in order to satisfy management that the requirement in the MLO to maintain such procedures has been met. There is however no specific recommendation relating to the appointment of a compliance officer.</p> <p>The Codes require that the Compliance Officer report to the “Jersey Management Board” of licensees.</p>

The proposal for legislative amendments approved by the Board also includes a provision for the appointment of a compliance officer.

60. Under the existing framework there is no requirement for the screening of applicants for employment by FIs to prevent the use of their institutions by money launderers or terrorists other than with respect to investment and trust company business. With respect to those activities, Codes of Practice issued pursuant to the FSL (Article 17) require institutions to ensure that partners, directors, senior managers and other employees are fit and proper, and to have procedures in place to vet and monitor competence and probity (Section 3 of each of the two Codes). Codes are not in place for banking, insurance or CIF management. Codes of practice for insurance business and for CIF functionalities are out for consultation, and the authorities have indicated that Codes for deposit-taking business will be released for consultation during 2003. The existing Codes are provided for in primary legislation (Article 8(1) (f) of the FSL) and failure to follow a Code is grounds for revocation of license issue of a public statement and issue of a direction. With respect to criminal offences, Article 17 of the FSL refers to the issuance of codes and states that the Code "shall be admissible in evidence if it appears to the court conducting the proceedings to be relevant to any question arising in the proceedings, and shall be taken into account in determining any such question." (Article 17(4)).

61. Although in most cases, Jersey is a host regulator, Jersey is the home regulator for a number of institutions most of which have branches or subsidiaries in other Crown Dependencies. Although Jersey does not have any requirements that FIs ensure that foreign branches observe Jersey's AML/CFT laws, Jersey has entered into an agreement with the other Crown Dependencies that AML/CFT defenses will be of an equivalent standard among Crown Dependencies. However, this arrangement does not cover the small number of branches and subsidiaries of Jersey FIs outside the Crown Dependencies.

With respect to Jersey acting as a host jurisdiction, paragraph 3.06 of the Notes states: "Where a Jersey financial services business is a branch or subsidiary of an international group which has, in accordance with the requirements of another country's legislation, established policies and procedures for the verification of identity, record-keeping and training for the prevention of ML, which are to the same or a higher standard than that required under Jersey law, it is recommended that group policies are followed.

Paragraph 3.06 of the Notes states that Jersey "does not seek to apply its ML extraterritorially." The paragraph also indicates however that where a Jersey financial services business is a branch or subsidiary of an international group which has, in accordance with the requirements of another country's legislation, established policies and procedures for the prevention of ML, which are to the same or a higher standard than that required under Jersey law, it is recommended that group policies are followed. The Notes also indicate that where any conflict is identified between an international group's policies and procedures and local legislation, it is the Jersey law which must be adhered to at all times.

The proposal for legislative amendments approved by the Board includes a requirement for provisions equivalent to those in the order to be applied to branches and subsidiaries of FSBs outside of Jersey.

Institutions generally had clear policies and procedures in place for their AML systems. In one instance some weaknesses were observed in this regard. While all institutions had training programs for staff in some instances no mechanism was used to determine the extent to which staff understood the issues addressed during training. While all institutions had measures in place to screen prospective employees, measures adopted were not specifically geared to reveal past criminal conduct. Given the small size of the jurisdiction this is not considered to be a critical issue.

Several of the institutions visited by the Mission had overseas branches or subsidiaries. These institutions confirmed that group policies were applied to operations located abroad. They were generally conscious of the need to meet the requirements of their home regulators as well as the Jersey requirements.

<b>Analysis of Effectiveness</b>
The framework is generally adequate except with respect to issues related to consolidated supervision where subsidiaries are located outside the Crown Dependencies, the appointment of a compliance officer and the supervision of the standalone MSBs by the Commission and the adequacy of screening of employees.
<b>Recommendations and Comments</b>
<p>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. Consideration should also be given to ensuring that institutions test compliance of AML/CFT systems against home and host country standards.</p> <p>Consideration should be given to the imposition of a requirement to designate an AML/CFT compliance officer for FSBs. Consideration should also be given to requiring banks and insurance companies to report any change in such position to the Commission, as is already required for trust and investment company businesses.</p> <p>Consideration should be given to adopting codes for banking, insurance and CIFs in order to strengthen the requirements regarding screening of employees.</p>
<b>Implications for compliance with the FATF Recommendations 19 and 20</b>
Full compliance will be achieved when the AML/CFT framework ensures that all FIs apply Jersey standards to branches and subsidiaries in other jurisdictions.
<b>VII—Integrity standards (compliance with Criteria 62 and 63 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 14 for the securities sector)</b>
<b>Description</b>
<p>62. There are laws that prohibit applicants for a license from employing individuals convicted of an offense under the relevant law, or an offense involving dishonesty, and that prohibit individuals not found to be fit and proper by the Commission from holding a significant investment or management function in a regulated FI (Articles 8, 11 and 12 of the FSL; Articles 9, 13, 14, 23 and 24 of the BBL; Articles 6 and 22 of the IBL; Articles 5 and 12 of the CIFL). Although the laws cited do specifically address the fitness of those convicted of crimes from being employed by a regulated FI, they are too narrowly drafted in that the range of crimes stated in the law is limited to offences under the relevant law or involving dishonesty. These laws should be amended to insert a reference to conviction for a serious crime (over one year imprisonment). It should be noted that these laws give the Commission the authority to remove principals not found to be fit and proper, which is a broader concept than that involving the conviction of specified crimes and therefore, in practice, the range of crimes that may be relevant is much broader. In addition, since freestanding MSBs are not regulated, there are no comparable provisions, which should be remedied if regulatory laws for such businesses are adopted.</p> <p>Article 9 BBL indicates that the Committee may refuse to grant a license or may revoke an existing license.</p> <p>Where the applicant or registered person or any person employed by or associated with the applicant or registered person for the purpose of his business has been convicted of an offence involving dishonesty in the British Islands or any place with which Jersey has an arrangement for extradition.</p> <p>Where it appears to the Commission on the basis of information obtained that:</p> <ul style="list-style-type: none"> <li>• It is not in the best interest of persons who may conduct business with the applicant;</li> <li>• In order to protect the reputation and integrity of Jersey.</li> </ul> <p>Similar provisions are contained in Article 8 of the Financial Services Law, Article 5 of the CIFL and Article 6 of the IBL.</p> <p>Paragraphs 3.1.1 of the Trust Company Business and Investment Business Codes of Practice require that directors, management and all employees be fit and proper for their roles.</p> <p>The Commission requires the submission of personal questionnaires by senior management and directors of FSBs and performs detailed screening on the basis of information received. Such persons are also subject to Police checks.</p> <p>63. With respect to companies, limited liability partnerships, limited partnerships and unit trusts, doing business in</p>

<p>Jersey (whether or not registered in Jersey), under the Borrowing Control Law (Schedule, 2(1), for any issuance of shares, other evidences of ownership or for any borrowing, the Commission has the authority to require the submission by such entity of any information on the entity or its business. According to the authorities, in practice, every entity of this type (including charities and nonprofit organizations) that intends to raise equity or debt must complete a standard form disclosing the identity of the beneficial owner and the intended activities of the entity. In addition, with respect to foreign-owned entities (i.e., tax-exempt companies), any changes in ultimate beneficial ownership must also be reported to the Commission, at a time of such change. Further, certain entities have conditions placed on their registration which require prior approval by the Commission for changes in ownership or activity. With respect to entities on whom such conditions have been placed, failures to report changes in ownership or business are subject to unlimited fines and imprisonment of up to five years (Borrowing Control Law, Schedule 2(5)). With respect to nonprofit organizations that do not fall within the first category (i.e., trusts or unincorporated associations), to the extent that such entities are run by trust companies regulated by the Commission as company service providers, they would be subject to the AML/CFT framework and their records to possible on-site inspection by the Commission. While there is no data available at this time, it is assumed that the vast majority of such nonprofit entities would not fall within this category.</p>
<p>Unincorporated nonprofit organizations or charities are not required to submit information to any governmental authority; hence there are no measures in place to protect such organizations at this time.</p>
<p>Paragraph 4.116 of the Notes indicates that particular care should be exercised to verify the legal existence of applicants that have corporate form to ensure that any person purporting to act on behalf of the applicant is fully authorized. It is indicated that FSBs should look behind the corporate entity to identify those who have ultimate control over the business and the company's assets. It indicates that efforts should be made to ensure that the applicant is not a "brass plate company where the principles cannot be identified.</p>
<p>Paragraph 4.102 indicates that trust, nominee and fiduciary accounts are popular vehicles for criminal wishing to avoid identification procedures.</p>
<p>Paragraph 4.95 of the Notes indicates that apart from the standard account opening procedures verification of the authority to act in the name of the charity is also necessary.</p>
<p><b>Analysis of Effectiveness</b></p>
<p>The framework is generally adequate but would be enhanced if the definition of "fit and proper" was expanded to include conviction for a serious crime, and a requirement for unincorporated nonprofit organizations or charities to submit information to a governmental authority.</p>
<p><b>Recommendations and Comments</b></p>
<p>Consideration should be given to the imposition of a requirement to include conviction for a serious crime (over one year imprisonment) as an element of fit and proper.</p>
<p>For unincorporated nonprofit organizations or charities, consideration should be given to amending the legal framework to require the same type of review by a governmental entity as occurs under the Borrowing Control Law.</p>
<p><b>Implications for compliance with FATF Recommendation 29</b></p>
<p>Compliant</p>



VIII—Enforcement powers and sanctions (compliance with Criteria 64 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 93-96 for the banking sector and criteria 115-117 for the securities sector)
<p><b>Description</b></p> <p>With respect to administrative or civil sanctions, the Commission as supervisor of regulated FIs, and, in some cases the attorney general as chief law enforcement officer of Jersey, have the following powers with respect to CIFs and fund functionaries, banks, insurance companies, investment businesses and trust company businesses : Objection to (i.e., removal of) a principal owner or director (and, in some cases, a senior manager) of the concern (CIF Article 12; BBL Articles 14 and 23 Article 11(1) (b) of the Banking Business (General Provisions) (Jersey) Order 2002; IBL Article 22; FSL Article 11); the Commission or the attorney general may petition a court to disqualify for a period of up to fifteen years a director or the management of any Jersey company, the management of any foreign company operating in Jersey or the management of a branch operating in Jersey (Company Law Article 78); placement of a condition on the registration or license of the concern (CIFL Article 6; BBL Article 10; IBL Article 6; FSL Article 9); appointment of an investigator to report to the Commission on issues relating to conduct of business and ownership (CIFL Article 19; BBL Article 27; IBL Article 10; FSL Article 30); issuance of directions to a concern (CIFL Article 12; IBL Articles 34 and 39A(1); FSL Article 20); issuance of a public statement concerning a regulatory lapse (CIFL Article 14A; BBL Article 45B; FSL Article 22); appointment of a reporting accountant (CIFL Article 8(1A); BBL Article 25(1)(b); IBL Article 9(1)(b); FSL Article 29(4); revocation of the license (CIFL Article 6; BBL Article 9; IBL Article 6; FSL Article 8); with respect to trust company and investment business only, with a court order, the appointment of a manager (FSL Article 10A; Financial Services (Appointment of a Manager) (Jersey) Order 2000; with respect to company service providers and investment business, to petition a court to issue an injunction or remedial order (FSL Article 21); to petition a court to intervene by making the company subject to such supervision, restraint or conditions as the court may specify (FSL Article 23); with respect to banks only, to petition a court to issue a restitution order relating to unauthorized deposits (BBL Articles 34 and 35); and with respect to trust company businesses only, removal of an external auditor (by withdrawing its approval)(Financial Services (Trust Company Business)(Jersey) Order 2000.</p> <p>With respect to administrative sanctions, the grounds upon which any of these sanctions may be imposed do not always explicitly refer to the failure to observe the relevant laws, and to ML or FT. The Commission does not have the legal authority to issue directions with respect to banks, and for insurance companies such authority is limited to directions about advertising. However in both cases the Commission is able to impose conditions on a license. With respect to other financial services business, however, the Commission has the authority to impose both conditions and directions. Further, the Commission does not have authority to impose a range of civil money penalties (sometimes called administrative fines) against individuals and FIs in an amount sufficiently large so as to discourage continued noncompliance with law. In addition, MSBs are defined as financial services business and are covered by the MLO. However stand-alone MSBs are not regulated by the Commission and therefore are not covered by any of the laws administered by the Commission. Hence, the enforcement mechanisms referred to above (other than the company law authority) do not apply to MSBs.</p>
<p><b>Analysis of Effectiveness</b></p> <p>With respect to administrative sanctions that the Commission may impose, there are a number of gaps in coverage and uniformity as identified in the above description.</p>
<p><b>Recommendations and Comments</b></p> <p>With respect to sanctions, consideration should be given to strengthening a number of areas, including (i) authorizing the Commission to impose civil money penalties or administrative fines, (ii) providing in relevant laws that the grounds for imposition of these sanctions explicitly refer to ML and FT, and (iii) providing that sanctions are uniform across all financial sectors, so that the same rules apply to every FI.</p>
IX—Cooperation between supervisors and other competent authorities (compliance with Criteria 65–67 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 97–100 for the banking sector and criteria 118–120 for the securities sector)
<p><b>Description</b></p> <p>65. Principal responsibility for AML/CFT rest with the Commission's Director of Policy and Legal Division. The Authorization, Compliance and Enforcement Divisions also have AML/CFT responsibilities appropriate to their principal mandates. There is however no one at the Commission whose time is fully devoted to AML/CFT and work in this area is undertaken along with other responsibilities. The Commission has access to external assistance for</p>

specialized projects such as revision of the Notes, systems reviews and investigations. It has also formed an AML Steering Group, consisting of lawyers, compliance officers, and financial executives, to assist in the revision of the Notes.

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. The reports reviewed were comprehensive and follow-up correspondence established clear deadlines by which remedial action was expected. However these inspections absorbed virtually all the resources of the Compliance Division and it is considered unlikely that the Division could have continued to undertake an appropriate level and frequency of on-site inspections covering all areas of risk, including AML/CFT, with these level of resources. The Commission has identified that further resources are needed to maintain this level of onsite supervision and has recruited additional compliance managers during 2002 and 2003 to meet the resource requirements of the risk-based supervision program. The Compliance Division's manpower resources are expected to increase further in 2004.

66. Jersey has a Financial Fraud Information Network, which is an informal group of domestic agencies, including the Commission, the JFCU, the Customs Office, the Law Officers' Department, the Regulation of Undertakings Department, and the Trading Standards Department. The Commission also has regular meetings with the Law Officers' Department and JFCU concerning possible prosecutions. All regulatory laws allow disclosure of relevant information to the Law Officers' Department and the Police to assist in a criminal investigation.

67. There are a number of gateways through which the Commission can share information with "relevant supervisory authorities". These are contained in Article 45 (a) of the Banking Business (Jersey) Law, Article 33 of the Financial Services (Jersey) Law, Article 31 of the Insurance Business (Jersey) Law and Article 19C of the CIFL. Over the past two years the Commission has received 25 requests for international cooperation and has responded to all of them. It has also offered information to foreign authorities without receiving a prior request. The jurisdiction has MOUs with authorities in Australia, Belgium, Bahrain, Bermuda, Germany, Guernsey, the Isle of Man, Mauritius, Netherlands, South Africa, the U.K. and the U.S.A.

In addition to formal gateways, the Commission participates in quarterly meetings with its counterparts in the U.K., Guernsey and the Isle of Man to discuss both general and more specific AML/CFT and regulatory issues which potentially have a common impact. The Commission also meets bi-monthly with the FSA, the home regulator for a large proportion of branches and subsidiaries based in Jersey.

Some institutions visited indicated that they were subject to visits from foreign regulators who had free access to their files.

#### Analysis of Effectiveness

There is a good framework in relation to cooperation with other supervisory authorities.

#### Recommendations and Comments

#### Implications for compliance with FATF Recommendation 26

Compliant

***Description of the controls and monitoring of cash and cross-border transactions***

Table 6. Description of the Controls and Monitoring of Cash and Cross-Border Transactions

<b>Recommendation 22:</b>
<b>Description</b>
The Customs Department does not consider that the physical cross-border transportation of cash and bearer negotiable instruments is a significant problem in Jersey. Nevertheless the monitoring of such movements is one of the operational objectives of the Customs Department at all ports as well as the Post Office.
<b>FATF Recommendation 23:</b>
<b>Description</b>
The Jersey Authorities have not instituted a reporting system based on currency transactions beyond a prescribed threshold amount.
<b>Interpretative Note to FATF Recommendation 22:</b>
<b>Description</b>
If such movements were identified they would be investigated and referred to the JFCU as would any other unusual shipments of currency, monetary instruments, precious metals or gems.
Under the Drug Trafficking Offences (Jersey) Law 1988 and the Terrorism (Jersey) Law 2002, police and customs officers have the power to seize cash which they have reasonable grounds to believe to be directly or indirectly the proceeds of drug trafficking or terrorist cash. These powers do not extend to other crimes. This creates a loophole in certain cases where police or customs officials suspect that cash is the proceeds of crime but cannot tie their suspicions to drug trafficking or terrorism offences.

**Ratings of Compliance with FATF Recommendations, Summary of Effectiveness of AML/CFT Efforts, Recommended Action Plan**

Table 7. Ratings of Compliance with FATF Recommendations Requiring Specific Action

FATF Recommendation	Based on Criteria Rating	Rating
1-Ratification and implementation of the Vienna Convention.	1	Compliant
2- Secrecy laws consistent with the 40 Recommendations.	43	Compliant
3-Multilateral cooperation and mutual legal assistance in combating ML.	34, 36, 38, 40	Compliant
4-ML a criminal offense (Vienna Convention) based on drug ML and other serious offenses.	2	Compliant
5-Knowing ML activity a criminal offense (Vienna Convention).	4	Compliant
7-Legal and administrative conditions for provisional measures, such as freezing, seizing, and confiscation (Vienna Convention).	7, 7.3, 8, 9, 10, 11	Compliant
8-FATF Recommendations 10 to 29 applied to nonbank financial institutions; (e.g., foreign exchange houses).		Largely Compliant
10-Prohibition of anonymous accounts and implementation of customer identification policies.	45, 46, 46.1	Largely Compliant

FATF Recommendation	Based on Criteria Rating	Rating
11–Obligation to take reasonable measures to obtain information about customer identity.	46.1, 47	Largely Compliant
12–Comprehensive record keeping for five years of transactions, accounts, correspondence, and customer identification documents.	52, 53, 54	Compliant
14–Detection and analysis of unusual large or otherwise suspicious transactions.	17.2, 49	Compliant
15–If financial institutions suspect that funds stem from a criminal activity, they should be required to report promptly their suspicions to the FIU.	55	Largely Compliant
16–Legal protection for financial institutions, their directors and staff if they report their suspicions in good faith to the FIU.	56	Compliant
17–Directors, officers and employees, should not warn customers when information relating to them is reported to the FIU.	57	Compliant
18–Compliance with instructions for suspicious transactions reporting.	57	Compliant
19–Internal policies, procedures, controls, audit, and training programs.	58, 58.1, 59, 60	Compliant
20–AML rules and procedures applied to branches and subsidiaries located abroad.	61	Largely Compliant
21–Special attention given to transactions with higher risk countries.	50, 50.1	Compliant
26–Adequate AML programs in supervised banks, financial institutions or intermediaries; authority to cooperate with judicial and law enforcement.	66	Compliant
28–Guidelines for suspicious transactions’ detection.	17.2, 50.1, 55.2	Compliant
29–Preventing control of, or significant participation in financial institutions by criminals.	62	Compliant
32–International exchange of information relating to suspicious transactions, and to persons or corporations involved.	22, 22.1, 34	Compliant
33–Bilateral or multilateral agreement on information exchange when legal standards are different should not affect willingness to provide mutual assistance.	34.2, 35.1	Compliant
34–Bilateral and multilateral agreements and arrangements for widest possible range of mutual assistance.	34, 34.1, 36, 37	Compliant
37–Existence of procedures for mutual assistance in criminal matters for production of records, search of persons and premises, seizure and obtaining of evidence for ML investigations and prosecution.	27, 34, 34.1, 35.2	Compliant

FATF Recommendation	Based on Criteria Rating	Rating
38–Authority to take expeditious actions in response to foreign countries’ requests to identify, freeze, seize and confiscate proceeds or other property.	11, 15, 16, 34, 34.1, 35.2, 39	Compliant
40–ML an extraditable offense.	34, 40	Compliant
SR I–Take steps to ratify and implement relevant United Nations instruments.	1, 34	Largely Compliant
SR II–Criminalize the FT and terrorist organizations.	2.3, 3, 3.1	Compliant
SR III–Freeze and confiscate terrorist assets.	7, 7.3, 8, 13	Compliant
SR IV–Report suspicious transactions linked to terrorism.	55	Compliant
SR V–provide assistance to other countries’ FT investigations.	34, 34.1, 37, 40, 41	Compliant
SR VI–impose AML requirements on alternative remittance systems.	45, 46, 46.1, 47, 49, 50, 50.1, 52, 53, 54, 55, 56, 57, 58, 58.1, 59, 60, 61, 62	Not Rated
SR VII–Strengthen customer identification measures for wire transfers.	48, 51	Not being rated in light of the two year compliance period provided by FATF.

Table 8. Summary of Effectiveness of AML/CFT Efforts for Each Heading

Heading	Assessment of Effectiveness
Criminal Justice Measures and International Cooperation	
I—Criminalization of ML and FT	<p>Jersey has a generally adequate legal framework for the criminalization of ML and terrorism financing, but the Convention for Suppression of the Financing of Terrorism, the Council of Europe Convention and the Palermo Convention have not been extended to the jurisdiction. (See reference to UNSC Resolution in response to criterion 1.)</p> <p><i>The legal resources available in Jersey enable the authorities to effectively implement AML and CFT laws.</i></p>
II—Confiscation of proceeds of crime or property used to finance terrorism	<p>Jersey has a generally adequate legal framework relating to confiscation, freezing and seizure of assets; orders to identify and trace assets; and protecting the rights of innocent third parties to such assets. While the confiscation of property of corresponding value can be achieved under AML Laws, the TL does not contain comparable provisions. Civil forfeiture is not available under current Jersey law, except with respect to cash used in connection with FT. Discussions are taking place for an appropriate civil forfeiture law for the jurisdiction.</p>

III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	<p>The framework for reporting suspicious transactions is generally adequate, although the absence of an explicit legal requirement for reports to be made to the JFCU and the lack of real time access to public and nonpublic databases are potential weaknesses.</p> <p><i>The current permanent staff levels at the JFCU are less than adequate to effectively implement aggressive investigations into ML and FT in Jersey. Since 1999 the workload of the JFCU has increased 600 percent due to the increased number of STRs. The work load has also grown due to increased requests for assistance from foreign law enforcement agencies.</i></p>
IV—Law enforcement and prosecution authorities, powers and duties	<p><i>The States of Jersey law enforcement agencies are making reasonable efforts to investigate, prosecute, convict, freeze, seize and confiscate the proceeds of crime or property to be used to finance terrorism.</i></p>
V—International cooperation	<p>The legal framework is generally adequate in that there are laws and procedures for mutual legal assistance in ML and FT 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.</p> <p><i>Jersey has structures in place to effectively follow-up to requests for mutual legal assistance.</i></p>
Legal and Institutional Framework for All Financial Institutions	
I—General framework	<p>Although the Commission has authority to ensure effective implementation of AML/CFT policies (Art. 6, Commission L) for all regulated FIs it does not currently have the authority to regulate (except to the extent that a bank or other regulated financial institution engages in such activities) or to monitor compliance of businesses that engage in bureau de change activities, check cashing and money transmitters. However, the authorities have indicated that MSB activity outside of the regulated sector is minimal. In addition, companies that engage in lending or financial leasing, such as finance houses, are covered under the AML/CFT framework but are not regulated or monitored for compliance by the Commission, except to the extent that the activity is performed by a regulated entity.</p>
II—Customer identification	<p>Measures in place for the verification of the identity are generally adequate although the relevant laws do not explicitly required that customer identification procedures be followed. There are some concerns relating to the re-verification of existing customers.</p>
III—Ongoing monitoring of accounts and transactions	<p>The legal framework is generally adequate though there are concerns with respect to enhanced scrutiny of wire transfers, the absence of legal provisions requiring special attention to be given to unusual or complex transactions that have no apparent economic or visibly lawful purpose and to business that has been turned away that is also unusual and has no apparent economic or visibly lawful purpose.</p>

Heading	Assessment of Effectiveness
IV—Record keeping	The framework is generally adequate, although existing legislation in respect of record keeping would be strengthened by adding an explicit requirement for records to be sufficient to enable the investigating authorities to compile a satisfactory audit trail.
V—Suspicious transactions reporting	The legal framework is generally adequate except with respect to the absence of a requirement of an affirmative obligation to report suspicious transactions under the POCL.
VI—Internal controls, compliance and audit	The framework is generally adequate except with respect to issues related to consolidated supervision where subsidiaries are located outside the Crown Dependencies, the appointment of a compliance officer and the supervision of the standalone MSBs by the Commission and the adequacy of screening of employees.
VII—Integrity standards	The framework is generally adequate but would be enhanced if the definition of “fit and proper” was expanded to include conviction for a serious crime, and a requirement for unincorporated nonprofit organizations or charities to submit information to a governmental authority.
VIII—Enforcement powers and sanctions	With respect to administrative sanctions that the Commission may impose, there are a number of gaps in coverage and uniformity as identified in the above description.
IX—Cooperation between supervisors and other competent authorities	There is a good framework in relation to cooperation with other supervisory authorities.

Table 9. Recommended Action Plan to Improve the Legal and Institutional Framework and to Strengthen the Implementation of AML/CFT Measures in Banking, Insurance and Securities Sectors.

<b>Criminal Justice Measures and International Cooperation</b>	<b>Recommended Action</b>
I—Criminalization of ML and FT	The Convention for Suppression of the Financing of Terrorism, the Council of Europe Convention and the Palermo Convention should be extended to Jersey.
II—Confiscation of proceeds of crime or property used to finance terrorism	Consideration should be given to amending the Terrorism Law to provide for the appointment of a receiver for all property owned by a defendant to satisfy a confiscation order..
III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels	<p>Consideration should be given to amending the relevant laws to require that the report be made directly to the JFCU, and that it be made in writing on a form to be issued by the JFCU.</p> <p>Consideration should be given to amending relevant laws to permit the JFCU to require the submission of additional information by reporting parties, and to provide expeditious or real-time access to public and nonpublic databases</p>

	<p>without the need for a court order. Such a showing is not always possible at the early stages of analysis of an STR.</p> <p>Consideration should also be given to amending the relevant laws to provide explicit legal authority for the Commission to issue guidance notes.</p> <p><i>Jersey should take immediate steps to increase the permanent staffing levels of the JFCU to the approved strength of 17.5 positions.</i></p> <p><i>The JFCU's IT/Data systems should be improved to increase its benefits to users.</i></p>
IV—Law enforcement and prosecution authorities, powers and duties	<p>A Regulation of Investigatory Powers proposal has been drafted and passage of the bill should occur without delay.</p> <p><i>Jersey's law enforcement agencies should prepare a 3–5 year corporate action plan to enable them to continue to investigate and prosecute ML and FT, setting goals, targets, strategy, implementation plans, etc.</i></p>
V—International cooperation	<p><i>Jersey authorities should consider revising terrorism legislation to formally address the sharing of confiscated assets with those jurisdictions that have contributed to the investigation leading to confiscation.</i></p>
<b>Legal and Institutional Framework for Financial Institutions</b>	
I—General framework	<p>Consideration should be given to enacting a law to regulate MSBs and to monitor compliance for companies that engage in lending or financial leasing. There are seven activities that fall within the definition of trust company business under the FSI that do not appear to be covered by the definition of 'financial service business,' which should be amended to cover these activities.</p>
II—Customer identification	<p>The relevant laws should be amended to explicitly require that customer identification procedures be followed.</p> <p>Consideration should be given to the imposition of a requirement for the re-verification of existing customers where doubts arise as to their previously established identity.</p> <p>There is currently an exemption from the AML framework for applicants for businesses that are covered under the EU AML Directive. Given that the amended directive now covers additional unregulated activities, such as law, accounting and high-end antique dealers, applicants in all such activities would be exempt from the identification procedures under the relevant law. To remedy the widening of this exemption, consideration should be given to amending the law to limit the availability of the exemption to entities regulated in EU states.</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</p>



Legal and Institutional Framework for Financial Institutions	Recommended Action
	<p>recommended that these efforts be redoubled to ensure a greater degree of consistency in the approach adopted by licensees.</p> <p>The example of an introduction certificate appearing at Appendix G of the Notes should be amended to indicate that it is mandatory for introducers to verify that they hold verification documents and that such documents will be available on demand by the service provider.</p> <p>Consideration should be given to amending the Notes to require FSBs to take decisions in respect of high-risk customers at senior management level.</p>
III—Ongoing monitoring of accounts and transactions	<p>Within the two-year period provided by FATF, the relevant laws should be amended to require that FIs give enhanced scrutiny to wire transfers that do not contain complete originator information.</p>
IV—Recordkeeping	<p>Consideration should be given to the imposition of a requirement that records of financial institutions should be sufficient to enable the investigating authorities to compile a satisfactory audit trail for suspected ML and establish a financial profile of any suspect account.</p>
V—Suspicious transactions reporting	<p>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 ML offence.</p> <p>Consideration should be given to providing the JFCU with the authority to give instructions to reporting entities and to require FIs to observe instructions of the JFCU.</p>
VI—Internal controls, compliance, and audit	<p>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. Consideration should also be given to ensuring that institutions test compliance of AML/CFT systems against home and host country standards.</p> <p>Consideration should be given to the imposition of a requirement to designate an AML/CFT compliance officer for FSBs. Consideration should also be given to requiring banks and insurance companies to report any change in such position to the Commission, as is already required for trust company and investment company businesses.</p> <p>Consideration should be given to adopting codes for banking, insurance and CIFs in order to strengthen the requirements regarding screening of employees.</p>
VII—Integrity standards	<p>Consideration should be given to the imposition of a requirement to include conviction for a serious crime (over one year imprisonment) as an element of fit and proper in a manner consistent with human rights concerns.</p>

<b>Legal and Institutional Framework for Financial Institutions</b>	<b>Recommended Action</b>
	For unincorporated nonprofit organizations or charities, consideration should be given to amending the legal framework to require the same type of review by a governmental entity as occurs under the Borrowing Control Law.
VIII—Enforcement powers and sanctions	With respect to sanctions, consideration should be given to strengthening a number of areas, including (i) authorizing the Commission to impose civil money penalties or administrative fines, (ii) providing in relevant laws that the grounds for imposition of these sanctions explicitly refer to ML and FT, and (iii) providing that sanctions are uniform across all financial sectors, so that the same rules apply to every FI.
<b>Banking Sector Based on Sector-Specific Criteria</b>	
III—Ongoing monitoring of accounts and transactions	Consideration should be given to requiring banks to aggregate and monitor significant balances and activity on customer accounts on a fully consolidated basis.
<b>Insurance Sector based on Sector-Specific Criteria</b>	
II—Customer identification	It should be a requirement that where claims and other payments are made to persons other than policyholders the identity of such persons should be verified.
V—Suspicious transaction reporting	Appendix H of the Notes should be amended to include examples of suspicious transactions relevant to the insurance sector.
<b>Securities Sector based on Sector-Specific Criteria</b>	

## **B. Authorities' Response to the Assessment**

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

#### *Overview*

#### *Compliance with international standards*

47. 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. The authorities report that they are committed to following the standards set by the recently revised FATF 40 Recommendations.

*Status of and authority for the Guidance Notes*

48. The authorities do not accept that the assessment has properly reflected the status of the Commission's Anti-Money Laundering Guidance Notes (Guidance Notes), and consider that the approach adopted by the Fund is inconsistent with the revised FATF 40 Recommendations. The FATF now clearly states that basic obligations under three Recommendations should be set out in law or regulation, while more detailed elements in those Recommendations, as well as obligations under other Recommendations, could be required either by law or regulation **or by other enforceable means issued by a competent authority**.

49. The authorities do not accept that the Guidance Notes are not mandatory nor subject to direct sanctions explicitly linked to violation. They are quite clear, having noted the advice of the Attorney General, that principles established in the Guidance Notes are enforceable by the Commission through Jersey's regulatory legislation and must be followed by regulated financial services business to demonstrate that they are "fit and proper" to be licensed. This requirement to comply with the Guidance Notes has been formally recognized in Codes of Practice for trust company business, though not yet explicitly for other regulated sectors. Where a financial services business is not considered to be "fit and proper" then direct regulatory sanctions are available. For this reason, Jersey considers that the Guidance Notes are properly to be considered as an enforceable mechanism within the terms of the FATF recommendations and to be considered as falling within the defined term "law" for the purposes of the assessment.

50. Whilst the Proceeds of Crime (Jersey) Law 1999 provides no explicit legal basis for the issuance of Guidance Notes, it does anticipate (Article 37(8)) that guidance may be issued, adopted or approved by the Commission and shall be taken into account by the Royal Court in determining whether any regulated or unregulated financial services business has complied with a requirement of the anti-money laundering legislation. In addition to this, Article 8(2)(c) of the Financial Services Commission (Jersey) Law 1998 provides for publication of such information relating to the Commission's functions as it "thinks fit". One function is the supervision and development of financial services provided in or from within the Island (Article 5(1)(a)), and "supervision" is interpreted to include oversight for compliance with anti-money laundering requirements. In support of this function, regulatory legislation provides the Commission with a power to request information and conduct compliance visits. Whilst such a power is not available for all financial services businesses, the absence of such a power does not act to constrain the Commission's ability to set standards. Indeed, as noted above, the Proceeds of Crime (Jersey) Law 1999 anticipates that the Commission may set such standards.

*Review of AML framework*

51. The authorities note that Jersey's framework to counter ML and the FT 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 transmitters (collectively referred to as money services businesses), the latter in line with FATF Special Recommendation VII. The authorities recognize 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 also be considered as part of this process.

52. 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 AML framework in Jersey, including the treatment of professional intermediaries (FATF 10-13). 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 FSCL, consultation on which will take place later in 2003. It is intended that, in line with the FATF Recommendations, the Guidance Notes will clearly set out legislative and regulatory requirements, and will also contain a description of Jersey's legal framework, discussion of typologies and trends in ML and terrorist financing, and hypothetical and illustrative cases.

53. A consolidated action plan, prepared by the authorities, is appended to Volume I of the assessment.

## **Criminal justice measures and international cooperation**

### ***I. Criminalization of ML and FT***

#### *International conventions*

54. The assessment recognizes that legislation is in place which addresses the ML provisions of the Palermo Convention and Council of Europe Convention on Mutual Legal Assistance. Similarly, the FT is criminalized as a serious offence and is consistent with the definition set out in the Convention for the Suppression of the Financing of Terrorism. The authorities note that this reflects Jersey's enactment of domestic legislation to conform with international conventions.

55. 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.

*Sanctions*

56. The authorities do not accept that the absence of uniform powers across all regulated sectors is a barrier to effective supervision. For example, although there is no power under the Banking Business (Jersey) Law 1991 for the Commission to issue directions and limited provision under the Insurance Business (Jersey) Law 1996, both laws provide the Commission with wide powers to impose conditions on the license of regulated institutions, a power equivalent to that of direction.

57. Notwithstanding this, a general review of existing powers and sanctions available to the Commission will be undertaken in 2004 to identify any “gaps” in the Commission’s regulatory arsenal and to determine whether or not any changes are appropriate. (Any changes proposed would then be subject to a period of consultation and legislative approval).

58. The authorities response on the Commission’s civil monetary penalty and fining powers is addressed at page 43 of Volume 1.

59. The authorities note that the grounds for imposing regulatory sanctions are already very broad. For example, the Commission may refuse an application to be licensed, or revoke an existing license where it is not satisfied that a person (business or an employee of that business) is a “fit and proper” person, or where a business has not followed a Code of Practice issued under a regulatory law. The Commission would certainly regard involvement in economic crime as a basis for exercising any one of the sanctions available to it, and no legislative changes are proposed in this respect. Notwithstanding this, the Commission will:

- make a firm statement that the integrity of a person working within the regulated sector will be questioned where that person has been convicted of a serious offence (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 ML and FT, and principles established in the Guidance Notes, where such a requirement does not already exist.

## ***II—Confiscation of proceeds of crime or property used to finance terrorism***

### *Civil forfeiture and confiscation*

60. The authorities note 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.

61. In common with many other jurisdictions, the authorities will now consult on the inclusion of such a provision in its AML framework. The authorities observe that in the case of *Re Illinois District Court JLR 1995* (Note 10), approved in *Re Batalla-Esquivel 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 external civil forfeiture orders.

62. The authorities emphasize that the Proceeds of Crime (Jersey) Law 1999 (Articles 15 to 21) and Drug Trafficking Offences (Jersey) Law 1988 (Articles 3 to 12) already provide for the appointment of the Viscount, executive officer of the Royal Court, as receiver for all property owned by a defendant pursuant to a confiscation order (*saisie judiciaire*). Consideration will be given to amending the Terrorism (Jersey) Law 2002 to make similar provision.

### *Cross-border cash movements*

63. The authorities note that police and customs officers are authorized to seize money being imported or exported from the Island where there are reasonable grounds to suspect that money, either directly or indirectly, represents the proceeds of drug trafficking or

terrorist cash. Notwithstanding this, the authorities will consult in 2004 on changes to the Proceeds of Crime (Jersey) Law 1999, which will include proposals to introduce provisions by which authorized officers may seize and detain cash if it is suspected that it directly or indirectly represents any person's proceeds of criminal conduct.

### ***III. The FIU and Processes for Receiving, Analyzing, and Disseminating Financial Information and Other Intelligence at the Domestic and International Levels***

#### *Receiving and analyzing intelligence*

64. The authorities note that Article 18A of the Drug Trafficking Offences (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 drugs trafficking or a terrorist activity. Notwithstanding this, the authorities will consult in 2004 on changes to the Proceeds of Crime (Jersey) Law 1999 which will include proposals to require financial services businesses to 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 ML offence.

65. As part of this consultation, consideration will also be given to whether or not the Joint Financial Crimes Unit should be able to compel the submission of additional information by reporting parties and have access to public and nonpublic databases without the need for a court order and give instructions to financial services businesses.

#### *Authority for Guidance Notes*

66. The authorities add that consultation in 2004 on changes to Jersey's AML framework will also include proposals to provide the Commission with explicit authority under AML legislation to issue Guidance Notes. Currently, Guidance Notes are issued under the FSCL.

#### *Resourcing*

67. The authorities reaffirm that they will ensure that the Joint Financial Crimes Unit (JFCU) has sufficient resources to meet its domestic and international obligations.

68. The JFCU is currently in the process of testing a prototype replacement IT system which will enhance the analysis capability of the Unit, 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 Unit has upgraded its computer link with the United Kingdom's National Criminal Intelligence Service thereby ensuring that search requests are processed quickly and efficiently. The Unit intends to update existing systems in 2003 following satisfactory testing.

#### ***IV. Law enforcement and prosecution authorities, powers and duties***

##### ***Regulation of Investigatory Powers (Jersey) Law 200-***

69. The authorities note that a draft of the Regulation of Investigatory Powers (Jersey) Law 200- was lodged au Greffe by the Home Affairs Committee of the States of Jersey on June 24, 2003.

70. The draft Law regulates the interception of communications and the use of surveillance. The Law also makes provision for the decryption of lawfully obtained electronic data, for the appointment of an Investigatory Powers Commissioner to scrutinize the exercise of powers conferred by the Law, and for the appointment of an Investigatory Powers Tribunal.

##### **Corporate action plan**

71. The authorities agree that an action plan is helpful and note that a high level plan for the JFCU is already produced as part of the States of Jersey Police annual business plan.

72. Notwithstanding this, in 2004 the Unit and the Attorney General will consider developing a more detailed plan including overseas requests for assistance and serious and complex fraud.

#### ***V. International cooperation***

##### ***Sharing of confiscated assets***

73. The authorities emphasize that both the Proceeds of Crime (Jersey) Law 1999 (Article 24) and Drug Trafficking (Jersey) Law 1988 (Article 14A) already provide for the sharing of confiscated assets. As noted in the assessment, where there is no legislative provision for sharing confiscated assets (as under the Terrorism (Jersey) Law 2002), Jersey is able to reach, and in fact has reached, agreement with other jurisdictions on a case by case basis. Jersey has opened preliminary negotiations with Canada and the United States of America with regard to an asset sharing agreement.

74. Notwithstanding this, consideration will be given to amending the Terrorism (Jersey) Law 2002 to introduce provisions facilitating the sharing of assets.

#### **Legal and institutional framework for financial institutions**

##### ***I. General framework***

##### ***Money services business***



75. The authorities note that the Commission is giving consideration to legislation to provide for the oversight of money services business.

76. The Commission intends to review whether or not there should be oversight of compliance with AML requirements by other nonregulated sectors such as lending and nonfinancial leasing, taking into account the risk of ML activity occurring. Any changes proposed would be considered in 2004 as part of the consultation on changes to Jersey's AML framework.

#### *Definition of trust company business*

77. While Jersey's AML legislation, through its application to trust company business, already exceeds the international standards against which Jersey was assessed, the authorities accept that certain persons that are regulated under the FSL are not also subject to the Money Laundering (Jersey) Order 1999. Subject to consultation and legislative approval, an amendment to the Second Schedule of the Proceeds of Crime (Jersey) Law 1999 in 2004 will extend the scope of the Money Laundering (Jersey) Order 1999 so that it covers all trust company business regulated under the FSL.

## ***II. Customer identification***

#### *Review of AML framework*

78. The authorities are clear that Article 3 of the Money Laundering (Jersey) Order 1999 already requires that customer identification procedures be maintained, i.e. that procedures are both in place and operating, and the Guidance Notes establish identification practices which are to be followed by all financial services businesses. To the extent that there is any inconsistency in approach adopted by financial services businesses, then it is between existing and enhanced practices, which have anticipated revisions to the FATF's Recommendations.

79. Notwithstanding this, consultation on changes to Jersey's AML framework, which is already well underway, will, inter alia, consider proposals:

- 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;
- that will ensure ready access by financial services businesses to identification documentation for underlying beneficial owners held by third parties; and
- to require financial services businesses to take decision concerning high risk customers at senior management level.

#### *Wire transfers*

80. The authorities note that, following publication of United Kingdom and European Union proposals, the Commission will consult with industry on action necessary to comply with Special Recommendation VII (the provision of accurate and meaningful originator information on funds transfers and the scrutiny of incoming transfers that do not contain complete originator information) within the two year period referred to by the FATF (which ends in January 2005).

### ***III. Ongoing monitoring of accounts and transactions***

#### *Wire transfers*

81. As highlighted above, the authorities note that following publication of United Kingdom and European Union proposals, the Commission will consult with industry on action necessary to comply with Special Recommendation VII within the two year period referred to by the FATF.

#### *Review of AML framework*

82. The authorities note that consultation on changes to Jersey's AML framework, which is already well underway, will, inter alia, consider proposals:

- for an explicit requirement for financial services businesses to pay special attention to complex or unusual transactions, and complex or unusual patterns of transactions, and to establish procedures for reporting business that has been turned away; and
- for an explicit legal requirement for financial services businesses to scrutinize transactions with persons in jurisdictions that do not have adequate systems in place to deter ML or terrorist financing (though reference is already made to "higher risk" jurisdictions within the Guidance Notes).

### ***IV. Record-keeping***

#### *Review of AML framework*

83. The authorities point out that Article 8 of the Money Laundering (Jersey) Order 1999 requires financial services businesses to retain records concerning customer identification and transactions for use as evidence in any investigation into ML. The Commission's Guidance Notes state that the records prepared and maintained by any financial services business on its customers and their transactions should be such that requirements of legislation are fully met, competent third parties will be able to assess the institution's observance of ML policies and procedures, transactions effected through a financial services business can be reconstructed, and the institution can satisfy, within a reasonable time, any enquiries or court orders from appropriate authorities as to disclosure of information.

84. Notwithstanding this, consultation on changes to Jersey's AML framework, which is already well underway, will consider whether or not financial services business should be explicitly required by law to maintain sufficient records to enable investigating authorities to compile a satisfactory audit trail.

## ***V. Suspicious transactions reporting***

### *Review of AML framework*

85. While reporting levels in Jersey are higher than in many jurisdictions, the authorities note that consultation on changes to Jersey's AML framework, which is already well underway will, inter alia, consider a proposal to amend the Proceeds of Crime (Jersey) Law 1999 to require financial services businesses to report knowledge or suspicion of ML to the Joint Financial Crimes Unit, in line with existing provisions in the Drug Trafficking Offences (Jersey) Law 1988 and Terrorism (Jersey) Law 2002.

### *On-site supervision*

86. The authorities note that the Commission has adopted revised compliance "route planners" which will ensure that levels of reporting are considered during on-site visits in the light of the nature of a financial services business's activities and customer base.

## ***VI. Internal controls, compliance, and audit***

### *Review of AML framework*

87. The authorities point out that consultation on changes to Jersey's AML framework, which is already well underway, will, inter alia, consider proposals:

- to require financial services businesses to apply AML standards equivalent to those in place in Jersey to subsidiary and branch operations outside Jersey (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 AML standards should be consistent in each jurisdiction); and
- to require financial services businesses to establish a compliance officer role (as opposed to just investment and trust company businesses as is currently the case), and to register that officer (along with the ML reporting officer) with the Commission.

88. Since existing legislation already requires customer identification procedures to be followed by all financial services business, no changes are considered necessary in this respect.

*On-site supervision*

89. The authorities note that the Commission has adopted revised compliance “route planners” which will ensure that an assessment is made of how financial services businesses determine the effectiveness of staff training on ML.

*Codes of Practice*

90. The authorities point out that Codes of Practice, which establish requirements to vet and monitor the competence and probity of employees, are already in place for investment and trust company business, and draft Codes for insurance business and fund functionaries have been issued for public consultation. Draft Codes for deposit-taking business are also to be issued for consultation in 2003. It is intended that all Codes of Practice will be brought into force in 2004, when finalized.

***VII. Integrity standards***

*“Fit-and-proper” test*

91. The authorities emphasize that existing regulatory laws already permit the Commission to establish that “fit and proper” status may be determined with respect to factors such as conviction for a serious crime.

92. Accordingly, the Commission will make a formal statement in that the integrity of a person working within the regulated sector will be questioned where that person has been convicted of a serious offence (i.e. one which resulted in over one year of imprisonment).

*Combating the use of nonprofit organizations*

93. The authorities note that 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 to consider proposals for oversight arrangements for nonprofit and charitable organizations.

## ***IX. Cooperation between supervisors and competent authorities***

### ***Resources***

94. The authorities believe it right that, in line with accepted supervisory practice, the Commission should continue to focus on identified higher-risk areas, and not on all risk areas.

95. The Commission reviews staff resource requirements on an annual basis during the process of establishing the 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 staff, of whom 35 are now in post. The Commission will continue to review staffing requirements on an annual basis.

96. Given the functional structure of the Commission, it does not consider that it is appropriate to have one overall AML/terrorist financing (AML/CFT) specialist. To ensure that adequate skills and resources are devoted to tackling ML, the Commission proposes to have at least one AML/CFT specialist in each division, with appropriate back up.

### **Banking sector based on sector-specific criteria**

## ***II. Ongoing monitoring of accounts and transactions***

### ***Review of AML framework***

97. The authorities confirm that consultation on changes to Jersey's AML framework will address the need for banks to monitor customer activity on a consolidated basis, and address issues arising from application of such a requirement to operations outside Jersey, since it is not possible to legislate for "gateways" that may or may not exist in other jurisdictions.

### **Insurance sector based on sector-specific criteria**

## ***II. Customer identification***

### ***Review of AML framework***

98. Consultation on changes to Jersey's AML framework, which is already well underway, will, inter alia, consider a proposal to verify the identity of recipients of insurance payments, where the recipient is a person other than the policy-holder.

## ***V. Suspicious transaction reporting***

### *Review of AML framework*

99. The authorities agree that consultation on changes to Jersey's AML framework, which is already well underway, should consider, inter alia, providing examples of suspicious transactions relevant to the insurance sector.

## **III. IAIS INSURANCE CORE PRINCIPLES**

### **A. General**

100. This assessment of Jersey's compliance with the IAIS Insurance Core Principles has been completed as part of the IMF OFC assessment program.<sup>6</sup> 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 CPs.

### **Information and methodology used in the assessment**

- (1) IAIS Insurance Core Principles Methodology, ICP Self Assessment Principles, Standards and Guidelines of the IAIS;
- (2) Laws, Orders, Codes of Practice, Guidelines etc. of Jersey;
- (3) Interviews with the Commission and the industry.

### **Institutional and macroprudential setting**

101. The insurance industry in Jersey is relatively new compared to that in Guernsey. The government decided late to open the market and to set up an offshore 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. Nearly all the Insurance Core Principles of the IAIS are fully observed.

102. The Commission is an integrated supervisory authority for banks, insurance companies and investment funds.

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<sup>6</sup> The assessment was undertaken by Helmut Mueller (Consultant MFD)

103. The ICP 1 (organization) is observed with two exceptions:

- the staff of the insurance division is too small. The number of supervisors should be increased;
- the possibility that the F&E Committee may give general directions to the Commission potentially impairs the independence of the insurance supervisor.

104. The Principles regarding licensing, changes in control, internal control, assets, liabilities, reinsurance, market conduct, financial reporting, cross-border business, coordination and cooperation and confidentiality are implemented.

105. An insurance license is given only for one year. The necessary renewal procedure gives the supervisor the opportunity to reconsider his former decision in a short time. The licensing procedure is an important part of ongoing supervision that allows the Commission to intervene in a preventive manner, necessary in this specialized insurance business carried out by offshore companies.

106. That is true also for financial reporting. The insurance companies have to provide accounts and other information including a balance sheet and a profit and loss account on a six monthly basis. That is a very useful tool that enables the supervisor to make timely intervention.

107. Corporate governance requirements, internal controls and the prudent use of derivatives are in place, however the Mission welcomes the Commission's initiative to consolidate these Principles into Codes of Practice. The legal minimum solvency requirements comply with international standards and the actual solvency of the companies is much higher than the legal minimum. However the Commission should continue to review the minimum solvency standards, in light of recent European developments, to ensure that the legal minimum capital is in line with international standards. On-site inspections should be more frequent; therefore, it is necessary to increase the number of insurance supervisors. The Commission has a wide range of sanctions, except the power to impose penalties (administrative fines). It is desirable that all financial services supervisors have consistent enforcement powers. According to international standards, the insurance supervisor should have the powers.

108. The transparency requirements are fulfilled. Regulation and guidelines for the day-to-day supervision are clearly defined, explained and publicly disclosed.

### **General preconditions for effective insurance supervision**

109. The preconditions for effective insurance supervision in Jersey are in place. The infrastructure is well developed because

- the legal system in place is functioning well;



- the applied accounting standards (internationally recognized standards) are comprehensive;
- the actuarial and auditing profession apply recognized standards;
- an efficient financial market (banks, investment funds) exists; and
- sound and effective macroeconomic policies are in place so that insurance companies can operate within a stable environment.

110. Rules of corporate governance are not consolidated and require extension. Existing provisions are in the IBL and in the Companies Law 1991. The Mission welcomes the Commission's initiative to introduce Codes of Practice that will formally address the issues of corporate governance. The Codes of Practice have been issued for industry consultation and the Commission intends for them to come into force during 2003. A meeting with the industry left us with the impression that there will not be substantial opposition to the changes, so that at least the Codes will be in force soon.

## B. Detailed Assessment

Table 10. Detailed Assessment of Observance of the IAIS Insurance Core Principles

Principle 1	<p>Organization of an insurance supervisor</p> <p><b>The insurance supervisor of a jurisdiction must be organized so that it is able to accomplish its primary task, i.e., to maintain efficient, fair, safe, and stable insurance markets for the benefit and protection of policyholders. It should, at any time, be able to carry out this task efficiently in accordance with the Insurance Core Principles. In particular, the insurance supervisor should:</b></p> <ul style="list-style-type: none"> <li>• be operationally independent and accountable in the exercise of its functions and powers;</li> <li>• have adequate powers, legal protection, and financial resources to perform its functions and exercise its powers;</li> <li>• adopt a clear, transparent, and consistent regulatory and supervisory process;</li> <li>• clearly define the responsibility for decision-making; and</li> <li>• hire, train, and maintain sufficient staff with high professional standards who follow the appropriate standards of confidentiality.</li> </ul>
Description	<p><b>Overview:</b> 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, enforcement), not by sector. The only exception is the insurance supervision. Given the size of the sector, the responsibility for all aspects of regulation is given to the Insurance Division.</p> <p>The specific insurance regulatory regime is laid down by the IBL (amended in 1998, 1999 and 2000), Insurance Business (General Provisions) Order 1996 and Insurance Business (Solvency Margin), Order 1996.</p>

The Insurance Business (Amendment No.4) (Jersey) Law 2003, prepared by the Commission, came into force on March 28, 2003.

The Commission has explained legal provisions by means of guidance notes. During 2002, the insurance division intends to reinforce insurance supervision by preparing and issuing Codes of Practice for the industry that reflect the IAIS Insurance Core Principles.

The Jersey insurance market is relatively small in comparison with other similar jurisdictions, for example Guernsey which began much earlier to build up an off shore insurance center. It is very difficult to assess the importance and size of the Jersey insurance market. This is due to the structure of this market. According to Article 4 (2) of the Insurance Law, no person shall carry on insurance business without a permit. The law distinguishes two kinds of permits: "Category A" and "Category B." A Category A permit is relevant when the applicant grants a license by virtue of its authorization in a jurisdiction outside Jersey and a Category B permit is for all other companies (this means companies establishing their head offices in Jersey; as the Commission is then the home supervisor). In the case of companies having a Category A permit, the Commission has no figures indicating the size of the business in Jersey. The number of category A insurers is 160 and the number of Category B is 18. 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.

The key figures of the Category B insurers for the year 2001 are:

Long-term insurance	£ millions
- gross premiums	132.4
assets covering technical provisions and solvency	306.4
- assets covering technical provisions and solvency	306.4
- total assets	350.6
- technical provisions	271.4
General insurance	
- gross premiums	163.9
- assets covering technical provisions and solvency	515.4
- total assets	573.7
- technical provisions	379.5

#### Essential criteria

##### 1. The responsibilities of the insurance supervisor are clear and objectively stated.

The duties and the powers of the Commission concerning insurance business are set out in the IBL 1996 and its amendments and orders.

Part II of the law prohibits persons from carrying on insurance business without a permit (license), sets out the conditions a company must meet to be granted a license, the license procedures, imposition of conditions and withdrawal of a license, gives the applicant the right to appeal the Commission and after that the court in case of refusal, or withdrawal, or other negative decision in the licensing procedures. It regulates together with the above mentioned two orders 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.). The classes of insurance are defined in three schedules to the law which give details to the transfer of long-term business and are contained transitional provisions.

The basis for the appointment and removal of the Board of Commissioners is set out in the FSL 1998. This law established the Commission as an independent body accountable for its overall performance to the Parliament through the F&E Committee.

	<p><b>2. The insurance supervisor is operationally independent from both political authorities and the insurance companies that it supervises in the execution of its supervisory tasks and its accountable in the exercise of its functions and powers.</b></p> <p>The insurance supervisor is the Insurance Division, part of the Commission. The budget is funded by means of fees from the supervised companies. The budget is prepared by the Commission and incorporated within a business plan, which is shown to members of the F&amp;E Committee—a body that exercises the functions of a ministry of finance for Jersey. The F&amp;E Committee may give guidance or general directions to the Commission, in relation to the policies of the States. The insurance supervisory team has confirmed that until now nor such guidance, or direction, has been given to the Commission.</p> <p>Nevertheless, the possibility of the F&amp;E Committee being able to issue these directions contained in the FSCL, potentially impairs the independence of the insurance supervisor, but has not in fact done so. In any event, such a direction must not conflict with the Commission's objective to protect the interests of insurance policyholders.</p> <p>Financially, the Commission is accountable to the Parliament. The Annual Report is made public, it includes inter alia a statement by the Insurance Division of the Commission addressing policies, developments and activities, and a two-year regulatory plan as well as audited financial statements. The Annual Report 2001 was published in April 2002.</p> <p><b>3. The insurance supervisor have adequate powers, legal protection and proper resources and staff, and the capacity to perform its functions and exercise its powers.</b></p> <p>The Commission has at its disposal wide powers to enforce compliance with the provisions of the insurance supervisory regulation (laws and orders). These powers include the right to get any necessary information from the companies. The Commission has powers of investigation (including on-site inspections; namely in the case of Category B) and enforcement through sanctions (see principle 14).</p> <p>Supervision of insurance business is undertaken by the Insurance Division (the Director of the Insurance Division, supported by a Finance Manager and a Finance Officer). On-site compliance visits are led by the Insurance Division and supported by resources from the Compliance Division. Enforcement action against insurance businesses is led by the Insurance Division and supported by the Enforcement Division. But with regard to the fact that the Department has other responsibilities besides insurance supervision (the duty of financing supervision), and in view of the necessity to increase the number of on-site inspections, we have the impression that the division is under-resourced.</p> <p><b>4. The insurance supervisor adopts clear, transparent and consistent regulatory and supervisory processes. The rules and procedures of the insurance supervisor are published and updated regularly.</b></p> <p>Under the regulatory legislation, following a period of consultation with the industry, the Commission may prepare and issue Codes of Practice and guidance notes for the purpose of establishing sound principles for the conduct of business. The Commission is also required by the legislation to distribute all Codes of Practice and guidance notes that are issued. Hard copies are available upon request at no charge, and are also available on the Commission's internet web site. The powers and functions of the Commission are clearly set out in the primary and secondary regulatory legislation. The Codes of Practice and guidance notes exist to ensure that legislation is consistently applied, understood and transparent to the general public.</p> <p>The rules for the authorization or rejection of insurance companies are laid out in Article 6 of the IBL. Any rejection of an application must be in writing, and the reasons for the rejection must be clearly stated.</p>
	<p><b>5. The decision-making lines of the insurance supervisor are structured so that action can be taken immediately in the case of an emergency situation.</b></p> <p>The Board of Commissioners has formally delegated most regulatory, supervisory and enforcement powers to the executive directors. In most cases of emergency, the relevant executive director therefore has the power to take the necessary action.</p> <p>In the absence of that director, or in cases where powers have not been specifically delegated, other directors and/or the director general (who is also a Commissioner) have the necessary powers.</p> <p>The executive Board of Directors meets every week to discuss all items of concern, and to take</p>

appropriate decisions. The Board of Commissioners meets monthly to agree higher level matters of policy, regulation and (sometimes) enforcement. In urgent cases, these meetings can be convened quickly outside the normal time frame, or even be conducted by a conference telephone meeting.

**6. The staff of the insurance supervisor observes the highest professional standards including appropriate standards of confidentiality.**

On commencement of employment, all staff (including Commissioners) are required to sign a declaration regarding confidentiality and conflicts of interest, and to disclose to the Commission any interests that they may have in respect of any business or undertaking with which the Commission is in, or may become engaged in, communication.

The Commission's terms and conditions of employment set out procedures to be followed in the event of misconduct. Under the regulatory legislation, any breach of confidentiality other than through a permitted gateway is a criminal offence.

The Commission's policy on conflicts of interest has been published and is available on its internet web site.

**7. The insurance supervisor establishes an employment system to hire, train and maintain the staff with the highest professional standards.**

Professional staff come from a variety of backgrounds, with experience in both the private and public sectors in Jersey and the United Kingdom. The Commission prepares and maintains a rolling training program, to ensure that all staff is aware of, and proficient in, current international regulatory standards and practices, and their application to Jersey. Training courses are run partly in house, and partly through the use of external professional training organizations.

**8. Remuneration paid by the insurance supervisor is such that it is able to employ and keep highly qualified staff.**

The Commission keeps the remuneration levels for staff at all grades of seniority under constant review, and uses independent remuneration surveys to ascertain that its own remuneration policy is in line with that of other employers in Jersey. Staff receive a work performance review annually, and this, together with other factors such as inflation rates and the remuneration surveys, largely determine the level of staff remuneration.

**9. The insurance supervisor is able to use its funds flexibly so that it can react flexibly and quickly. Necessary activities (e.g., international cooperation) and actions (e.g., on-site inspections) should not fail for budgetary reasons.**

The Commission produces a detailed annual budget, which is a realistic assessment of its spending needs for the short to medium term.

The Commission's stated policy is to set regulatory fees at a level that allows, as far as possible, a balance between income and expenditure, subject to the need to build up a contingency reserve against unforeseen costs. There have been no reported cases where necessary activities have not been carried for budgetary reasons.

	<p><b>10. If its own capacities are not sufficient, the insurance supervisor should be able to outsource to third parties (e.g., auditors, actuaries) supervisory tasks such as on-site inspections and monitoring the solvency position or the sufficiency of technical provisions (policy liabilities).</b></p> <p>Where functions are outsourced to third parties, the insurance supervisor is able to:</p> <ul style="list-style-type: none"> <li>• assess the competence;</li> <li>• monitor the performance (for instance, through reviewing working papers); and</li> <li>• ensure the independence from the company and the consideration they give to the protection of the policyholders' interests.</li> </ul> <p><b>11. Third parties are subject to the same legal requirements, in particular concerning confidentiality, as the insurance supervisor. If required, the insurance supervisor must have the ability to take actions against these third parties either directly or through the appropriate professional body.</b></p> <p>Where appropriate, the work of the Commission is supplemented by using specialist third parties such as lawyers, accountants and actuaries. These specialists are used for technical advisory services in connection with supervisory requirements, and in connection with investigations carried out by the Commission. For example, the Commission has a formal contract with the Government Actuary's Department in London (GAD) for the provision of actuarial services and advice.</p> <p>The Commission has published a policy statement regarding the use of third party services, applicable to the financial services industry as well as to the Commission itself. The statement includes the same requirements of independence and confidentiality from third parties that would be expected of the Commission.</p> <p><b>Additional criteria</b></p> <p><b>1. Rules are in place for the dealings between the members of the supervisory staff and the insurance companies (e.g., as regards the acceptance of gifts or invitations).</b></p> <p>The Commission has issued a policy statement to all staff regarding gifts hospitality. Gifts should not be accepted, and hospitality should also generally be declined, unless they are for genuine business reasons. All such offers must be notified to, and recorded by, the Commission secretariat. Any breach of the rules is a disciplinary offence.</p> <p><b>2. Regulatory staff is subject to conflict of interest rules (e.g., prohibition on dealing in shares or investments in the companies that they regulate).</b></p> <p>Staff is required to take effective steps to ensure that their actions are unaffected by any conflict of interest and cannot be called into question, and not to wrongly or improperly use information received while in the employment of the Commission.</p>
Assessment	Largely observed
Comments	<p>It is necessary to increase the staff of the insurance division.</p> <p>The independence of the supervisor is potentially impaired by an Article 11, FSCL.</p>
Principle 2.	<p>Licensing</p> <p><b>Companies wishing to underwrite insurance in the domestic insurance market should be licensed. Where the insurance supervisor has authority to grant a license, the insurance supervisor:</b></p> <ul style="list-style-type: none"> <li>• in granting a license, should assess the suitability of owners, directors, and/or senior management, and the soundness of the business plan, which could include proforma financial statements, a capital plan, and projected solvency margins; and</li> <li>• in permitting access to the domestic market, may choose to rely on the work carried out by an insurance supervisor in another jurisdiction if the prudential rules of the two jurisdictions are broadly equivalent.</li> </ul>
Description	<p><b>2(1): Companies wishing to underwrite insurance in the domestic insurance market should be licensed. Where the insurance supervisor has authority to grant a license, the insurance supervisor:</b></p> <ul style="list-style-type: none"> <li>• in granting a license, should assess the suitability of owners, directors, and/or senior management, and the soundness of the business plan, which could include proforma financial</li> </ul>

	<p>statements, a capital plan and projected solvency margins; and</p> <ul style="list-style-type: none"> <li>• in permitting access to the domestic market, may choose to rely on the work carried out by an insurance supervisor in another jurisdiction if the prudential rules of the two jurisdictions are broadly equivalent.</li> </ul> <p><b>Essential criteria</b></p> <p><b>1. Legal provisions on licensing are in place through the insurance supervision law.</b></p> <p>A license is given only for one year. The necessary renewal gives the supervisor the possibility to reconsider his former decision in a short time. So the licensing procedure is an important part of ongoing supervision that allows to intervene in a preventive manner.</p> <p>The IBL contains comprehensive provisions on licensing.</p> <p><b>2. These legal provisions define the types of company or entity that are insurance companies or entities, and the insurers which must be licensed or define insurance business and prescribe that all of entities writing insurance business must be licensed.</b></p> <p>Following the IBL no person shall carry on in or from Jersey insurance business unless this person is authorized by a permit to do so. The law contains comprehensive provisions on licensing, especially the licensing requirements and the licensing procedure.</p> <p><b>3. These legal provisions also contain regulations defining the authority responsible for licensing, its tasks, and the licensing requirements.</b></p> <p>Article 3 of the IBL confers the powers and duties to the Commission. The licensing requirements are contained in Article 6.</p> <p><b>Additional criteria</b></p> <p><b>1. The licensing authority makes directives or guidelines available to insurance companies. These directives or guidelines give information on the requirements that are to be met if the license is to be granted.</b></p> <p><b>2. A regulation on what is to be considered 'insurance business' exists, either in a law or in the established practice of the courts.</b></p> <p>The Commission has issued Guidelines covering the application procedures, licensing requirements, ongoing supervisory regime and the necessary regular reporting requirements. These guidelines are available in hard copy upon request, free of charge, and are also included in full on the Commission's internet web site.</p> <p>A definition of what constitutes insurance business exists through many years of common law established by the practice and decisions of the courts.</p> <p><b>2(2): The insurance supervisor, in granting a license, should assess the suitability of owners, directors, and/or senior management, and the soundness of the business plan , which could include proforma financial statements, a capital plan and projected solvency margins.</b></p> <p><b>Essential criteria</b></p> <p><b>1. The permitted types of legal form are defined</b></p> <p>The Commission only accepts the legal form of a company limited by shares.</p> <p><b>2. Legal provisions exist on whether key functionaries such as owners, directors and/or senior managers are fit and proper (i.e., possessing the necessary knowledge, skills and integrity for their positions).</b></p> <p>All owners, directors and key senior managers of an insurance company must each complete and sign a personal questionnaire for the purpose of assessing their fitness and propriety to be directors or managers. This covers their complete employment history, professional qualifications and other personal details, and includes specifically a requirement to certify that they have not been convicted of a range of offences, which would lead the supervisor to the conclusion that they are not fit and proper.</p>
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**3. As regards owners, the provisions require the following:**

The insurance supervisor is to be informed of the names of the natural and legal persons holding a direct or indirect qualifying participation in the applicant company.

- The insurance supervisor has the authority to refuse to issue the license to operate if facts exist from which it can be deduced that the holders of a qualifying participation: are in an economic situation which may be hazardous to the soundness of the applicant; do not have sufficient resources to keep the company solvent on an ongoing basis; are or have been directly or indirectly involved in illegal transactions affecting their suitability, or intend to abuse the insurer for criminal purposes (e.g., ML); or are connected with the applicant company in a way that would obstruct or render effective supervision impossible.
- Criteria similar to those applied to directors and/or senior management (see below) can be applied to check the reliability of natural persons. As far as legal persons are concerned, the insurance supervisor applies the criterion of suitability to the persons running the company; the insurance supervisor is authorized to ask for submission of audit reports and other key information such as extracts from the statutory records (the register of commerce).
- The insurance supervisor has the power to exchange information with other relevant authorities inside and outside its jurisdiction which respect minimum reciprocity and confidentiality requirements.

The IBL and the Companies Law 1991 require that the names of all persons having a beneficial ownership of all or a proportion of a Jersey registered company be disclosed to the Commission.

Article 6 of the IBL gives authority to the Commission to refuse to grant an insurance permit in cases where the directors and officers are not considered fit and proper, if the declared

purpose of the company is suspect, if the five year business plan does not make financial sense, if the proposed levels of capital are inadequate and if financial resources are inadequate to meet minimum solvency requirements. The Commission may also refuse to grant an insurance permit for any other reason which it considers valid, provided that it gives its reasons in writing to the applicant. Should an applicant for an insurance permit be a corporate entity, the Commission has the power under Article 6 to obtain the audited accounts and any other information that it considers necessary, including details of the directors and officers of that company, as part of its evaluation of the application.

If the applicant is a regulated entity in another jurisdiction, the Commission has gateways under Article 32 of the IBL to exchange information with regulators in other jurisdictions, but is obliged to keep confidential all information so obtained.

**4. As regards directors and/or senior managers (key functionaries), the insurance supervisor should assess their fitness and propriety as follows:**

fitness tests seek to assess the competence of managers and directors and their capacity to fulfill the responsibilities of their positions while propriety tests seek to assess their integrity and suitability;

- the requirements could, however, depend on the area for which the person concerned will be responsible given that all necessary qualifications are present on the Board of Directors; and if, in special cases, senior management functions (e.g., authorized representative of a foreign branch) are performed by a company (legal person), the insurance supervisor should be assured that the representatives of that company are qualified, reliable and of good repute.

All directors and officers must submit a personal questionnaire. Should the information contained in the completed questionnaire require further details, the Commission has the power to obtain such additional information as it considers necessary to properly evaluate the integrity and suitability of each person. This applies equally to the directors and officers of a corporate applicant.

**5. The insurance supervisor has the authority to deny the license on the basis of facts from which it could be deduced that the person concerned will not manage the insurance company in a proper fashion (a previous conviction especially for an offence committed in connection with financial services; participation in unsound transactions; bankruptcies caused by dishonesty; tax evasion).**

	<p><b>6. Within the framework of the fit and proper test (the test of possessing the necessary knowledge, skills and integrity for his/her position), the applicant is required to submit a complete curriculum vitae and to provide a declaration from the proposed owners and directors/senior managers confirming that no criminal proceedings are or have been pending against them.</b></p> <p>The applicant has to deliver any necessary document to the Commission (Article 5 and 9 IBL and published guidance notes). The designated directors for instance have to fulfill a so called Long Form Personnel Questionnaire with a confirmation by the company.</p> <p><b>7. The applicant is required to submit a business plan outlining the proposed business of the company for at least three years ahead.</b></p> <p><b>8. The business plan provides information on the types of obligation the company proposes to incur (in the case of life insurance); the types of risk it proposes to cover (in the case of nonlife insurance); the basic principles of the company's insurance and reinsurance program; the estimated setting-up costs and the financial means to be used for this purpose; and the projected development of business and capital or solvency margins.</b></p> <p>The applicant has to present a business plan for the next five years (see guidance notes).</p> <p><b>9. A minimum amount of capital is required for all insurance companies.</b></p> <p>The minimum of capital is £100.000 (see Principle 9).</p> <p><b>10. The insurance supervisor has the ability to check affiliation or outsourcing contracts, and, where material, exercise this ability.</b></p> <p>The supervisor has the right to require information about anything necessary for his decision (Article 9 IBL). Outsourcing contracts must be presented to the Commission.</p> <p><b>11. The insurance supervisor has the authority to request and check information on the products offered by the insurer (general policy conditions, technical basis for the calculation of premium rates and provisions).</b></p> <p>The applicant has to set out in the application what risks he shall write and what new products he shall introduce. Any change needs prior consent of the supervisory authority. Insurance Business (General Provision) Order 1996, Schedule to Article 5.</p> <p>Observant</p> <p><b>12. The documents of formation as well as information on actuaries and auditors are to be provided.</b></p> <p>Information about auditors (Article 16 – 20, Insurance Business Law 1996) and actuaries (Article 24, Insurance Business Law 1996) are requested by the Commission.</p> <p>Observant</p> <p><b>13. A company license to operate life insurance should not also be licensed to operate non-life insurance and vice versa, unless there are clear provisions, which the insurance supervisor finds satisfactory, requiring that risks be handled separately on both an on-going concern and a winding-up basis.</b></p> <p>The Commission does not allow composite companies (principle of specialization).</p> <p>Observant</p> <p><b>14. The insurance has the right to withdraw the license on the grounds of substantial irregularities; e.g., if the company no longer meets the licensing requirements or seriously infringes the law in force.</b></p> <p>The Commission has the right to suspend and to withdraw the license (Articles 6 and 7 of the Insurance Business Law, 1996).</p> <p>Observant</p>
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	<p><b>15. Where an authority granting licenses is different from that conducting ongoing supervision.</b></p> <ul style="list-style-type: none"> <li>• The authority granting licenses ensures that the legal and prudential criteria which are applied in the process of checking the license application are in line with the criteria on which ongoing supervision will be based;</li> <li>• The authority in charge of ongoing supervision is given the right to check the application, documents, and give his opinion;</li> <li>• The insurance supervision law provides that the authority in charge of ongoing supervision is to be notified of changes in criteria that are relevant for granting the license;</li> <li>• The authority in charge of ongoing supervision is informed of the reasons for which the license was granted or denied; and</li> <li>• If the authority in charge of ongoing supervision has objections to the license being granted, and if it is granted irrespective of such objections, the reasons for granting it are documented.</li> </ul> <p>The Commission is the only insurance supervisor. There is no other supervisory authority for insurance business.</p> <p><b>16. The insurance supervisor provides insurers with information detailing the documents they are required to submit to the insurance supervisor.</b></p> <p>This information is given in the form of published guidelines.</p> <p><b>Additional criteria</b></p> <p><b>1. When checking the documents submitted, the insurance supervisor refers to reports on checks made by other bodies such as auditors and other regulatory bodies.</b></p> <p><b>2. Directors/senior managers should not hold two positions that would result in a material conflict (e.g., appointed actuary and chief executive officer).</b></p> <p>All documents available are checked (especially auditors' reports and information from other supervisors). It is the policy of the Commission to require that an actuary has no other duties that can involve a conflict of interest.</p> <p><b>2(3): The insurance supervisor, in permitting access to the domestic market, may choose to rely on the work carried out by an insurance supervisor in another jurisdiction if the prudential rules of the two jurisdictions are broadly equivalent</b></p> <p><b>2(3): The insurance supervisor, in permitting access to the domestic market, may choose to rely on the work carried out by an insurance supervisor in another jurisdiction if the prudential rules of the two jurisdictions are broadly equivalent.</b></p> <p><b>Essential criteria</b></p> <p><b>1. The insurance supervisors of competent authorities share information when foreign insurers are to be licensed.</b></p> <p>Under the provisions of Articles 29, 31 and 32 of the IBL of 1996, the Commission may provide to the insurance supervisors in other jurisdictions, and receive from such insurance supervisors, information in connection with applications from foreign regulated insurers. Such information is given and received in strict confidence. It is standard practice for the Commission to seek such information when an application is received from a foreign regulated entity.</p> <p><b>2. When licensing a foreign insurer, the insurance supervisor may choose to rely on the information supplied by the insurance supervisor in the jurisdiction where the insurer's head office is situated (home supervisor), provided that the host supervisor treats the information it obtains as confidential and protects it appropriately.</b></p> <p>The Commission does often request and receive information, including copies of the annual returns, submitted to regulators in other jurisdictions as part of its own supervision of foreign insurers' local business. Such information is required to be kept confidential by the provisions of Article 28 of the IBL of 1996.</p>
Assessment	Observed

Comments	
Principle 3.	<p><b>Changes in Control</b></p> <p><b>The insurance supervisor should review changes in the control of companies that are licensed in the jurisdiction. The insurance supervisor should establish clear requirements to be met when a change in control occurs. These may be the same as, or similar to, the requirements which apply in granting a license. In particular, the insurance supervisor should:</b></p> <ul style="list-style-type: none"> <li>• require the purchaser or the licensed insurance company to provide notification of the change in control and/or seek approval of the proposed change; and</li> <li>• establish criteria to assess the appropriateness of the change, which could include the assessment of the suitability of the new owners as well as any new directors and senior managers, and the soundness of any new business plan.</li> </ul>
Description	<p><b>Essential criteria</b></p> <p><b>1. The insurance supervisor is required by law to be notified of changes in control by the party acquiring the participation or by the insurer.</b></p> <p>The IBL requires that any change to the owner, shareholder controller, chief executive or directors of an insurance company be notified in writing to the Commission.</p> <p><b>2. The law defines such changes and permits the insurance supervisor to take into account the substance as well as the form of the transaction.</b></p> <p>Article 22 (4) requires a written statement of the reasons for the change, Article 22 (5) empowers the Commission to obtain such additional documents and information as it may require to enable it to accept or reject the change, and the failure to notify such a change or provide the information or documents requested by the Commission is a criminal offence under Article 22 (10).</p> <p><b>3. The insurance supervisor has the power to assess the change in control and take the necessary measures.</b></p> <p>Article 22 (6) provides the power to the Commission to accept or reject any change in control of an insurance company, and Article 22 (3) permits the supervisor to treat the change as if it were a new application for a license. If it is considered that the fit and proper criteria are not met, or that any revised business plan or other information submitted in connection with the change do not satisfy the supervisor, the change may be refused.</p> <p>Article 22 (9) sets out the grounds under which an appeal may be lodged by an insurer in the royal court against any such refusal.</p> <p><b>Additional criteria</b></p> <p><b>1. The insurance supervisor regularly obtains information from the insurance companies on the holders of participations in such companies exceeding a designated threshold, either by means of reports submitted by the insurers, or on-site inspections.</b></p> <p><b>2. The insurance supervisor develops criteria on the basis of which the changes in control are assessed. As a minimum, the suitability of the new owners, directors and senior managers, and the soundness of any new business plan are checked when a change in control occurs. The specific documents that the insurers have to submit depend on the licensing requirements of the jurisdiction and are consistent with the documentation required for new license applications.</b></p> <p>The annual insurance license renewal form requires each insurance company to formally declare, inter alia, that there have been no changes in the persons having an interest of any kind in the company. The Companies Law 1991 requires in its annual return a complete list of all shareholders. The Commission is therefore receiving an update on the shareholders in each company twice a year. The question is also raised during the course of visits to insurers.</p> <p>Changes of control are assessed on the same basis as new license applications (Article 22 (3) of the IBL.</p>
Assessment	Observed
Comments	

Principle 4.	<p>Corporate Governance</p> <p><b>It is desirable that standards be established in the jurisdictions which deal with corporate governance. Where the insurance supervisor has responsibility for setting requirements for corporate governance, the insurance supervisor should set requirements with respect to:</b></p> <ul style="list-style-type: none"> <li>• the roles and responsibilities of the Board of Directors;</li> <li>• reliance on other supervisors for companies licensed in another jurisdiction; and</li> <li>• the distinction between the standards to be met by companies incorporated in his jurisdiction and branch operations of companies incorporated in another jurisdiction.</li> </ul>
Description	<p><b>Overview</b></p> <p>There are no sections under the legislation dealing explicitly with corporate governance. In the IBL as well as in the Companies Law 1991 there are some special requirements and powers which enable the supervisor to observe most of the essential and additional criteria of corporate governance. Some of these powers and requirements are set out in the conditions attaching to insurance licenses. A person who fails in complying with conditions is guilty of offence and liable to imprisonment or fine or both. However, the Commission recognizes that current practice requires improvement and has included the criteria of corporate governance in draft Codes of Practice which will be issued pursuant to Article 39 of the IBL. This draft is in discussion with the industry, and is expected to come into force during 2003.</p> <p><b>Essential criteria</b></p> <ol style="list-style-type: none"> <li><b>1. The insurance supervisor has the authority to require Boards of directors to clearly set out their responsibilities towards acceptance of and commitment to the specific corporate governance principles for their undertaking.</b></li> <li><b>2. The insurance supervisor has the authority to require Boards or directors to clearly set out their strategic objectives.</b></li> <li><b>3. The insurance supervisor has the authority to require Boards of directors to set out the means of attaining those objectives and procedures for monitoring and evaluating their progress toward those objectives.</b></li> <li><b>4. The insurance supervisor has the authority to require Boards of directors to clearly set out the nomination and appointment procedures, structure, functions, re-elections and balance between executive and non-executive directors of the Board in a transparent manner.</b></li> <li><b>5. The insurance supervisor has the authority to require Boards of directors to clearly distinguish between the responsibilities, accountabilities, decision-making, interaction and cooperation of the Board of Directors, chairman, chief executive and management.</b></li> <li><b>6. The insurance supervisor has the authority to require a clear division of responsibilities which will ensure a balance of power and authority, so that no one individual has unfettered powers of decision. Where the posts of chairman and chief executive are combined in one person, the insurance supervisor has the authority to verify that appropriate controls are in place to ensure that management is sufficiently accountable to the Board or directors.</b></li> <li><b>7. The insurance supervisor has the authority to require Boards of directors to have in place and to monitor independent risk management functions related to the type of business undertaken.</b></li> </ol> <p>All the above criteria are included in the conditions attached to insurance licenses.</p> <ol style="list-style-type: none"> <li><b>8. The insurance supervisor has the authority to require Boards of directors to have in place external audit functions, strong internal controls and applicable checks and balances.</b></li> </ol> <p>The IBL requires all insurance companies to appoint an external auditor, defines the minimum qualification that the auditor must hold, and gives the Commission the power to approve the appointment. Articles 17 and 18 specify that an auditor's report must be provided to the Commission annually, within defined timescales, and that it must:</p> <ul style="list-style-type: none"> <li>• state that the financial statements have been audited in accordance with approved auditing standards, confirm that the financial statements give a true and fair view of the company's state of</li> </ul>

	<p>affairs at the balance sheet date and of the trading result shown in the profit and loss account, and</p> <ul style="list-style-type: none"> <li>confirm that the company has kept proper books and records throughout the period, and that all necessary information and explanations have been obtained for the purpose of the audit. Articles 19 and 20 give power to the auditor to report to the Commission if false or misleading information is found during the course of the audit, and if the license holder is in breach of any conditions attaching to the insurance business license.</li> </ul> <p><b>9. The insurance supervisor has the authority to require Boards of directors to have in place clear complaints procedures and to communicate them properly to their customers.</b></p> <p>Under the provisions of Articles 33 and 34 of the IBL, the Commission has the power to ensure that details of complaints procedures are contained within the literature provided to customers, and that the procedures are reasonable.</p> <p><b>Additional criteria</b></p> <p><b>1. The insurance supervisor has the authority to require Boards of directors to clearly set out policies regarding conflicts of interest, fair treatment of customers and information sharing with stakeholders.</b></p> <p><b>2. The insurance supervisor has the authority to require Boards of directors to have clear policies on private transactions, self-dealing, preferential treatment of favored internal and external entities, covering trading losses and other inordinate trade practices of a non-arms length nature. The insurance supervisor has the authority to ensure that systems are in place to monitor and report deviations to an appropriate level of management.</b></p> <p><b>3. The insurance supervisor has the authority to require Boards of directors to ensure that they are not subject to undue influence from management or outside concerns.</b></p> <p><b>4. The insurance supervisor has the authority to require Boards of directors to make proper and full disclosure in their annual reports of their level of adherence to corporate governance principles and attainment of stated corporate objectives.</b></p> <p><b>5. The insurance supervisor has the authority to require Boards of directors to adopt a goal of improving customer awareness and knowledge.</b></p> <p><b>6. The insurance supervisor has the authority to require Boards of directors to create a functionary known as the compliance officer to oversee observance by the institution and its staff with relevant laws and required standards of business conduct, and to report to the Board of Directors at regular intervals.</b></p> <p><b>7. The insurance supervisor has the authority to require Boards of directors to have in place a proper remuneration policy for directors and senior management, to review that policy periodically, and to disclose it to the insurance supervisor or to the public consistent with the applicable standards of the jurisdiction.</b></p> <p>The Companies Law 1991 also contains articles relating to corporate governance. Article 74 requires Boards of directors to act honestly and in good faith with a view to the best interests of the company, and to exercise the necessary care, diligence and skill. Article 75 specifically requires a Board of Directors to establish a policy regarding conflicts of interest, including private transactions and those not on an arms length basis. The article also empowers the Commission to ensure that such policies are in place and complied with (questions 1 and 2).</p> <p>The other elements of this principle are largely observed through the use of conditions attaching to insurance licenses.</p>
Assessment	Largely observed
Comments	The Mission welcomes the Commission's initiative to incorporate the issues of corporate governance in the Codes of Practice. When the plan is realized, the Principle will be fully observed.
Principle 5.	<p>Internal Controls</p> <p><b>The insurance supervisor should be able to:</b></p> <ul style="list-style-type: none"> <li>review the internal controls that the Board of Directors and management approve and apply, and</li> </ul>

	<p>request strengthening of the controls where necessary; and</p> <ul style="list-style-type: none"> <li>require the Board of Directors to provide suitable prudential oversight, such as setting standards for underwriting risks and setting qualitative and quantitative standards for investment and liquidity management.</li> </ul>
Description	<p><b>Essential criteria</b></p> <ol style="list-style-type: none"> <li><b>1. The insurance supervisor has the authority to review the internal controls that the Board of Directors and management approve and apply; where necessary the supervisor requests a strengthening of the controls. These controls should be adequate for the nature and scale of its business.</b></li> <li><b>2. The insurance supervisor has the authority to require the Board of Directors to provide suitable prudential oversight, such as setting standards and monitoring controls for underwriting risks, valuation of technical provisions (policy liabilities), investment and liquidity management and reinsurance.</b></li> <li><b>3. The insurance supervisor has the authority to require the Board of Directors to provide suitable oversight of market conduct activities such as setting standards and monitoring controls on fair treatment of customers; proper disclosure to customers of policy benefits, risks and responsibilities; conflicts of interest; handling of clients' money; and separation of principal and agent activities.</b></li> <li><b>4. The insurance supervisor has the authority to require internal controls to address issues of an organizational structure; i.e., of duties and responsibilities including clear delegation of authority, decision-making procedures, separation of critical functions (for example, new business, claims, reconciliation, risk management, accounting, audit and compliance).</b></li> <li><b>5. The insurance supervisor has the authority to require internal controls to address accounting procedures, reconciliation of accounts, control lists and information for management.</b></li> <li><b>6. The insurance supervisor has the authority to require internal controls to address checks and balances; e.g., segregation of duties, cross-checking, dual control of assets, double signatures.</b></li> <li><b>7. The insurance supervisor has the authority to require controls on safeguarding of assets and investments, including physical control.</b></li> <li><b>8. The insurance supervisor has the authority to require that the insurer has an ongoing audit function of a nature and scope appropriate to the nature and scale of the business. This includes ensuring compliance with all applicable policies and procedures and reviewing whether the insurer's policies, practices and controls remain sufficient and appropriate for its business. The insurance supervisor should determine whether the audit function:</b> <ul style="list-style-type: none"> <li><b>has unfettered access to all the insurer's business lines and support departments;</b></li> <li><b>has appropriate independence, including reporting lines to the Board of Directors and has status within the insurer to ensure that senior management reacts to and acts upon its recommendations;</b></li> <li><b>has sufficient resources and staff that are suitably trained and have relevant experience to understand and evaluate the business they are auditing; and</b></li> <li><b>employs a methodology that identifies the key risks run by the institution and allocates its resources accordingly.</b></li> </ul> </li> <li><b>9. The insurance supervisor has the authority to require that insurers have formal procedures to recognize potential suspicious transactions.</b></li> <li><b>10. The insurance supervisor has the authority to require that insurers have established lines of communication both to management, law enforcement authorities and/or the insurance supervisor for the reporting of irregular and suspicious activities.</b></li> </ol> <p><b>Additional criteria</b></p>

	<p>1. In those jurisdictions with a unicameral Board structure (as opposed to a bicameral structure with a supervisory Board and a management Board), the insurance supervisor encourages the company to appoint experienced non-executive directors to the Board.</p> <p>2. The insurance supervisor encourages the establishment of an internal audit function that reports to an Audit Committee of the Board.</p> <p>3. The insurance supervisor has access to reports of the internal audit function.</p> <p>4. In those jurisdictions with a unicameral Board structure, the insurance supervisor has the authority to require the Audit Committee to be composed of a majority of experienced non-executive directors.</p> <p>5. The insurance supervisor requires actuarial reporting where called for by applicable law or by the nature of the insurer's operations, and where appropriate encourages the appointment of an actuary reporting directly to the Board or directors.</p> <p>The criteria referred to in this section (the essential criteria 1-10 and the additional criteria 1-5) are addressed by three pieces of legislation—the Companies Law 1991, the IBL and the Financial Services Law 1998. For example, Article 24 of the IBL requires every long-term insurer to appoint a qualified actuary to be responsible for the long-term reserving of the company (additional criteria no. 5). The article also defines the qualifications that such an actuary must hold.</p> <p>In practice, internal controls are subject to ongoing review through the regular six monthly reporting requirements, the auditors report, on site visits and ad hoc reviews. The auditors are obliged to report to the Commission if there are any significant failings found during the course of their annual audit.</p> <p>When insurance licenses are initially issued, some of the criteria may be considered of extra importance because of the nature of the business being carried on. In these circumstances, compliance will be reinforced through the use of special conditions attaching to the license and issued under the provisions of Article 6 of the IBL. In these circumstances it is a requirement that the auditors formally report that the company has complied with such conditions on a six monthly basis.</p> <p>As an example, any long-term business insurer licensed in Jersey and wishing to take advantage of Jersey's designated territory status with the U.K. and market its products into that country will automatically have several special conditions attached to its license, one of which will specifically be the requirements for the safeguarding of assets and investments and their physical control (essential criteria no. 7).</p> <p>All of the above is complemented and reinforced by the Money Laundering Order 1999, which covers all financial services companies, including insurers. This Order not only sets out the formal procedures that companies must adopt for the recognition and reporting of all suspicious transactions, but it also contains Articles regarding management responsibilities, internal systems and training, record keeping, and internal reporting.</p>
Assessment	Largely Observed
Comments	Internal controls become more and more important in all financial services. The management of the companies needs to be encouraged by the supervisor to introduce efficient control systems. The Code of Practices will be a constructive step in this direction.
Principle 6.	<p>Assets</p> <p><b>Standards should be established with respect to the assets of companies licensed to operate in the jurisdiction. Where insurance supervisors have the authority to establish the standards, these should apply at least to an amount of assets equal to the total of the technical provisions, and should address:</b></p> <ul style="list-style-type: none"> <li>• diversification by type;</li> <li>• any limits, or restrictions, on the amount that may be held in financial instruments, property, and receivables;</li> <li>• the basis for valuing assets which are included in the financial reports;</li> <li>• the safekeeping of assets;</li> <li>• appropriate matching of assets and liabilities; and</li> </ul>

	<ul style="list-style-type: none"> <li>liquidity.</li> </ul>
Description	<p><b>Essential criteria</b></p> <p><b>1. Legal provisions on asset management are in place. These legal provisions may define the following: mixture and diversification by type; any limits, or restrictions on the amount that may be held in financial instruments, property, and receivables; the basis for valuing assets which are included in the financial reports; the safekeeping of assets; appropriate matching of assets and liabilities; and liquidity.</b></p> <p>The legal provisions are contained in the IBL and its associated Orders, the Insurance Business (General Provisions) Order 1996 and the Insurance Business (Solvency Margin) Order 1996. They cover the essential criteria No. 1-7 and the additional criteria No. 1-3.</p> <p>As an example, Article 2 of the Insurance Business (Solvency Margin) Order 1996 lists in detail the types of asset in which an insurance company may invest (essential criteria no.1). However, under the powers vested in the Commission by Article 6 of the IBL, the permitted investments for each insurance company may be amended (extended or limited) according to the specific circumstances of each company through the use of special conditions attaching to the insurance license.</p> <p><b>2. Assets are valued on a basis prescribed by or acceptable to the insurance supervisor.</b></p> <p>The valuation basis used by the company must be declared in its accounts, and the supervisor will review this as a matter of standard practice. The Commission has the powers to require a company to adopt a different basis if it feels that the basis used is inappropriate. In principle U.K. GAAP, U.S. GAAP, IAS are accepted and in the case of captives the GAP of the jurisdiction of the owner( after approval of the Commission).</p> <p><b>3. The insurance supervisor has the authority to require insurers to have in place an overall strategic investment policy, formulated and approved by the Board of Directors, that addresses the following main elements:</b></p> <ul style="list-style-type: none"> <li>the determination of the strategic asset allocation, that is, the long-term asset mix over the main investment categories;</li> <li>the establishment of limits for the allocation of assets by geographical area, markets, sectors, counterparties and currency;</li> <li>the extent to which the holding of some types of assets is ruled out or restricted, for example where the disposal of the asset could be difficult due to the illiquidity of the market or where independent (i.e., external) verification of pricing is not available;</li> <li>under what conditions the company can pledge or lend assets;</li> <li>an overall policy on the use of financial derivatives or of structured products that have the economic effect of derivatives or the explicit exclusion of the use of such products or of certain types of such products; and</li> <li>the framework of accountability for all asset transactions.</li> </ul> <p><b>4. The insurance supervisor requires insurers to have in place comprehensive risk management policies and systems capable of promptly identifying, measuring, reporting and controlling the risks associated with investment activities that might affect the coverage of technical provisions (policy liabilities) and/or solvency margins (capital). These main risks are:</b></p> <ul style="list-style-type: none"> <li>market risk (adverse movements in, for example, stocks, bonds and exchange rates);</li> <li>credit risk (counterparty failure);</li> <li>liquidity risk (inability to unwind a position at any price near fair market value);</li> <li>operational risk (system/internal control failure);</li> <li>legal risk; and</li> <li>safekeeping of assets.</li> </ul> <p><b>5. The insurance supervisor checks that insurers have in place adequate internal controls to ensure that assets are managed in accordance with the overall investment policy, and the legal and regulatory requirements. These controls should ensure that investment procedures are documented</b></p>

	<p>and properly overseen, and that the functions responsible for measuring, monitoring, settling and controlling asset transactions are distinct from the front office functions.</p> <p><b>6. The insurance supervisor requires that oversight of, and clear management accountability for, an insurer's investment policies and procedures remains ultimately with the Board of Directors, regardless of the extent to which associated activities and functions are delegated or outsourced.</b></p> <p><b>7. The insurance supervisor checks that insurers have in place rigorous audit procedures that include full coverage of their investment activities to ensure the timely identification of internal control weaknesses and operating system deficiencies. If the audit is performed internally it should be independent.</b></p> <p>It is standard practice to ensure that insurance companies have proper investment policies, risk management policies and internal controls in place (essential criteria No. 3,4, and 5). Again the Commission may use license conditions to enforce this if necessary. It is a requirement that the auditors review these policies as part of their work (essential criteria no. 7) and report to the Commission if failings are found. Ad hoc reviews and on site visits also check this area.</p> <p>If specific license conditions have been imposed in any of these areas, the auditors are required to formally report to the Commission at six monthly intervals that these conditions have been complied with.</p> <p><b>Additional criteria</b></p> <p><b>1. The insurance supervisor checks that insurers have in place effective procedures for monitoring and managing their asset/liability position to ensure that their investment activities and asset positions are appropriate to their liability profiles.</b></p> <p><b>2. The insurance supervisor checks that the Board of Directors of an insurer reviews the adequacy of its overall investment policy at least annually in the light of the company's activities, and its overall risk tolerance, long-term risk requirements and solvency position.</b></p> <p><b>3. The insurance supervisor encourages insurers to undertake regular resilience testing for a range of market scenarios and changing investment and operating conditions in order to assess the appropriateness of asset allocation limits.</b></p> <p>The Commission checks that insurers properly monitor and manage their asset/liability position on an ongoing basis. Insurers are obliged to submit a solvency calculation to the Commission on a six monthly basis, and requirements may also be imposed for additional supporting analyzes (e.g., currency matching reports, reserving calculations). The Commission may require resilience testing should the results of the calculations give cause for concern. With regard to loans, these are prohibited under the provisions of the Insurance Business (Solvency Margin) Order 1996 without the prior consent of the Commission.</p>
Assessment	Observed
Comments	
Principle 7	<p><b>Liabilities</b></p> <p><b>Insurance supervisors should establish standards with respect to the liabilities of companies licensed to operate in their jurisdiction. In developing the standards, the insurance supervisor should consider:</b></p> <ul style="list-style-type: none"> <li>• what is to be included as a liability of the company, for example, claims incurred but not paid, claims incurred but not reported, amounts owed to others, amounts owed that are in dispute, premiums received in advance, as well as the provision for policy liabilities or technical provisions that may be set by an actuary;</li> <li>• the standards for establishing policy liabilities or technical provisions; and</li> <li>• the amount of credit allowed to reduce liabilities for amounts recoverable under reinsurance arrangements with a given reinsurer, making provision for the ultimate collectability.</li> </ul>
Description	<p><b>Essential criteria</b></p> <p><b>1. Legal provisions are in place for establishing technical provisions (policy liabilities) and other liabilities based on sound accounting and actuarial principles.</b></p> <p>The criteria for establishing technical provisions and other liabilities are contained within the IBL, the Insurance Business (General Provisions) Order 1996 and the Insurance Business (Solvency Margin) Order</p>



	<p>1996.</p> <p>For example, Article 24 of the IBL requires that every long-term insurance company shall appoint a qualified actuary. The actuary is responsible for the establishment of the long-term technical provisions in accordance with actuarial principles.</p> <p>In addition, Article 15 demands that an insurer shall prepare annual financial statements that show a true and fair view of the state of affairs of the company, and the auditors are required by Article 17 to report to the Commission that such is the case.</p> <p><b>2. The insurance supervisor has the authority to prescribe standards for establishing technical provisions (policy liabilities) and other liabilities.</b></p> <p>By the use of the license conditions authorized by Article 6 of the IBL, the Commission has the power to prescribe the standards and methods that each insurer shall adopt for the purpose of establishing proper technical provisions.</p> <p><b>3. The insurance supervisor has the authority to:</b></p> <ul style="list-style-type: none"> <li>• <b>check the sufficiency of the technical provisions (policy liabilities) which at all times are such that the insurance company can meet any estimated insurance liabilities as they fall due; and</b></li> <li>• <b>require these provisions (liabilities) to be increased if necessary.</b></li> </ul> <p><b>4. The insurance supervisor assesses the adequacy of the technical provisions (policy liabilities) as deemed necessary through on-site and off-site inspections.</b></p> <p>The sufficiency of the technical provisions is checked as a standard part of the review of an insurance company's six monthly returns. In most cases, it is a license condition that the full calculations working papers of these provisions are included in the returns. In respect of long-term insurance the returns are sent to the GAD in London for examination. When these actuaries have concerns the Commission takes the appropriate measures, for instance an on site-inspection together with an actuary of the GAD. The Commission can require that the technical provisions be strengthened if necessary.</p> <p><b>5. When the insurance company has reinsured part of its risks, the insurance supervisor:</b></p> <ul style="list-style-type: none"> <li>• <b>has the authority to stipulate general limits for the valuation of the amounts recoverable under reinsurance arrangements with a given reinsurer, taking into account the ultimate collect ability;</b></li> <li>• <b>has the authority to stipulate sound accounting principles for the booking of the amounts recoverable under reinsurance arrangements; and</b></li> <li>• <b>may allow the reduction of technical provisions (policy liabilities) for amounts recoverable under reinsurance arrangements. In that case, the amount recoverable is disclosed in the financial statement of the insurer by respective gross and net figures shown in the accounts.</b></li> </ul> <p>The Commission has the power to review all reinsurance arrangements, and indeed the authority to approve the use of individual reinsurance companies. According to individual circumstances, it can stipulate the maximum amounts of risk that can be retained (i.e., the point at which reinsurance is deemed necessary) as well as set specific limits on the amount of reinsurance that can be placed with any one reinsurer.</p> <p>It is generally accepted accounting practice in the jurisdiction that premiums, claims and technical liabilities are all disclosed gross and net of reinsurance in the accounts.</p> <p><b>Additional criteria</b></p> <p><b>The insurance supervisor has the power to intervene against a specific reinsurance arrangement if the reinsurance conditions are not suitable with respect to the insured risks, the premiums which are ceded or the suitability of the reinsurance company.</b></p> <p>The Commission can intervene against specific reinsurance contracts (see essential criteria 5 above).</p>
Assessment	Observed
Comments	

Principle 8	<p><b>Capital Adequacy and Solvency</b>  <b>The requirements regarding the capital to be maintained by companies which are licensed, or seeking a license, in the jurisdiction should be clearly defined and should address the minimum levels of capital or the levels of deposits that should be maintained. Capital adequacy requirements should reflect the size, complexity, and business risks of the company in the jurisdiction.</b></p>
Description	<p><b>Essential criteria</b></p> <p><b>1. Legal provisions address the three components of solvency, i.e., the ability of the insurance company to fulfill its commitments at any time:</b></p> <ul style="list-style-type: none"> <li>• <b>the level of technical provisions (policy liabilities);</b></li> <li>• <b>the adequate coverage of technical provisions (policy liabilities) by assets;</b></li> <li>• <b>an additional buffer (required minimum solvency margins – minimum capital adequacy requirements).</b></li> </ul> <p>The relevant provisions are contained in the IBL, the Insurance Business (Solvency Margin ) Order 1996 and the Insurance Business (General Provisions) Order 1996.</p> <p><b>2. The main control levels of these components ensure, with a very high probability, that the insurer is able to meet its obligations at any time.</b></p> <p>The Commission is satisfied that the defined levels of solvency margin, the specified list of admissible assets and the requirements to properly calculate and reserve for policy liabilities ensure that there is a high probability that insurers will be able to meet their future liabilities.</p> <p><b>3. The insurance supervisor has the authority to monitor these three components.</b></p> <p>All insurers must, under the provisions of Article 5 of the Insurance Business (General Provisions) Order 1996, provide the Commission at six monthly intervals with financial returns that fully disclose the technical provisions and solvency margin position.</p> <p><b>4. The required minimum solvency margins (capital) depends on the size, complexity and the business of the insurance company.</b></p> <p>The minimum solvency margin requirement is laid down in the Insurance Business (Solvency Margin) Order 1996. For life and pensions business, the minimum requirement 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 premium income.</p> <p>The Commission has the power under Article 6 of the IBL to amend the minimum solvency margin applicable to individual insurers at any time, by the attachment of a special condition to the license, if it considers that circumstances demand such action.</p> <p><b>5. A minimum amount of capital, depending on the types of business the insurer is entitled to write and staying in line with developing cost and price, is required for all insurance companies.</b></p> <p>The Commission requires a minimum capital of £100,000 for all insurance companies, but has the authority under Article 6 of the IBL to enforce a higher level should the financial position of the insurer warrant it.</p> <p><b>6. The components of solvency margins, i.e., capital elements which are considered as free capital for regulatory purposes, are clearly defined.</b></p> <p>The components of the solvency margins are defined in the Insurance Business (Solvency Margin) Order 1996.</p> <p><b>7. At given time intervals, the company assesses the amount of its available solvency margins (capital).</b></p> <p>Article 5 of the Insurance Business (General Provisions) Order 1996 requires all insurers to fully assess their solvency margin position at six monthly intervals, and to report it to the Commission.</p> <p><b>8. Where the capital available reaches or falls below one or more control levels, the insurance supervisor has the authority to intervene or impose restrictions.</b></p> <p><b>9. The insurance supervisor has the authority to intervene to require an insurance company to hold</b></p>

	<p><b>capital at a higher level than the required minimum margin where circumstances exist to justify such an action.</b></p> <p>Under the provisions of Article 6 (5) of the IBL the Commission has the power to demand an increase in capital if control levels are threatened or breached, and can restrict business under Article 6 (6) if the necessary additional capital is not forthcoming. If the margin of solvency falls below the required amount, the Commission requires from the company a short-term financial scheme for the purpose of remedying the shortfall within thirty days.</p> <p><b>10. The inflation of supervisory capital through double/multiple gearing or other financing techniques in an ‘insurance group’ should be eliminated. The structure of the ‘insurance group’ should be transparent.</b></p> <p>Where an insurance group exists, the Commission ensures, through the use of conditions attaching to the license, that the capital supporting insurance liabilities is only applied once (i.e., there is no double counting).</p> <p><b>Additional criteria</b></p> <p><b>1. The insurance supervisor has the authority to require that the minimum amount of capital be covered by unencumbered assets (i.e., not pledged assets). If exceptions are permitted, they are closely monitored by the insurance supervisor.</b></p> <p>The Commission has the authority under the IBL and the Insurance Business (Solvency Margin) Order 1996 to require that the minimum capital be covered by unencumbered assets.</p> <p><b>2. The insurance supervisor is entitled to disclose information—case-by-case or in aggregated form—to other insurance supervisors about the solvency status of the insurers under its supervision.</b></p> <p>The Commission is permitted to disclose information on a confidential “Regulator to Regulator” basis under the provisions of the IBL.</p>
Assessment	Observed
Comments	The legal minimum solvency requirements comply with international standards and the actual solvency of the companies is much higher than the legal minimum. However 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.
Principle 9	<p>Derivatives and ‘Off-Balance Sheet’ Items</p> <p><b>The insurance supervisor should be able to set requirements with respect to the use of financial instruments that may not form a part of the financial report of a company licensed in the jurisdiction. In setting these requirements, the insurance supervisor should address:</b></p> <ul style="list-style-type: none"> <li>• restrictions in the use of derivatives and other off-balance sheet items;</li> <li>• disclosure requirements for derivatives and other off-balance sheet items; and</li> <li>• the establishment of adequate internal controls and monitoring of derivative positions.</li> </ul>
Description	<p><b>Essential criteria</b></p> <p><b>1. There are requirements in place that address restrictions in the use of derivatives and other off-balance sheet items.</b></p> <p>Under the provisions of Article 2 of the Insurance Business (Solvency Margin) Order 1996, derivatives are not approved as admissible assets. However, if an insurer’s margin of solvency is sufficiently strong, the Commission may, at the request of the insurer, authorize the limited use of derivatives by means of a special condition attached to the license under the provisions of Article 6 of the IBL. If such authorization is given, such derivatives will remain as inadmissible for solvency purposes, and there will be a restriction on the maximum percentage of total assets that may be held in this form.</p> <p><b>2. Disclosure requirements should be established for derivatives and other off-balance sheet items.</b></p> <p>In cases where this authorization is granted, disclosure requirements are laid down in the license condition.</p>

	<p><b>3. The insurance supervisor requires insurers using derivatives to have in place an appropriate policy for their use, formulated and approved by the Board of Directors, this policy should be consistent with the company's activities, its overall strategic investment policy and asset/liability management strategy, and its risk tolerance, It addresses the following main elements:</b></p> <ul style="list-style-type: none"> <li>• the purposes for which derivatives can be used;</li> <li>• the establishment of appropriately structured exposure limits for derivatives taking into account the purpose of their use and the uncertainty caused by market, credit, liquidity, cash flow, operations and legal risk;</li> <li>• the extent to which the holding of some types of derivatives is restricted or not authorized; for example where the potential exposure cannot be reliably measured the closing out or disposal of the derivative could be difficult due to its lack of marketability (as may be the case with over-the-counter instruments) or the illiquidity of the market, or where independent (i.e., external) verification of pricing is not available; and</li> <li>• the delineation of lines of responsibility and a framework of accountability for derivatives functions.</li> </ul> <p><b>4. The insurance supervisor requires insurers to have in place comprehensive systems, forming part of their wider investment risk management systems, capable of identifying, measuring, controlling, and reporting (both internally and to the supervisor) the risks from derivatives activities. These systems ensure that the risks arising from all derivatives transactions undertaken by the insurer can be:</b></p> <ul style="list-style-type: none"> <li>• analyzed and monitored individually and in aggregate; and</li> <li>• monitored and managed in an integrated manner with similar risks arising from non-derivatives activities so that exposures can be regularly assessed on a consolidated basis.</li> </ul> <p><b>5. The insurance supervisor checks that insurers have in place adequate internal controls to ensure that derivatives activities are properly overseen and that transactions have been entered into only in accordance with the insurer's approved policies and procedures, and legal and regulatory requirements. These controls ensure that the functions responsible for measuring, monitoring, settling and controlling derivatives transactions are distinct from the front office functions.</b></p> <p><b>6. The insurance supervisor requires that the Board of Directors of an insurer ensures that the company has the appropriate capability to verify pricing independently where the use of 'over-the-counter' derivatives is permitted under the company's policy.</b></p> <p>Approval will only be given in circumstances where the Commission is satisfied that the insurer has proper policies in place, adequate systems and controls, and staff with the necessary qualifications and experience to manage this kind of business.</p> <p><b>7. The insurance supervisor checks that insurers have in place rigorous audit procedures that include coverage of their derivatives activities to ensure the timely identification of internal control weaknesses and operating system deficiencies. If the audit is performed internally it should be independent.</b></p> <p>Where approval is given, it is an essential requirement contained within the license condition that the auditors fully examine and review the insurer's derivatives activities and controls, and report in writing to the Commission at six monthly intervals that derivatives business has been properly managed in accordance with the license conditions.</p> <p><b>Additional criteria</b></p> <p><b>1. The insurance supervisor checks that the board of directors of an insurer reviews the adequacy of its derivatives policies and procedures at least annually in the light of the company's activities, its overall risk tolerance and market conditions.</b></p> <p>The insurance supervisor has the authority to require that the minimum amount of capital be covered by unencumbered assets (i.e., not pledged amount assets). If exceptions are permitted, they are closely monitored by the insurance supervisor.</p>
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	<p><b>2. The insurance supervisor requires the board of directors of an insurer to satisfy themselves that collectively the board has sufficient expertise to understand the important issues related to the use of derivatives, and that all individuals conducting and monitoring derivatives activities are suitably qualified and competent.</b></p> <p>Insurance supervisor is entitled to disclose information—case-by-case or in aggregated form—to other insurance supervisors about the solvency status of the insurers under its supervision. The Board of Directors has to review its derivatives policies and procedures at six monthly intervals to comply with license conditions and the auditors review.</p> <p>A license to carry on derivatives business will only be given if the Commission is satisfied that the insurer has the necessary qualified staff to manage such business.</p>
Assessment	Largely observed
Comments	The circumstances, under which derivatives are supervised are not mentioned directly in the legal framework; however, legislation prevents unapproved assets being taken into account for solvency purposes. The Mission welcomes the Commission's initiative to include the present practices of the Insurance Division with respect to derivatives in the Codes of Practice.
Principle 10	<p><b>Reinsurance</b></p> <p><b>Insurance companies use reinsurance as a means of risk containment. The insurance supervisor must be able to review reinsurance arrangements, to assess the degree of reliance placed on these arrangements and to determine the appropriateness of such reliance. Insurance companies would be expected to assess the financial positions of their reinsurers in determining an appropriate level of exposure to them.</b></p> <p><b>The insurance supervisor should set requirements with respect to reinsurance contracts or reinsurance companies addressing:</b></p> <ul style="list-style-type: none"> <li>the amount of the credit taken for reinsurance ceded. The amount of credit taken should reflect an assessment of the ultimate collect ability of the reinsurance recoverable and may take into account the supervisory control over the reinsurer; and</li> <li>the amount of reliance placed on the insurance supervisor of the reinsurance business of a company which is incorporated in another jurisdiction.</li> </ul>
Description	<p><b>Essential criteria</b></p> <p><b>1. The insurance supervisor has the authority to review the reinsurance arrangements to ensure that they are adequate and that the claims held by insurers on their reinsurers are recoverable. This includes ensuring that:</b></p> <ul style="list-style-type: none"> <li>the reinsurance program is appropriate to the level of capital of the insurer and the profile of the risks it underwrites; and</li> <li>the reinsurers' protection is secure, which may be ensured by such measures as obtaining collateral (including trust, letters of credit or funds withheld) or by relying on a system of direct supervision of reinsurers.</li> </ul> <p><b>Additional criteria</b></p> <p><b>1. A reinsurer that acts also as a primary insurer is subject to insurance supervision.</b></p> <p><b>2. With regard to a reinsurer that does not act as a primary insurer (professional reinsurer):</b></p> <p><b>The reinsurance supervisor has:</b></p> <ul style="list-style-type: none"> <li>the necessary tools available for collecting, reviewing and analyzing prudential reports and other information from reinsurers;</li> <li>regular contact with the management of the reinsurer and a thorough understanding of its operations;</li> <li>the ability to monitor the activities of reinsurers and to intervene when necessary, including issuing cease and desist orders and instituting the winding up of the reinsurer.</li> <li>The reinsurance supervisor is entitled to require reinsurance companies: to define clearly the permissible activities they want to engage in; to comply with requirements regarding</li> </ul>

	<p>ownership structure, management, operating plan, internal controls and financial position; to have systems that accurately measure, monitor and adequately control market risks as well as to have a comprehensive risk management process; and to have adequate policies, practices and procedures that safeguard high ethical and professional standards.</p> <ul style="list-style-type: none"> <li>• The reinsurance supervisor has the authority to cooperate, where appropriate, with other (re)insurance or financial supervisors to assess the financial position of a reinsurer that is: part of an insurance or financial group; participating in other (re)insurers or financial institutions, or in joint ventures or reinsurance pools; or conducting business in or providing services to other jurisdictions. The reinsurance supervisor, in assessing the reinsurer's financial position, takes into consideration: the adequacy of technical provisions (policy liabilities) from both the ceding insurer's and the assuming reinsurer's perspective; the adequacy of capital (solvency margin) to support the reinsurer's business operations; the reinsurance program of the reinsurer itself; and any effects of risk accumulation which result from the aggregation of reinsured insurance branches that are separate at the level of primary insurance.</li> </ul> <p><b>3. The insurance supervisor:</b></p> <ul style="list-style-type: none"> <li>• has at his disposal the professional skills and tools to ensure independent validation of the received information; and</li> <li>• has the ability to share confidential information with other insurance supervisors. Information flows between home and host supervisor may be based on agreed model forms for supervisory information</li> </ul> <p>With regard to the reinsurance arrangements of insurance companies, the Commission does have the authority under the IBL to review these, to consider the adequacy of a reinsurer in relation to the liabilities taken on, and to cooperate with regulators in other jurisdictions in cases where a reinsurer is based in those jurisdictions.</p> <p>The Commission can also require an insurance company to increase or decrease the amount of reinsurance ceded, and can require an insurer to spread its risk if it is considered that the company is over-exposed to one reinsurance company.</p> <p>Under the provisions of the IBL, all reinsurance companies are treated in exactly the same way as insurance companies. They are therefore subject, inter alia, to the same authorization requirements, supervisory control, regular reporting routines, minimum solvency margin provisions and internal control requirements.</p>
Assessment	Observed
Comments	
Principle 11	<p><b>Market Conduct</b></p> <p>Insurance supervisors should ensure that insurers and intermediaries exercise the necessary knowledge, skills, and integrity in dealing with their customers.</p> <p><b>Insurers and intermediaries should:</b></p> <ul style="list-style-type: none"> <li>• at all times act honestly and in a straightforward manner;</li> <li>• act with due skill, care, and diligence in conducting their business activities;</li> <li>• conduct their business and organize their affairs with prudence;</li> <li>• pay due regard to the information needs of their customers and treat them fairly;</li> <li>• seek from their customers information which might reasonably be expected before giving advice or concluding a contract;</li> <li>• avoid conflicts of interest;</li> <li>• deal with their regulators in an open and cooperative way;</li> <li>• support a system of complaints handling, where applicable; and</li> <li>• organize and control their affairs effectively.</li> </ul>

Description	<p><b>Overview</b></p> <p>All intermediaries, and insurers 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/selling long-term insurance products. So the assessment cover only the long-term business.</p> <p>For general insurance there is no specific legislation. Jersey has followed the route of self regulation adopted in the United Kingdom, where such intermediaries are regulated and supervised by the General Insurance Standards Council. Intermediaries in Jersey that deal with general insurance are expected to be members of this Council and to abide by its rules and regulations.</p> <p><b>Essential criteria</b></p> <p><b>1. The insurance supervisor requires that insurance entities (insurers and intermediaries) have key functionaries who are and remain fit and proper for their roles (i.e., possessing the necessary knowledge, skills and integrity for their positions), and has effective means to enforce this.</b></p> <p>Article 8 of the Financial Services Law 1998 authorizes the Commission to refuse to grant a license, or to revoke a license, if</p> <ul style="list-style-type: none"> <li>a) it has good reason to doubt the intermediary's integrity, competence, financial standing, structure or organization, and/or</li> <li>b) it is not persuaded that the principal persons and/or persons employed by the intermediary are fit and proper to hold their positions, or if their professional qualifications and experience are inadequate.</li> </ul> <p>In addition, paragraph 3.1.1 of the Codes of Practice requires that an intermediary must "ensure that its directors, senior managers and all other staff are fit and proper for their roles."</p> <p>Paragraph 3.4 of the Codes of Practice lays down the specific professional qualifications that staff must have in order to give such investment advice.</p> <p><b>2. The insurance supervisor requires insurance entities to have policies in place on how to treat customers fairly.</b></p> <p>Code of Practice no. 2 fully covers the requirement for an intermediary to treat its customers fairly. For example, Code 2.2 states that "where a registered person is responsible for providing advice or exercising discretion for its clients, it must be able to demonstrate in writing that the advice or exercise of discretion is appropriate for a particular client, its stated risk profile and investment requirements."</p> <p><b>3. The insurance supervisor has the capability to carry out on-site inspections to check observance of the required standards of market conduct where necessary.</b></p> <p>The Commission has the authority to carry out on-site inspections, however lack of staff has limited the number of on-site inspections conducted to date.</p> <p><b>4. The insurance supervisor sets policy and guidelines with regard to disclosure to the customer of relevant, meaningful and understandable information in a timely manner. The information to be disclosed covers the insurer, intermediary, product, risks, benefits, obligations, charges and estimated returns as appropriate.</b></p> <p>The Codes of Practice meet fully the requirement that the intermediary must disclose to its customers all relevant, meaningful and understandable information not only about the products being offered but also about the intermediary's own charges and return.</p> <p><b>5. The insurance supervisor requires insurance entities to seek information from their customers that might reasonably be expected, before giving advice or concluding a contract.</b></p> <p>Codes of Practice 2.3 requires that registered persons must seek all relevant information from the customer regarding their financial situation, existing investments, and objectives, so that appropriate products and services may be provided.</p> <p><b>6. The insurance supervisor requires insurance entities to have in place procedures to deal with conflicts of interest. These might include disclosure, internal rules of confidentiality, or other appropriate procedures.</b></p>
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	<p>Code of Practice 2.6 states “A registered person must try to avoid conflicts of interest and, when they cannot be avoided, must ensure that its clients’ interests are placed before its own</p> <p><b>7. The insurance supervisor requires insurance entities to deal with complaints of customers effectively and fairly through a simple and equitable process. The process is well disclosed and easily accessible.</b></p> <p>Code of Practice 3.7 requires all registered persons to have effective complaints procedures that are defined and open, and which include the requirement for proper written records of all complaints.</p> <p><b>8. The insurance supervisor has procedures available to it to stop persons or entities doing unauthorized business quickly and effectively.</b></p> <p>Article 10 of the Financial Services Law 1998 provides authority to the Commission to stop persons carrying on unauthorized business quickly and effectively</p> <p><b>Additional criteria</b></p> <p><b>1. Intermediaries are directly or indirectly supervised. Regulation may cover issues like registration, knowledge and skills, codes of conduct, complaints procedures, professional indemnity insurance, continued professional education etc.</b></p> <p><b>2. If the insurance supervisor does not have the authority to resolve disputes, it encourages the setting up of an alternative dispute resolution mechanism to deal with complaints in an effective and affordable manner. It is advisable that this should be a neutral body that reports publicly on at least an annual basis.</b></p> <p>Intermediaries providing long-term insurance contracts are regulated by the Financial Services Law 1998 and its legally enforceable Codes of Practice. The Law and its Codes fully cover the requirements contained in these additional criteria.</p>
Assessment	Observed
Comments	Intermediaries are strongly supervised by the Commission in the case they sell long-term products. For general insurance products Jersey has followed the route of self-regulation adopted in the U.K.. Moreover there is indirect supervision via the supervised companies.
Principle 12	<p>Financial Reporting</p> <p><b>It is important that insurance supervisors get the information they need to properly form an opinion on the financial strength of the operations of each insurance company in their jurisdiction. The information needed to carry out this review and analysis is obtained from the financial and statistical reports that are filed on a regular basis, supported by information obtained through special information requests, on-site inspections, and communication with actuaries and external auditors.</b></p> <p><b>A process should be established for:</b></p> <ul style="list-style-type: none"> <li>• setting the scope and frequency of reports requested and received from all companies licensed in the jurisdiction, including financial reports, statistical reports, actuarial reports, and other information;</li> <li>• setting the accounting requirements for the preparation of financial reports in the jurisdiction;</li> <li>• ensuring that external audits of insurance companies operating in the jurisdiction are acceptable; and</li> <li>• setting the standards for the establishment of technical provisions or policy and other liabilities to be included in the financial reports in the jurisdiction.</li> </ul> <p><b>In so doing, a distinction may be made:</b></p> <ul style="list-style-type: none"> <li>• between the standards that apply to reports and calculations prepared for disclosure to policyholders and investors, and those prepared for the insurance supervisor; and</li> <li>• between the financial reports and calculations prepared for companies incorporated in the jurisdiction, and branch operations of companies incorporated in another jurisdiction.</li> </ul>
Description	<p><b>Essential criteria</b></p> <p><b>1. The insurance supervisor has the legal authority to require companies to submit information on</b></p>



	<p><b>both a solo and a consolidated basis, on their financial condition and performance.</b></p> <p>The IBL provides the Commission with the authority to require insurance companies to provide accounts and information on a six monthly basis (Article 15). Such accounts and information may be either on an individual basis, or consolidated, or both.</p> <p><b>2. The insurance supervisor has the authority to set the scope and frequency of reports requested and received from all companies licensed in the jurisdiction, including financial reports, statistical reports and actuarial reports.</b></p> <p>Article 5 (5) of the Insurance Business (General Provisions) Order 1996 states "The permit holder shall furnish to the Commission at six monthly intervals such information relating to its business as may be determined by the Commission."</p> <p>Article 5 (6) of the Order states "The permit holder shall furnish to the Commission at six monthly intervals financial statements including a balance sheet and profit and loss account in a form determined by the Commission."</p> <p>The scheme (scope, forms, etc.) for Category B companies has been determined following the EU Insurance Accounting Directive.</p> <p><b>3. The insurance supervisor has the authority to stipulate the principles and norms regarding accounting and consolidation techniques to be used for the purposes of reports provided to it for supervisory purposes.</b></p> <p>The accounting techniques used by insurers must consistently be in accordance with one of the following:</p> <ul style="list-style-type: none"> <li>International Accounting Standards (IAS)</li> <li>Generally Accepted Accounting Practice (GAAP) of:</li> <li>The United Kingdom</li> <li>The United States</li> <li>The domicile of the beneficial owner (if applicable)</li> </ul> <p><b>4. The insurance supervisor requires insurance companies to utilize valuation rules that are consistent, realistic and prudent.</b></p> <p>Valuations are required to be prudent, realistic and consistent. In practice, these requirements are tested by auditors and in the case of long-term insurance, also by appointed actuaries.</p> <p><b>5. The insurance supervisor has the authority to issue principles for the establishment of technical provisions (policy liabilities) and other liabilities to be included in the financial reports in the jurisdiction.</b></p> <p>In practice, the Commission follows the principles for establishing technical liabilities that are accepted in the United Kingdom. The power to issue such principles does exist within Article 6 of the IBL.</p> <p><b>6. The information has to be submitted on a timely and accurate basis. The insurance supervisor ascertains that the appropriate level of senior management is responsible for the accuracy of these returns, and can require that inaccurate information be amended.</b></p> <p>As given in Article 5 of the Insurance Business (General Provisions) Order 1996, all information must be provided at six monthly intervals and within three months of the end of the relevant financial period. Such information must be properly signed by a director of the insurer.</p> <p><b>7. The information includes details about off-balance sheet activities.</b></p> <p>The information mentioned in Article 5 IBL will include off-balance sheet activities if appropriate.</p> <p><b>8. The insurance supervisor has a framework for ongoing monitoring of the condition and performance of the companies. This requires that the insurance supervisor has an adequate information system.</b></p> <p>The application process includes a requirement to produce a five year plan. Subsequent six monthly returns to the Commission are required to include an updated, amended plan, giving full details of significant variations arising from actual trading conditions. All returns are carefully analyzed by the supervisor, and clarification is sought as necessary.</p>
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Assessment	Observed
Comments	
Principle 13	<p><b>On-Site Inspection</b></p> <p><b>The insurance supervisor should be able to:</b></p> <ul style="list-style-type: none"> <li>• carry out on-site inspections to review the business and affairs of the company, including the inspection of books, records, accounts, and other documents. This may be limited to the operation of the company in the jurisdiction or, subject to the agreement of the respective supervisors, include other jurisdictions in which the company operates; and</li> <li>• request and receive any information from companies licensed in its jurisdiction, whether this information be specific to a company or be requested of all companies.</li> </ul>
Description	<p><b>Essential criteria</b></p> <p><b>1. On-site inspection must have a legal basis giving the insurance supervisor wide-ranging powers to investigate insurance or reinsurance companies and to gather information he or she deems necessary.</b></p> <p>Article 9 of the IBL gives authority to the Commission to obtain such information as it may require from an insurer or reinsurer, either in writing or by a visit, and Article 10 permits investigations by the Commission into the nature, conduct and state of an insurance business and its integrity, competence, financial standing and organization.</p> <p><b>2. Where insurance supervisors undertake a full-scale on-site inspection, this includes at least the activities listed below:</b></p> <ul style="list-style-type: none"> <li>• <b>evaluation of the management and internal control system;</b></li> <li>• <b>analysis of the company's activities;</b></li> <li>• <b>evaluation of the technical conduct of insurance business, e.g., evaluation of the organization and the management of the company, analysis of the commercial policy of the company and evaluation of the reinsurance cover and its security;</b></li> <li>• <b>analysis of the relationships with external entities; and</b></li> <li>• <b>evaluation of the company's financial strength.</b></li> </ul> <p>Supervision of insurance businesses was extended to include on-site as well as offsite supervision in 2000. The insurance industry in Jersey only really began to grow after the introduction of the IBL, and earlier visits were largely to hold meetings with the Board and management, particularly the compliance manager, to discuss the company's operation and any specific problems. The program of full scope visits is continuing to be developed, using the assessment sheets developed for the banking industry but amended to include the issues specific to an insurance company.</p>

	<p>It is expected that a normal on-site inspection will have a duration of one week. The visit schedule is determined by the risk assessment of each insurance business, with higher risk insurance businesses, such as those selling insurance to the general public, receiving more frequent visits than lower risk businesses. Each Category B company should have an on-site inspection every 2 -3 years (captives every 5 years). From time to time the Commission will inspect also Category A companies, where increased risk is identified.</p> <p><b>3. The insurance supervisor has the authority to conduct on-site inspections on a limited basis, investigating only areas of specific concern.</b></p> <p>On-site visits may be either full scope, or limited to areas of specific concern.</p> <p><b>4. The insurance supervisor should discuss findings with, and obtain feedback from, the insurance company.</b></p> <p>The findings of on-site visits are always discussed with the insurance company, (usually a discussion of a draft report), and valid feedback will be included in the final version of the report.</p> <p><b>5. Insurance supervisors should follow up to ensure that any required action has been taken.</b></p> <p>A timetable for any remedial action is included in the report, and the Commission does take steps to ensure that necessary actions have been taken in accordance with agreed time scales.</p> <p><b>Additional criteria</b></p> <p><b>1. The insurance supervisor has the authority to extend on-site inspections to brokers and companies that have capital links with, or that have accepted functions outsourced by, the supervised company.</b></p> <p>The Commission does have the authority to extend on-site inspections to other companies within the same group. Such companies will often be in a different jurisdiction, and in these cases the Commission will liaise with the insurance supervisor in that location so that any visit is either carried out by that supervisory authority or on a joint basis.</p> <p>The Commission does not have a blanket authority to conduct visits to companies that carry out functions outsourced from an insurer (unless those companies are also regulated entities) but can usually make such a visit by mutual agreement.</p> <p><b>2. Where insurance supervisors have the necessary powers to deal with the treatment of the customers, they may include the following points in the on-site inspection:</b></p> <ul style="list-style-type: none"> <li>• review of the information given to customers and checking of its sufficiency and adequacy;</li> <li>• review of the time for payment, the number and nature of litigation and the transactions with the policyholders; and</li> <li>• assessment of observance of the consumer regulations</li> </ul> <p>The treatment of customers by insurers, the nature of any disputes/litigation between a customer and the insurer, and observance of consumer regulations, are all part of the normal on-site review.</p>
Assessment	Largely observed
Comments	<p>It is necessary to intensify on-site inspections made by the staff of the Insurance Division. That is intended. For this purpose it is necessary to increase the number of supervisors in the Division.</p> <p>It is recommended a legal provision that allows the supervisor to inspect on-site companies or persons that carry out functions outsourced from an insurer.</p>
Principle 14	<p><b>Sanctions</b></p> <p><b>Insurance supervisors must have the power to take remedial action where problems involving licensed companies are identified. The insurance supervisor must have a range of actions available in order to apply appropriate sanctions to problems encountered. The legislation should set out the powers available to the insurance supervisor and may include:</b></p> <ul style="list-style-type: none"> <li>• the power to restrict the business activities of a company, for example, by withholding approval for new activities or acquisitions;</li> <li>• the power to direct a company to stop practices that are unsafe or unsound, or to take action to</li> </ul>

	<p>remedy an unsafe or unsound business practice; and</p> <ul style="list-style-type: none"> <li>the option to invoke other sanctions on a company or its business operation in the jurisdiction, for example, by revoking the license of a company or imposing remedial measures where a company violates the insurance laws of the jurisdiction.</li> </ul>
Description	<p><b>Essential criteria</b></p> <p><b>1. The insurance supervisor has the authority to refuse or revoke a license if the organizational (or group) structure of the applicant or licensee hinders the effective supervision.</b></p> <p>Article 6 (4) of the IBL authorizes the Commission to refuse or revoke a license, inter alia, if it appears that the organization or structure reflects discredit on the method of conducting business or may lead to improper conduct of business.</p> <p><b>2. The insurance supervisor has the authority to act if it determines that the Board of Directors and senior management of the institution do not understand the underlying risks in their business or are not committed to, and accountable for, the control environment. The insurance supervisor has the legal authority, upon sufficient proof of an insurer's hazardous condition, to require changes in the composition of the Board and/or senior management in order to satisfy these criteria.</b></p> <p>Article 22 of the IBL requires all the directors and officers of an insurer to be approved by the Commission under fit and proper criteria. Should members of the Board or officers of the company prove not to be fit and proper or not to have the required technical knowledge, the Commission can demand their replacement as a condition of the continuance of the license under the terms of this Article combined with those contained in Article 6.</p> <p><b>3. The insurance supervisor has the legal authority to take remedial action against companies and impose sanctions. Remedial actions consistent with the severity of the situation are used to address such problems as failure to meet prudential requirements, violation of regulations, or situations where the interest of policyholders might be threatened.</b></p> <p>Article 6 of the IBL authorizes the Commission to impose on an insurer conditions that may require remedial action or restrict business.</p> <p><b>4. The range of possible available sanctions is broad, ranging from penalties, fines, restricting the current activities of the company, withholding approval of new activities to revoking licenses or imposing conservatorship and the forced transfer of portfolio.</b></p> <p>Sanctions available to the Commission under the IBL include restrictive license conditions, and full or partial cancellation of a license. The Commission also has authority to "name and shame" insurers that are not in compliance with regulatory requirements.</p> <p>For serious offences, fines and prison sentences, as well as compulsory winding up or portfolio transfer, are available, but these require the direction of the royal court.</p> <p>The Commission does not have the power to impose monetary penalties.</p> <p><b>5. The insurance supervisor ensures that remedial actions are taken in a timely manner.</b></p> <p><b>6. The insurance supervisor addresses all significant remedial actions in a written document to the Board of Directors as well as to the company itself, and also requires that progress reports are submitted in writing.</b></p> <p>Where remedial action is required, the Commission will request this in writing, providing full details of the action necessary, the reasons for it, and the expected timescale for completion. The insurer's progress in completing the action plan will be monitored.</p> <p><b>7. Upon determining that a company is unsound, the insurance supervisor asks the ailing company to submit a recovery plan within a relatively short period, e.g., one month, which among other things should:</b></p> <ul style="list-style-type: none"> <li>list the financial or administrative measures proposed by the company to improve its situation; and</li> <li>quantify the expected effects of those measures and estimate the amount of time needed to obtain</li> </ul>

	<p>visible results.</p> <p><b>8. Implementation of the plan can be accompanied by safeguards if the insurance supervisor does not trust the current management's capacity to carry out the recovery plan; for example:</b></p> <ul style="list-style-type: none"> <li>• restrictions on the freedom to dispose of assets;</li> <li>• appointment of a temporary administrator in place of the current management; and/or</li> <li>• suspension of payments.</li> </ul> <p><b>9. These safeguard measures can also be taken if a company refuses to produce the requested plan, if a proposed plan is not approved by the insurance supervisor or if a plan, once approved, is not implemented.</b></p> <p><b>10. The insurance supervisor asks the company to take, within a given period and under threat of penalties, all measures necessary to restore or reinforce its financial equilibrium, or remedy its practices.</b></p> <p><b>11. If an agreement improving the situation of the policyholders cannot be reached, the insurance supervisor pronounces a penalty proportionate to the defaults of the company. A public reprimand, a bar on carrying out certain operations, or the temporary suspension of a manager are examples of penalties that may be imposed when the continuation of the business is not in question.</b></p> <p><b>12. When no external support can be found, and the situation of the company can only keep deteriorating to the detriment of the policyholders, the insurance supervisor must put an immediate stop on the company writing new business, and consider forcing a transfer of portfolio, a withdrawal of all licenses and liquidation.</b></p> <p>All these criteria are part of the normal standard procedures of the Commission, backed up by the provisions of Articles 6, and 8–14 of the IBL.</p> <p><b>Additional criteria</b></p> <p><b>1. The insurance supervisor applies penalties and sanctions not only to the company, but, if and when necessary, also to management and/or the Board of Directors.</b></p> <p>Sanctions may be applied to the directors and officers of an insurer, but fines and prison sentences require the sanction of the royal court.</p>
Assessment	Observed
Comments	It is recommended to complete the range of sanctions by the power of the Commission to impose monetary penalties (administrative fines) following the international standards of financial services supervision. It is desirable that all supervisors have consistent enforcement powers.
Principle 15.	<p><b>Cross-Border Business Operations</b></p> <p><b>Insurance companies are becoming increasingly international in scope, establishing branches and subsidiaries outside their home jurisdiction, and sometimes conducting cross-border business on a services basis only. The insurance supervisor should ensure that:</b></p> <ul style="list-style-type: none"> <li>• no foreign insurance establishment escapes supervision;</li> <li>• all insurance establishments of international insurance groups and international insurers are subject to effective supervision;</li> <li>• the creation of a cross-border insurance establishment is subject to consultation between host and home supervisors; and</li> <li>• foreign insurers providing insurance cover on a cross-border services basis are subject to effective supervision.</li> </ul>
Description	<p><b>Essential criteria</b></p> <p><b>1. The insurance law under which the insurance supervisor operates requires that all insurance establishments of international insurers, insurance groups and conglomerates operating within the jurisdiction be subject to continuing effective prudential supervision – irrespective of any licensing requirement.</b></p> <ul style="list-style-type: none"> <li>• In the case of the insurance subsidiaries of foreign parent companies, and insurance joint ventures</li> </ul>

	<p>in which one or more of the parent institutions is incorporated in a different jurisdiction, the law requires that these be subject to supervision of their capital adequacy/solvency in the host jurisdiction where they are incorporated.</p> <ul style="list-style-type: none"> <li>• In the case of foreign branches which are an integral part of an insurer incorporated in another jurisdiction then either: the law provides for continuing direct supervision in the host jurisdiction; or the insurance supervisor is able to demonstrate that they have a sound basis on which to believe that the insurance supervisor of the company in its home jurisdiction exercises continuing effective prudential supervision over the company as a whole, including its branch operations in foreign jurisdictions.</li> <li>• The insurance supervisor's standard procedure for considering the application for a license for: <ul style="list-style-type: none"> <li>• a subsidiary of a foreign insurer;</li> <li>• a joint venture in which one or more of the parent institutions is an insurer incorporated in a different jurisdiction; or</li> <li>• a branch of a foreign insurer; includes the need to consult the insurance supervisor of the parent insurer.</li> </ul> </li> </ul> <p><b>2. Where the cross-border promotion of insurance contracts on a services basis is permitted, the insurance supervisor in the host jurisdiction has one (or a combination) of the following in place:</b></p> <ul style="list-style-type: none"> <li>• a procedure whereby foreign insurers are required to notify the host supervisor of their intention to promote insurance contracts;</li> <li>• a special licensing procedure; or</li> <li>• specific safeguards to protect policyholders.</li> </ul> <p><b>3. Where a notification or special licensing procedure is used, then it includes checks that the foreign insurer is subject to continuing effective prudential supervision in its home jurisdiction over its global activities.</b></p> <p><b>4. The insurance law provides the host supervisor with the powers to be able to assess on a case by case basis, whether to license, continue to license or otherwise permit, an insurance subsidiary or branch of a foreign institution to operate in its jurisdiction. The process should be transparent.</b></p> <p><b>5. The insurance supervisor has the ability to refuse a license for a foreign establishment in its jurisdiction, or impose additional conditions on a license, where it has material concerns that the foreign parent insurer is not subject to continuing effective supervision in its home jurisdiction. The process should be transparent.</b></p> <p><b>6. The insurance law provides the insurance supervisor with the power to prevent insurers established within its jurisdiction from promoting contracts of insurance through a branch or on a cross-border services basis in foreign jurisdictions where the insurer does not have the required financial capacity, or the necessary expertise, to manage the business prudently.</b></p> <p><b>7. The home supervisors of insurers with overseas establishments require those insurers to maintain a sound and verifiable system of reporting from any foreign establishment to the head office.</b></p> <p><b>8. Insurance supervisors exchange information, as necessary, on the operation in their jurisdictions of the insurance establishments of foreign insurers.</b></p> <p>The IBL requires that all insurers and reinsurers carrying on business in Jersey are licensed by the Commission. This includes not only Jersey incorporated companies, which may or may not be subsidiaries of international insurers or part of insurance groups, but branches of foreign insurers, and also foreign insurers that do not have a physical presence but market and sell their products through brokers and intermediaries situated in Jersey.</p> <p>Where a foreign insurer wishes to carry on business in Jersey, Article 4 of the Law states that a license may be granted by virtue of the insurer's authorization under the law of an "acceptable" jurisdiction</p>
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	<p>outside Jersey. In these circumstances, the Commission will obtain confirmation from the home supervisor that the insurer is indeed authorized to carry on the classes of business that it wishes to market in Jersey, and that the insurer is in full compliance with the regulatory requirements in the home jurisdiction.</p> <p>The Commission will normally use the regulatory returns sent to the home supervisor as part of its own ongoing supervision, but it may also require such an insurer to complete Jersey returns if circumstances demand such action. The conditions that the Commission may attach to licenses under Article 6 of the Law also apply to foreign insurers.</p> <p>The powers of the Commission to accept or reject applications for licenses from foreign insurers, and the application procedures, are the same as those for Jersey companies. They include, for example, the fit and proper criteria and the need to submit financial and other planning information in support of the application.</p> <p>Article 4 (2) of the IBL states that no person shall carry on in or from within Jersey insurance (or reinsurance) business unless that person is authorized by a license granted under Article 6 of the Law.</p> <p>Information may be shared between supervisors, on a confidential regulator to regulator basis, under the provisions of Article 31 of the Law.</p> <p><b>Additional criteria</b></p> <ol style="list-style-type: none"> <li><b>1. Home supervisors have the powers to order independent checks on data reported by an individual foreign establishment.</b></li> <li><b>2. Insurance supervisors advise each other on a timely basis of any significant action they propose to take affecting the operations of a cross-border establishment.</b></li> <li><b>3. Host supervisors accept on-site inspection of the branches of foreign insurers in their jurisdiction under the following conditions.</b> <ul style="list-style-type: none"> <li>The home supervisor will inform the host supervisor of both commencement and conclusion of any examination of the host country branch.</li> <li>The home supervisor and the host supervisor may communicate with each other on the initiative of either party. The home supervisor would share the necessary information with the host supervisor to a reasonable extent, subject to any statutory provisions.</li> <li>The information obtained by the home supervisor in the course of inspections and meeting with the host supervisor shall be treated as confidential and shall be used solely for supervisory purposes according to applicable legislation.</li> </ul> </li> </ol> <p>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. Similarly, the Commission will accept requests from foreign home regulators for on-site visits to Jersey insurers where Jersey is the host supervisor.</p> <p>The Commission considers communication between supervisors to be a key element of regulation, and will request or provide information as necessary, within statutory provisions, to ensure proper group regulation.</p>
Assessment	Observed
Comments	
Principle 16.	<p><b>Coordination and Cooperation</b></p> <p><b>Increasingly, insurance supervisors liaise with each other to ensure that each is aware of the other's concerns with respect to an insurance company that operates in more than one jurisdiction, either directly or through a separate corporate entity.</b></p> <p><b>In order to share relevant information with other insurance supervisors, adequate and effective communication should be developed and maintained.</b></p> <p><b>In developing or implementing a regulatory framework, consideration should be given to whether the insurance supervisor:</b></p> <ul style="list-style-type: none"> <li>• is able to enter into an agreement or understanding with any other supervisor both in other</li> </ul>

	<p>jurisdictions and in other sectors of the industry (i.e., insurance, banking, or securities) to share information or otherwise work together;</p> <ul style="list-style-type: none"> <li>• is permitted to share information, or otherwise work together, with an insurance supervisor in another jurisdiction. This may be limited to insurance supervisors who have agreed, and are legally able, to treat the information as confidential;</li> <li>• should be informed of findings of investigations where power to investigate fraud, ML, and other such activities rests with a body other than the insurance supervisor; and</li> <li>• is permitted to set out the types of information and the basis on which information obtained by the insurance supervisor may be shared.</li> </ul>
Description	<p><b>Essential criteria</b></p> <ol style="list-style-type: none"> <li>1. The insurance supervisor is able to enter into an agreement or understanding with any other supervisor both in other jurisdictions and in other sectors of the industry (i.e., insurance, banking or securities) to share information or otherwise work together.</li> <li>2. The insurance supervisor is permitted to share confidential information, or otherwise work together, with an insurance supervisor in another jurisdiction. This may be limited to insurance supervisors who have agreed, and are legally able, to treat the information as confidential.</li> <li>3. The insurance supervisor is permitted to set out the types of information obtained by the insurance supervisor that may be shared and the basis on which it may be shared.</li> <li>4. Information sharing arrangements allow for a two way flow of information, but strict reciprocity in terms of the level, format and detailed characteristics of the information exchanged is not demanded.</li> </ol> <p><b>Additional criteria</b></p> <ol style="list-style-type: none"> <li>1. The insurance supervisor is informed about findings of investigations where the power to investigate fraud, ML, and other such activities rests with a body other than the insurance supervisor.</li> <li>2. In the case of insurers with foreign establishments, the insurance supervisor of the parent insurer will take the host supervisors into their confidence as much as possible.</li> <li>3. The recipient of information provided by an insurance supervisor in another jurisdiction undertakes, where possible, to consult with that insurance supervisor if they propose to take action on the evidence of the information received.</li> <li>4. The insurance supervisor of the parent insurer with foreign establishments informs the host supervisors of those establishments of any material changes in supervision which may have a significant bearing on the operations of such establishments.</li> <li>5. Where an insurance supervisor has doubts about the standard of host supervision in a particular jurisdiction and, as a consequence, is anticipating action that will affect the foreign establishments in the jurisdiction concerned, they will consult with the host supervisor in advance.</li> <li>6. If a host supervisor identifies, or has reason to suspect, problems of a material nature in a foreign establishment, it takes the initiative to inform the insurance supervisor of the parent company and provides prior warning of any regulatory action intended.</li> <li>7. An insurance supervisor is able to obtain information on behalf of an insurance supervisor in another jurisdiction, or otherwise cooperate with that supervisor.</li> </ol> <p>Under regulatory legislation, the Commission is able and willing to cooperate with overseas regulators without a requirement for a MOU to be in place. Nevertheless, the Commission recognizes the certainty that such agreements add to the process of information exchange. The Commission is able to communicate to a relevant supervisory authority information that is in its possession, whether or not as a result of the exercise of any of its powers, at the request of another authority.</p>



	<p>The Commission may exercise the following powers at the request of, or for the purpose of assisting, an overseas supervisory authority:</p> <ul style="list-style-type: none"> <li>• power to impose, revoke or vary the conditions of a license;</li> <li>• power to refuse or revoke a registration;</li> <li>• powers of intervention;</li> <li>• powers relating to information and documents;</li> <li>• powers of investigation; and</li> <li>• powers of entry (through application to Jersey's Bailiff).</li> </ul> <p>Requests for assistance from overseas regulators can be and are met. The Commission can and does communicate information relating to customers of registered persons, without their consent, in cases, for example, involving insider dealing.</p> <p>The Commission will always cooperate with other relevant supervisory authorities unless it believes that assistance is requested other than for the purpose of the exercise of supervisory functions. In practice, assistance is given in investigations, in compliance programs for the prevention of illicit activities, and by the exchange of general information about matters of regulatory concern.</p> <p>Domestic gateways exist to enable the Commission to provide and receive information, inter alia, to: the Viscount, for matters such as bankruptcy and inquests; the domestic law enforcement agencies, in connection with the investigation of suspected offences, or the institution of criminal proceedings; the attorney general and any police officer where it suspects a ML offence under Articles 32 to 37 of the Proceeds of Crime Law 1999.</p> <p>The Commission recognizes that information exchange is a two way process, and will always consult with an overseas regulator where problems of any kind exist with a regulated person licensed in both jurisdictions on a "home" and "host" basis.</p>
Assessment	Observed
Comments	
Principle 17.	<p><b>Confidentiality</b></p> <p><b>All insurance supervisors should be subject to professional secrecy constraints in respect of information obtained in the course of their activities, including during the conduct of on-site inspections.</b></p> <p><b>The insurance supervisor is required to hold confidential any information received from other insurance supervisors, except where constrained by law or in situations where the insurance supervisor who provided the information provides authorization for its release.</b></p> <p><b>Jurisdictions whose confidentiality requirements continue to constrain or prevent the sharing of information for supervisory purposes with insurance supervisors in other jurisdictions, and jurisdictions where information received from another insurance supervisor cannot be kept confidential, are urged to review their requirements.</b></p>
Description	<p><b>Essential criteria</b></p> <ol style="list-style-type: none"> <li><b>1. An appropriate confidentiality requirement that all insurance supervisors should be subject to professional secrecy constraints in respect of information obtained in the course of their activities is embodied in law (either in the insurance law or in other laws applying to the behavior of the insurance supervisor).</b></li> <li><b>2. 'Gateways' that allow the insurance supervisor to pass confidential information to other supervisors or law enforcement bodies are clearly set out.</b></li> <li><b>3. Freedom of information provisions do not override the confidentiality requirements applying to the insurance supervisor in situations where confidentiality is necessary for sound regulatory practice or effective communication with other regulators.</b></li> <li><b>4. Insurance supervisors are able to hold confidential any information received from an insurance supervisor in another jurisdiction with an expectation of confidentiality.</b></li> </ol> <p>Under Article 28 of the IBL, any breach of confidentiality or disclosure of information by any person who receives this information, other than through a permitted gateway, is a criminal offence and is liable to</p>

	<p>imprisonment for a term not exceeding two years, or a fine, or both.</p> <p>Articles 29-32 of the IBL define those gateways.</p> <p>Under these provisions, the Commission can, and does, keep confidential such information that it receives in order to maintain sound regulatory practice. Similarly, any information received from a supervisor in another jurisdiction will always be kept confidential, except where the other regulator has been informed in advance that such information may be used in circumstances that may lead to it becoming public, for example in a criminal prosecution, and the other regulator has provided the information in full knowledge and approval of this situation.</p>
Assessment	Observed
Comments	

Table 11. Summary Observance of IAIS Insurance Core Principles

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Observed	12	ICP 2, 3, 6, 7, 8, 10, 11, 12, 14, 15, 16, 17
Largely observed	5	ICP 1, 4, 5, 9, 13
Materially nonobserved		
Non-observed		
Not applicable		

***Recommended actions***

Table 12. Recommended Actions to Improve Observance of IAIS Insurance Core Principles

Reference Principle	Recommended Action
(ICP 1) Organization of an insurance supervisor	Increase number of staff of the Insurance Division. Avoid to impair the independence of the supervisor.
(ICP 4) Corporate Governance	The Commission should complete its initiative to incorporate corporate governance requirements into Codes of Practice.
(ICP 5) Internal controls	Systematic confirmation by senior management and Board regarding their responsibility for internal controls.  Introduce quickly Codes of Practice containing the requirements for the existence of adequate risk management systems.
(ICP 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.
(ICP 9) Derivatives	It is recommended that the present practices of the Commission in relation to derivatives be incorporated in the Codes of Practice.

Reference Principle	Recommended Action
(ICP 13) On-site inspection	Intensify on-site inspections (increasing the number of staff, see above).
(ICP 14) Sanctions	Complete the range of sanctions by the power of the supervisor to impose monetary penalties (administrative fines).

### **C. Authorities' Response to the Assessment**

#### ***IAIS Core Principles***

##### ***Overview***

111. 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.

112. A consolidated action plan, prepared by the authorities, is appended to Volume I of the assessment.

##### ***Organization***

###### ***Independence (ICP 1)***

113. The authorities' response to the question of the Commission's development function and the Committee's power of direction is set out in the general comments on Volume I (page 21).

###### ***Resourcing (ICPs 1 and 13)***

114. The authorities point out 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.

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

##### ***Internal controls***

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

116. The authorities note that 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 CIF functionaries and deposit-takers.

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

*Management declaration on internal controls (ICP 5)*

118. 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 AML legislation and Codes of Practice (Article 6 of the Financial Services (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000).

119. 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.

***Capital adequacy and solvency***

*Solvency requirements (ICP 8)*

120. The authorities point out that solvency 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.

***On-site inspection***

*Outsourcing (ICP 13)*

121. The authorities note that the Commission's existing outsourcing policy states that there must be supervisory access to any function which is outsourced (which is often achieved through an access clause in the outsourcing contract). Approval will not be given by the Commission for an arrangement which does not facilitate access.

122. Notwithstanding this, the Commission will review in 2004 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.

***Regulatory sanctions***

*Civil monetary penalties and fining (ICP 14)*

123. The authorities' response to the question of civil monetary penalties and fining is set out in Volume I (page 43).

#### **IV. IOSCO OBJECTIVES AND PRINCIPLES OF SECURITIES REGULATION**

##### **A. General**

124. As assessment of observance of the objectives and principles of securities regulation (the IOSCO principles) was conducted as part of the offshore financial sector assessment of Jersey.<sup>7</sup>

##### **Information and methodology used for assessment**

125. 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.

126. 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.

127. The mission received extensive briefings from Commission staff on relevant matters and helpful answers to the many questions.

128. There were no factors that impaired the assessment process. The Commission has a great deal of useful material on its website including annual and quarterly reports. Commission staff was readily available to brief the team and to answer questions. The law, regulations and guidance notes were always accessible.

129. The core regulatory provisions of securities law relate to:

- the functions and powers of the Commission
- the issue of permits to those who perform designated functions on behalf of CIFs and the supervision of those functionaries
- the registration of those who undertake investment business, in particular, dealers, discretionary investment managers and investment advisers
- the offer of securities and investments to members of the public and others

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<sup>7</sup> The assessment was undertaken by John Farrell (Consultant MFD)

### **Institutional and macroprudential setting, market structure**

130. The core investment product is the 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.

131. The main piece of legislation governing the CIFs business is the CIFL. The Law was designed to prohibit unauthorized persons from operating CIFs 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 (IOSCO).

132. 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. Jersey has a conventional framework of general business law including a common law system. It does not have rules of law about competition, but has established the Jersey Competition Regulatory Authority (JCRA), which is currently consulting on a draft competition law. 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.

### **General preconditions for effective securities regulation**

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

- reducing risk to the public of financial loss due to dishonesty, incompetence and malpractice;
- protecting and enhancing Jersey's reputation and integrity;
- safeguarding Jersey's best economic interests;
- contributing to the fight against financial crime.

134. Market access is determined by reference to the securities regulatory system and the decisions of the Commission. The Mission is not aware of any particular barriers to the entry or exit of market participants other than those which are incidental to the operation of the regulatory system. Jersey does not have explicit rules of statute law about competition. However, Jersey is moving to put competition legislation in place. The Competition Regulation Authority (Jersey) Law 2001 established the JCRA. A draft competition law has been released for consultation and is expected to be implemented in 2003. The mission's impression is that there is a diversity of market participants in the

securities and investment business and the community is not disadvantaged in this business sector by the absence of a Competition Law.

135. 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. In the main, they appear to accept this. They argue that a key determinant of success for Jersey as an international finance centre is its reputation, which in turn depends on its stability, political, economic and fiscal, its regulatory environment and its breadth of expertise. We routinely encountered a general understanding of the importance of the regulatory system and support for the regulatory policies of Jersey authorities. Nevertheless, there are some market professionals who contend for less regulation.

136. Ultimately, Jersey depends for its ability to develop as an international finance centre on the quality of its securities regulatory system, its tax regime and the professional expertise of its people. It has encountered criticism in the past, particularly from neighboring countries, for its tax regime. Jersey authorities consider that it is all the more important in the circumstances to have and to be seen to have soundly based securities and investments supervision and regulation and to cooperate with equivalent authorities in other jurisdictions to best international standards.

137. It is against the background of these general comments that the mission proceeds to examine the extent of Jersey's compliance with the IOSCO Principles.

## B. Detailed Assessment

Table 13. Detailed Assessment of Observance of the IOSCO Objectives and Principles of Securities Regulation

Principles Relating to the Regulator	
<b>Principle 1.</b>	The responsibilities of the regulator should be clear and objectively stated.
Description	<p>1. The responsibilities of the Commission are set out in the FSCL, the statute establishing the Commission.</p> <p>2. The Commission is responsible for:</p> <ul style="list-style-type: none"> <li>the supervision and development of financial services provided in or from within Jersey;</li> <li>providing the States, 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</li> <li>preparing and submitting to the F&amp;E 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.</li> </ul> <p>These responsibilities are clearly stated in the law. They apply to securities and investments, to which this report relates. They are backed by explicit rules of law about (a) collective investment schemes and (b) people who deal in investments, undertake discretionary investment management or give investment advice. They are also backed by the more general provisions of the Borrowing (Control) (Jersey) Law 1947 which applies generally to the raising of capital but is the basis for the direct regulation of certain products, in particular at present the offer of interests in special purpose vehicles.</p>

	Until November 2001, the Commission was responsible for promoting Jersey as a finance center, but this responsibility was discontinued by an amendment to the law.
Assessment	Implemented
Comments	<p>(1) The IOSCO Principles are backed by the three IOSCO Objectives:</p> <ul style="list-style-type: none"> <li>• the protection of investors;</li> <li>• ensuring markets are fair, efficient and transparent;</li> <li>• reducing systemic risk.</li> </ul> <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>(2) The Commission has assumed the responsibilities of the Registrar of Companies. Section 196 of the Companies (Jersey) Law as amended by Amendment No. 6 provides for the Commission to appoint the Registrar. Nevertheless the Registrar remains a statutory officer with separate statutory responsibilities and the Commission should consider whether to recognize this explicitly in its financial statements or otherwise recognize the separate accountability of the Registrar under Companies Law.</p> <p>(3) The Commission is regulating the offer of interests in securitization and certain other securities and investment business directly under the general authority of the Borrowing Control Law . While the offer of these interests may be restricted to experienced investors it will be material to a decision to invest in these interests in Jersey that the offer is regulated and the mission considers it should review this practice and consider whether it should have more explicit powers for this part of its work.</p>
<b>Principle 2.</b>	<b>The regulator should be operationally independent and accountable in the exercise of its functions and powers.</b>
Description	<p>1. The Commission is established by statute and its constitution and powers are prescribed in the statute.</p> <p>2. Commissioners are appointed by the States of Jersey from persons nominated by the F&amp;E Committee, including:</p> <ul style="list-style-type: none"> <li>• persons with experience of the type of financial services supervised by the Commission;</li> <li>• regular users on their own account or on behalf of others, or representatives of those users, of financial services of any kind supervised by the Commission; and</li> <li>• individuals representing the public interest.</li> </ul> <p>3. The composition of the Commission is intended to be such as to secure a proper balance between the interests of persons carrying on the business of financial services, the users of such services and the interests of the public at large. The Commissioners act in a non-executive capacity, except the director general, who sits as a Commissioner by virtue of office. The procedures for the appointment of new Commissioners are reviewed by an independent government appointments authority, the Jersey Appointments Commission. The aim of this Commission is to ensure that appointments are properly made and to keep the official appointments process as a whole in Jersey under review.</p> <p>4. The Commission may delegate its functions or powers. It has exercised the power of delegation in favor of Commission officers in accordance with a policy statement approved by the Commission Board. The director general or the appropriate Director reports regularly to the Board on the exercise of this delegation.</p> <p>5. Remuneration levels for the Commissioners are established on the basis of independent advice.</p> <p>6. There are clear rules in a schedule to the statute on the disclosure of interests by Commissioners and on withdrawing from deliberations on any matter.</p> <p>7. The F&amp;E Committee may dismiss a Commissioner if the Commissioner:</p> <ul style="list-style-type: none"> <li>• has been absent from meetings of the Commission for a period longer than six</li> </ul>



	<p>consecutive months without the permission of the Commission;</p> <ul style="list-style-type: none"> <li>• has become bankrupt;</li> <li>• is incapacitated by physical or mental illness; or</li> <li>• is otherwise unable or unfit to discharge the functions of a Commissioner.</li> </ul> <p>8. The statute provides for the Commission to be funded by fees and charges or by government grants. In practice it is funded by fees and charges payable by the financial services industry.</p> <p>9. The Commission reports through the F&amp;E Committee to the States each year. It meets with the Committee each year when it outlines its plans for the future, together with its budget, objectives and performance indicators. These with the annual report and accounts form the basis of an analysis of the Commission's performance by the Committee.</p> <p>10. Any person aggrieved by a decision of the Commission about a registration may appeal to the royal court of Jersey on the grounds that the decision was unreasonable having regard to all the circumstances of the case.</p> <p>11. Two matters arise. First, under Article 11 of the FSCL, the F&amp;E Committee may give the Commission guidance or give in writing general directions in respect of the policies to be followed by the Commission in relation to its core responsibility for the supervision and development of financial services in Jersey. The mission notes that the Committee has never done so. Nevertheless it is open to the Committee to direct Commission policies. The Committee's power does not extend to operational matters. The mission considers that the use of such a power could impact on the operational independence of the Commission. We query whether such a power should be available in respect of a securities and investments regulator. The mission recommends that the nature of the power should be reviewed. If it is to continue, those who hold the power should be required to exercise it publicly and be held publicly accountable in respect of any guidance or direction given.</p> <p>12. Secondly, Article 18 of the Act requires the Commission to pay each year into the annual income of the States such amount, if any, as may be determined in accordance with the terms of the law. The mission is informed that the States have traditionally profited from the operations of the Registrar of Companies by levying fees which exceed the operational needs of the Registrar. When the Commission absorbed the functions of the Registrar it also absorbed this revenue raising responsibility. This appears to place the Commission in the position of a tax-gatherer on behalf of the States. Again this appears to impact on the independence of the Commission. The government is at present reviewing this matter.</p> <p>We consider that this principle is implemented with respect to accountability and , broadly implemented with respect to independence.</p>
Assessment	Broadly Implemented
Comments	The mission recommends that the Commission confers with the government on the continuing need for these provisions of Articles 11. It is also recommended that the government complete its review of Article 18.
<b>Principle 3.</b>	<b>The regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.</b>
Description	<p>1. The Commission has powers to:</p> <ul style="list-style-type: none"> <li>• register or refuse to register a person or to issue a permit to carry on an investment business;</li> <li>• revoke registration or permit;</li> <li>• attach and vary conditions;</li> <li>• issue codes of conduct for the purpose of establishing sound principles for the conduct of business;</li> <li>• apply to the Court for the appointment of a manager;</li> <li>• object to a person being a principal person or an owner of a registered person, to the effect</li> </ul>

	<p>that the person is banned;</p> <ul style="list-style-type: none"><li>• issue directions to any person requiring anything to be done or omitted to be done in relation to a financial services business including requiring a registered person to cease operations or any principal person or any person having functions in relation to a registered person to be removed and replaced;</li><li>• apply to the Court to make a financial services business subject to supervision, restraint or conditions and seeking orders for the transfer of assets;</li><li>• issue public statements concerning a person;</li><li>• require the provision of information and documents, Commission investigations and, subject to the issue of a warrant by the Bailiff, enter and search premises;</li><li>• share information with other supervisory authorities;</li><li>• apply to the Court for an order prohibiting a person from being a director of a company;</li><li>• request the attorney general's office to bring prosecutions; and</li><li>• publish information or give advice on the law including the rights of those provided with financial services and the steps to be taken to enforce those rights.</li></ul> <p>2. These powers apply in respect of those who undertake investment business as defined. They also apply in respect of the functionaries of CIFs. Similar powers to grant, refuse and revoke consent, and the ability to attach and vary conditions are also available under the Borrowing (Control) (Jersey) Law and the Order made under it, together with the power for the attorney general to bring prosecutions for breach of the Law. The Borrowing (Control) (Jersey) Law principally regulates the raising of money by the issue of securities (including shares) units, or limited partnership interests, the circulation in Jersey of prospectuses for non-Jersey entities, and the holding of registers in Jersey for non-Jersey entities. As such it complements the Companies Law and the CIFL. Although the Borrowing (Control) (Jersey) Law applies to structures that are regulated by the CIFL, it also applies to structures available to sophisticated and institutional investors, such as SPVs and private equity funds. We are informed that, in relation to investment products, this law is principally used to control the issue of securities, units and interests by private collective investment schemes, the majority of which issue debt only to sophisticated investors, and all of which are restricted to fewer than 50 offers to investors.</p> <p>3. The Commission has the following divisions: authorizations, compliance, enforcement, policy and legal, insurance, financial business (to develop a new regulatory regime for trust and company service providers), and support services. None of these divisions is exclusively responsible for securities and investments work and the Commission's work in this area must be seen in the wider context of its work more generally.</p> <p>4. The Commission has a current complement of staff of 68. Some 15 percent of the Commission's total resource is allocated to investment work. Where appropriate, the work of the Commission is supplemented by resources based in the Channel Islands and U.K., for example, the regulatory unit from an accountancy firm for some of the technical supervisory requirements applying to London Stock Exchange member stockbrokers. Lawyers and accountants from both inside and outside Jersey are also appointed as inspectors to conduct investigations on behalf of the Commission.</p> <p>5. The arrangements for the funding of the Commission as described elsewhere in this report appear sound and reliable. While some of the professional staff seem stretched, some not yet experienced, and there are staff vacancies in the Division, this is not unusual in an agency such as a financial services commission. The forward program of work of the Commission as described in the Business Plan 2002-2004 seems robust and the level of resources available for securities and investment work may be suited to the jurisdiction.</p> <p>6. The mission has met with a number of people in the financial services industry. The impression is that the efforts of the Commission are by and large well supported in the community, reinforcing its capacity to perform its functions and exercise its powers effectively</p>
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	as a securities regulator.
Assessment	Implemented
Comments	<p>In making its assessment that principle 3 has been implemented the mission has the following observations: ( 1) The grounds for exercising these powers of the Commission are often expressed in very general terms in the statutes. It may be that the courts will from time to time if called upon have difficulty in applying them to particular situations and the Commission may not always be able to secure the sort of results it might otherwise have hoped for ;</p> <p>(2) The Commission has informed the Mission that it expects the States to consider in 2003 whether to confer on it the power to impose administrative fines. The mission considers this to be a significant development. Nevertheless it does not consider that, in the absence of such powers, the Commission has not complied with Principle 3 in its capacity as a securities regulator;</p> <p>(3) The Commission depends for the effectiveness of its powers on the issue of Codes of Practice. The statutes provide for these codes and describe their legal effect. The breach of a provision of these codes is not in itself a breach of the law. However important administrative consequences flow from a breach on the initiative of the Commission and the codes are a significant tool in the supervision and regulation of the Jersey financial sector; and</p> <p>(4) The Commission expects the States to standardize its powers to apply to the Court for restitution on behalf of customers. This appears to be part of a wider move to standardize the law relating to the supervision and regulation of the financial sector in Jersey. This is to be encouraged.</p>
<b>Principle 4.</b>	<b>The regulator should adopt clear and consistent regulatory processes.</b>
	<p>1. As noted above the Commission is empowered under the law to issue Codes of Practice for the purpose of establishing principles for the conduct of financial services business. In addition the Commission may give advice on the operation of the law or its own functions. It has the practice of preparing guidance notes on policy or operational matters and publishing them on its website. These codes and guides provide the Commission with an excellent vehicle to record and publicize the regulatory processes which it has adopted and the consequences to registered persons of noncompliance.</p> <p>2. A Code of Practice has been issued and is in force for investment business, that is, the business of dealers, discretionary investment managers and investment advisers. The Financial Services Law 1998 states that where the Commission has reason to believe that a person has failed to follow the code, it may revoke the person's registration, refuse to register an applicant, issue a public statement, or issue a written direction. Equivalent Codes are not yet available for other areas of securities regulation, for example, for operators of collective investment schemes, other than for managers of recognized CIFs, where conduct of business-type rules are contained in subordinate legislation. However, standards set in legislation for Recognized funds are used as a best practice benchmark for the supervision of all CIF operators. The Commission has a program of work in place to prepare Codes to formalize existing best practice and guidance.</p> <p>3. The Commission's application form to be registered for investment business and personal questionnaires to be completed by principal persons are available on the website, and address the factors that will be considered by the Commission in determining the suitability of an applicant for registration.</p> <p>4. Commission policy statements are available in respect of promoters of public and private CIFs, issues of securities under the Borrowing Control Law, the management and control of Jersey domiciled funds, eligible markets, outsourcing, and the circulation in Jersey of offers for subscription, sale or exchange of securities originating outside of Jersey. Guidance notes are also available on open-ended unclassified collective investments fund offered to the general public, establishing a CIF operation in Jersey, and trustees and custodians of CIFs.</p> <p>5. In formulating its policies and processes, the Commission has said that it aims to adopt international best practice following extensive industry consultation.</p> <p>6. Any person who is aggrieved by a decision of the Commission on designated matters relating to the administration of the Law may appeal to the Court on the grounds that the decision was</p>

	<p>unreasonable having regard to all of the circumstances of the case.</p> <p>7. The Commission has a stated policy of notifying the subject of an intended action that it is "minded to" take action and giving the subject time within which to offer information or explanations. The subject of an action is generally offered an opportunity to attend any meeting of Commissioners at which a decision is to be taken on action proposed against him.</p> <p>8. To the extent that Codes of Practice are in place the Commission appears to meet the requirements of Principle 4. However there is uncompleted work in this area.</p>
Assessment	Partially implemented
Comments	The Commission is at present engaged in a further program of work preparing Codes of Practice in respect of its regulatory policies and processes for securities and investments. This appears to be a comprehensive program. The mission recommends that the Commission complete this program. It considers that on completion of codes for CIFs the Commission will comply fully with Principle 4.
<b>Principle 5.</b>	<b>The staff of the regulator should observe the highest professional standards including appropriate standards of confidentiality.</b>
Description	<p>1. Any person who receives confidential information about a person for the purposes of the law and discloses that information other than for a permitted purpose is guilty of a criminal offence and is liable to imprisonment for a term not exceeding two years, or a fine, or both.</p> <p>2. Where a Commissioner has any direct or indirect personal interest in the outcome of the deliberations of the Commission in relation to any matter:</p> <ul style="list-style-type: none"> <li>the Commissioner shall disclose the nature of the interest at a meeting of the Commission in person or by means of a written notice brought to the attention of the Commission;</li> <li>the disclosure shall be recorded in the minutes of the Commission; and</li> <li>the Commissioner shall withdraw from any deliberations of the Commission in relation to that matter and not vote upon it.</li> </ul> <p>A summary statement of all interests is circulated to all Commissioners and to the Commission's senior executives. The Commission has produced a policy paper on its management of conflicts of interest which is available on its website.</p> <p>3. On commencement of employment, every member of staff is required to sign a declaration regarding confidentiality and conflicts of interest. Three main principles arise:</p> <ul style="list-style-type: none"> <li>Regulatory action: staff is expected to take effective steps to ensure that action is, and is seen to be, unaffected by any conflict of interest and cannot be called into question;</li> <li>Organization structure: The Commission's structure will be kept under review so that decisions can be taken notwithstanding any conflicts of interest that may arise; and</li> <li>Use of information: Staff must not wrongly or improperly use information which is received in the employment of the Commission.</li> </ul> <p>4. The Commission Staff Handbook sets out policies, procedures, and processes to be followed by employer and employee. Policies are in place to cover confidentiality and conflicts of interest, gifts and hospitality, and expected standards of behavior. It is the practice of the Commission to give a copy of the Handbook to each member of staff. Guidance is given on the disclosure of conflicts and follow-up action following disclosure.</p> <p>5. No stock exchanges or other securities trading systems operate in Jersey, and many investment operations are small parts of international groups. Notwithstanding this, executive staff is restricted in their ability to engage directly or indirectly in any business or transaction.</p> <p>6. It is the mission's view that the Commission adheres to and enforces its policies on confidentiality and conflicts, and related matters.</p>
Assessment	Implemented
Comments	

Principles of Self-Regulation	
<b>Principle 6.</b>	The regulatory regime should make appropriate use of Self-Regulatory Organizations (SROs) that exercise some direct oversight responsibility for their respective areas of competence, and to the extent appropriate to the size and complexity of the markets.
Description	The Commission considers that there are no self regulatory organizations. The mission agrees. There does not appear to be a need for self-regulatory organizations (SROs).
Assessment	Not applicable
Comments	
<b>Principle 7.</b>	SROs should be subject to the oversight of the regulator and should observe standards of fairness and confidentiality when exercising powers and delegated responsibilities.
Description	
Assessment	Not applicable
Comments	
Principles for the Enforcement of Securities Regulation	
<b>Principle 8.</b>	The regulator should have comprehensive inspection, investigation and surveillance powers.
Description	<p>1. The Commission has power to require the provision of information and documents which the Commission reasonably requires for the performance of its functions under regulatory legislation relating to:</p> <ul style="list-style-type: none"> <li>• the business of a registered person or formerly registered person;</li> <li>• the integrity, competence, financial standing, or organization of that person or of any person who is or was a principal person, and of any associate of such a person; or</li> <li>• the compliance by the person with the law and any regulation, order, or code of practice.</li> </ul> <p>The power extends to require the person to attend at the Commission and to answer questions.</p> <p>2. The power also extends to unregistered persons suspected of conducting financial services business or making false or misleading statements.</p> <p>3. Any officer or agent of the Commission may, on producing, if required, evidence of authority, enter, at a reasonable time, any premises occupied by a person on whom notice has been served.</p> <p>4. The Commission may require a person to commission a report by an accountant or other person with relevant professional approved by the Commission.</p> <p>5. The Commission routinely receives prudential information and financial statements and other information in accordance with the law or the terms of a permit or registration. It has powers of enforcement where this information is not received. It conducts on-site inspection visits to assess adherence to regulatory legislation and best practice (refer to principle 10). Reporting accountants may also be requested to address issues of interest to the Commission.</p> <p>6. Auditors or reporting accountants are required to communicate to the Commission circumstances which give them reasonable cause to believe that:</p> <ul style="list-style-type: none"> <li>• there are grounds for revoking a registered person's registration; or</li> <li>• as a result of any legal requirement, Code of Practice or internal controls and procedures of a registered business being breached, investors are at significant risk of incurring a material loss.</li> </ul> <p>7. The Commission may also appoint one or more competent persons to investigate and report on:</p> <ul style="list-style-type: none"> <li>• the nature, conduct or state of a registered person's business;</li> <li>• the integrity, competence, financial standing or organization of the person;</li> <li>• the integrity, competence, and financial standing of principal persons, and of associates of principal persons;</li> </ul>

	<ul style="list-style-type: none"> <li>compliance by those persons with legislation, regulation, orders or Codes of Practice.</li> </ul> <p>8. In prescribed circumstances the Police may enter and search premises for the purposes of the financial services law, acting on a warrant from the Bailiff.</p> <p>9. Equivalent powers are available in respect of those holding permits in respect of CIFs.</p> <p>10. In the view of the mission the Commission has comprehensive inspection, investigation and surveillance powers.</p>
Assessment	Implemented
Comments	The Commission regularly and routinely conducts on-site inspections of registered persons and others. It relies for this purpose on its statutory authority to obtain all the information which it reasonably requires to perform its functions under the regulatory laws. It does not rely on its formal power of entry. The mission believes that the ability to undertake on-site inspections without resort to the formal power of entry should be clearly and unambiguously stated in the Law.
<b>Principle 9.</b> The regulator should have comprehensive enforcement powers.	
Description	<p>1. Where, on application of the Commission, the Court is satisfied that a person is likely to:</p> <ul style="list-style-type: none"> <li>undertake unauthorized business;</li> <li>breach any condition of registration;</li> <li>provide false or misleading information or fail to provide information;</li> <li>make misleading, false, or deceptive statements, or dishonestly conceal any material facts;</li> <li>breach any direction issued by the Commission;</li> <li>breach any regulatory law;</li> </ul> <p>the Court may issue an injunction restraining that person.</p> <p>2. Where the Court is satisfied that there are steps that could be taken to remedy the situation, the Court may also make an order requiring that person, or any other person, to take these steps.</p> <p>3. Where, on application of the Commission, the royal court is satisfied that:</p> <ul style="list-style-type: none"> <li>a registered person or a permit holder is not a fit and proper person to carry on business;</li> <li>in relation to a registered person or permit holder one of the matters in para 1 above applies;</li> <li>it is desirable for the protection of a person transacting investment business with the registered person;</li> <li>the Court may, as it thinks just, make an order making his business subject to such supervision, restraint, or conditions, from time to time, and for such periods as the Court may specify.</li> </ul> <p>4. Where the Court is satisfied that a person has breached the law by entering into any transaction the Court may order that person and any other person to take such steps as the Court may direct for restoring the parties to the position in which they were before the transaction was entered into.</p> <p>5. Where the Commission is satisfied that any of the following apply in respect of investment business the Commission may apply to the Court for the appointment of a manager:</p> <ul style="list-style-type: none"> <li>inadequate management of the affairs of the business;</li> <li>the person carrying on the business is not registered;</li> <li>there is a need to appoint a manager to collect, protect or preserve the assets or records of the business or the property of the customers of the business, or both; and</li> <li>the person carrying on the business has failed to comply with a notice of objection by</li> </ul>

	<p>the Commission to a change in principal person.</p> <p>6. The Commission may, by notice in writing, give directions:</p> <ul style="list-style-type: none"> <li>to require anything to be done or be omitted to be done;</li> <li>require that any principal person be removed or removed and replaced by another person acceptable to the Commission;</li> <li>require a registered person or formerly registered person to cease operations.</li> </ul> <p>7. The Commission may make public statements about a person.</p> <p>8. Inspectors may be appointed under the Company Securities (Insider Dealing) (Jersey) Law 1988, with power to summon witnesses and obtain documents and information, for the purpose of investigating insider dealing in Jersey or elsewhere.</p> <p>9. The Commission may exercise the following powers at the request of an overseas supervisory authority for the purpose of assisting in the investigation of an offence committed in Jersey or elsewhere:</p> <ul style="list-style-type: none"> <li>power to refuse or revoke a registration;</li> <li>power to impose, revoke or vary conditions;</li> <li>power to apply to the Court for an order making an investment business subject to supervision, restraint or conditions;</li> <li>powers relating to information and documents;</li> <li>power of investigation;</li> <li>power of entry and search of premises (through the Bailiff); and</li> <li>power to communicate information which is in its possession, whether or not as a result of the exercise of any of the above powers, where it is satisfied that the authority to which the information is communicated will treat it with appropriate confidentiality.</li> </ul> <p>No trading systems, including stock exchanges, operate in Jersey. Accordingly, the Commission has no need for a power to suspend trading.</p> <p>There are a number of powers available for exercise in the course of supervising and regulating the financial system in Jersey. The Commission depends for the exercise of some of these on the attorney general's Office and the Court. Nevertheless the relationship between the Commission and the AG's Office seems close and effective.</p>
Assessment	Implemented
Comments	<p>1. The Commission is scheduled to consider the benefits arising from consolidating the CIFL with the Financial Services Law. The mission considers that the opportunity should be taken to review the respective roles of the Commission, the attorney general's and the Court in the enforcement of securities and investment laws. This will obviously need to take into account the needs of the financial community for a principled, practical and effective securities regulatory system, and for banking, insurance and discretionary trust work, but also the level of law enforcement skills that may be available elsewhere in Jersey's economy, whether in the AG's Office, the Police or elsewhere.</p> <p>2. The Mission understands that the Commission and the government are already looking at possible proposals to empower the Commission to levy administrative fines and the circumstances in which this may be appropriate. The consideration of this matter should continue as a priority.</p>
<b>Principle 10.</b>	<b>The regulatory system should ensure an effective and credible use of inspection, investigation, surveillance and enforcement powers and implementation of an effective compliance program.</b>
Description	<p>1. The Commission's Compliance Division undertakes supervisory work on each regulated group. The Division states its aim as being to ensure that all entities operate in line with international standards. As part of its program of work the Commission conducts on site inspections, manages off-site prudential reporting (monthly, quarterly, or annual returns,</p>

	<p>audited accounts etc) and receives and researches complaints.</p> <p>2. At the time of the mission's visit to Jersey the Compliance Division had a staff establishment of 27 people of which 19 were compliance officers. Of these 5 were committed full-time to securities and investment work, that is, the supervision of CIF functionaries and those persons who are registered to undertake investment business. There were vacancies in the Division but these were not in the CIF/investment business area. In the meantime the Division staff establishment has increased from 27 to 35 people and will increase again to 40 by the end of 2003.</p> <p>3. In 1999/2000, the Commission set a target of visiting every licensed person within two years. The aim was to secure an understanding of all supervised business in Jersey. On the basis of this review the Division is developing a framework for a risk based approach to supervision, taking into account the relative importance of the functions performed by the supervised person and the compliance record. The Divisional Director expects this to lead to a visit to each entity on average less often than once every two years but more rigorous and more intensive inspections in risk situations. He does not expect there to be any reduction in the resources available for the investment business area.</p> <p>4. The Commission's program of work for the present financial year are contained in the Commissions business plan 2002 – 2004.</p> <p>5. Over the past two years, the Compliance Division has reviewed all institutions' internal management controls and procedures (corporate governance), staff quality and competence, risk management and AML systems.</p> <p>6. The Division at present undertakes supervision work in respect of 71 banks, 169 firms providing services in respect of 368 funds, and 162 firms registered to do investment business. The Division is also assuming responsibility for trust companies and will receive additional resources for this.</p> <p>7. The Commission has the power to require regulated businesses to appoint external professionals, such as lawyers and accountants. Certain specialist work, e.g., the regulation of firms which are members of an offshore stock exchange, e.g., the London Stock Exchange is out-sourced to U.K. professional firms and is undertaken on a basis consistent with U.K. regulatory practice. The Commission retains full responsibility for regulation and its staff accompany outside professionals on compliance visits.</p> <p>8. The Enforcement Division's aim is to identify and take enforcement action against regulatory breaches. In practice this represents reacting to information received from Compliance Division, other regulators whether in Jersey or elsewhere, in particular, other Channel Islands regulators, the Police, members of the financial services industry and complaints from the public and internet sweeps. The Commission also sees a key part of its work as to assist regulators overseas in their investigations, particularly where these involve entities in Jersey.</p> <p>9. The Enforcement Division has a complement of 5 professionals. Some 30 percent of its work relates to investments. Like all the Divisions it reports regularly to meetings of the Commissioners. Whenever there is a proposal for important enforcement action the decision is referred to the Commissioners. If a matter is referred to the attorney general it is done with the full authority of the Commission and, one may assume, is dealt with on this basis.</p>
Assessment	Broadly implemented
Comments	<p>The mission considers that it may advantage investors if, while not increasing the total resource committed to investment business, greater emphasis were placed on the offer documents to non-expert investors where these are not currently subject to pre-approval. The most significant challenge to international confidence in the funds management today, to the extent that it involves non-expert investors, is concern about possible mis-selling. The Commission should consider whether its present supervision procedures in this particular area make the optimum contribution to the release of timely, balanced, clear and accurate information in the prospectus and promotional literature of retail products. The mission notes that there is a discussion paper out on the regulation of advertising and regards this as an important matter which remains to be addressed.</p>



<b>Principles for Cooperation in Regulation</b>	
<b>Principle 11.</b>	The regulator should have authority to share both public and nonpublic information with domestic and foreign counterparts.
Description	<p>1. The Commission may request assistance from relevant overseas regulator.</p> <p>2. The Commission may exercise the following powers at the request of an overseas regulator for the purposes of assisting in the investigation of an offence committed in Jersey or elsewhere (including the provision of misleading statements and unauthorized business activities):</p> <ul style="list-style-type: none"> <li>• power to refuse or revoke a registration;</li> <li>• power to impose, revoke or vary conditions of a license;</li> <li>• powers of intervention (through the Court);</li> <li>• powers to obtain information and documents;</li> <li>• powers of investigation;</li> <li>• powers of entry (through the Bailiff); and</li> <li>• power to communicate information which is in the possession of the Commission, whether or not as a result of the exercise of any of the above powers.</li> </ul> <p>3. In deciding whether to exercise its powers under regulatory legislation, the Commission may (but does not have to) take into account, among other things:</p> <ul style="list-style-type: none"> <li>• whether corresponding assistance would be given to the Commission in the overseas territory;</li> <li>• whether the case concerns the possible breach of a law, or other requirement, which has no close parallel in Jersey or involves the assertion of a jurisdiction not recognized by Jersey;</li> <li>• the seriousness of the case and its importance in Jersey and whether the assistance could be obtained by other means; and</li> <li>• whether it is otherwise appropriate in the public interest to give the assistance sought.</li> </ul> <p>4. The policy of the Commission is to provide information and documents unless it believes that the request is made other than for the purposes of financial regulation or supervision. We are informed that no request of an overseas regulator has been declined on this ground.</p>
Assessment	Implemented
Comments	
<b>Principle 12.</b>	Regulators should establish information sharing mechanisms that set out when and how they will share both public and nonpublic information with their domestic and foreign counterparts.
Description	<p>1. The Commission is able to cooperate with overseas regulators without a MOU and does so. Nevertheless, it recognizes the certainty that such understandings add to the process of information exchange, and currently has MOU in place with thirteen jurisdictions (including the U.K., Germany, France, and the United States), and discussions are ongoing with others including Italy and the Netherlands.</p> <p>2. MOUs are based on a proforma document produced by the Forum of European Securities Commissions, which establishes, inter alia, the scope of assistance available, procedures for requesting assistance, the permissible uses of information exchanged, and confidentiality.</p> <p>3. The Commission is currently liaising with supervisors with which it has an MOU in place to establish whether they have any objections to its plan to publish each agreement on the Commission's web site.</p> <p>4. Certain MOUs have now been in place for a number of years. In that time the supervisory authorities and the laws under which they operate may have changed. The Commission will be reviewing the understandings with a view to updating where appropriate.</p> <p>5. The Commission is proposing to extend the number of MOUs in place with "home"</p>

	authorities.
Assessment	Implemented
Comments	
<b>Principle 13.</b>	The regulatory system should allow for assistance to be provided to foreign regulators who need to make inquiries in the discharge of their functions and exercise of their powers.
Description	<p>1. In 2001, the Commission conducted 70 investigations, of which 6 were at the request of overseas investigators and 9 were matters where the Commission notified other jurisdictions of issues relevant to them.</p> <p>2. The Commission considers that it has a strong commitment to effective cooperation on supervision, regulation and enforcement and that this is gaining widespread international recognition.</p>
Assessment	Implemented
Comments	
<b>Principles for Issuers</b>	
<b>Principle 14.</b>	There should be full, accurate and timely disclosure of financial results and other information that is material to investors' decisions.
Description	<p>1. Under the Companies (Jersey) Law 1991 and Orders made under the Law no person shall circulate a prospectus in Jersey and no Jersey company shall circulate a prospectus outside Jersey unless:</p> <ul style="list-style-type: none"> <li>• it contains all material information and all statements required by law, which includes audited financial statements; and</li> <li>• a copy has been delivered to the registrar signed by or on behalf of all of the directors of the company, a signed copy of any report included in or attached to it and such other particulars as the registrar may require; and</li> <li>• the registrar has given his consent to the circulation of the prospectus.</li> </ul> <p>2. The registrar may give his consent to the circulation of a prospectus which does not comply in every respect with the requirements of the law if he is satisfied that the deviation from those requirements does not affect the substance of the prospectus and is not calculated to mislead.</p> <p>3. The provisions of this law are in addition to the requirements of the Control of Borrowing (Jersey) Order 1958, which also requires the consent of the Commission for the circulation in Jersey of overseas prospectuses.</p> <p>4. A person who acquires or agrees to acquire a security to which a prospectus relates and suffers a loss in respect of the security as a result of the inclusion in the prospectus of a statement of material fact which is untrue or misleading, or the omission from it of the statement of a material fact, shall be entitled to compensation:</p> <ul style="list-style-type: none"> <li>• in the case of securities offered for subscription, from the body corporate issuing the securities and from each person who was a director of it when the prospectus was circulated;</li> <li>• in the case of securities offered otherwise than for subscription, from the person making the offer and, where that person is a body corporate, from each person who was a director of it when the prospectus was circulated;</li> <li>• from each person who is stated in the prospectus as accepting responsibility for the prospectus, or any part of it, but, in that case, only in respect of a statement made in or omitted from that part; and</li> <li>• from each person who has authorized the contents, or any part, of the prospectus.</li> </ul> <p>5. All companies are required by law to keep accounting records and to disclose financial and other information to shareholders on an annual basis. Foreign listing requirements will also apply to some companies. A public company must present audited financial statements to the Registrar of Companies within seven months of its period end. These statements are placed on the public record.</p>

	<p>6. Under the Companies (Jersey) Law 1991, any meeting of a company may be called:</p> <ul style="list-style-type: none"> <li>• in the case of the annual general meeting or a meeting for the passing of a special resolution, by 21 days' notice in writing; and</li> <li>• in the case of a meeting, other than an annual general meeting or a meeting for the passing of a special resolution, by 14 days' notice in writing.</li> </ul> <p>Every shareholder is entitled to notice of meeting.</p> <p>7. The Companies (Jersey) Law 1991 sets out that a director, in exercising his powers and discharging his duties, shall:</p> <ul style="list-style-type: none"> <li>• act honestly and in good faith with a view to the best interests of the company; and</li> <li>• exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.</li> </ul> <p>8. The Companies Law applies to CIFs that are companies (just as trusts legislation applies to CIFs that are trusts, and limited partnership legislation to those that are limited partnerships), except where expressly not applied. The regulation of CIFs depends on the CIF Law. The CIF Law empowers the government to make Orders "for prescribing any matter which is to be prescribed under this Law." This is a very general power. The Commission informed us that for this purpose the government has made rules of law about prospectuses, the appointment, removal, powers and duties of auditors, the keeping of records and the preparation and distribution of periodic reports. Orders are in place in respect of both Recognized and Unclassified CIFs.</p> <p>9. The investment adviser also has a responsibility in respect of the full, timely and accurate disclosure of information. The Codes or Practice for investment business establish a requirement on investment advisers to provide clients with adequate and fair information and with information that is not misleading. In this respect it is noteworthy that this matter is not more explicitly addressed in the Code of Practice for Investment Business.</p> <p>10. At present, except for Recognized funds, the advertising of public offerings is not subject to regulation. The Commission has recently issued a discussion paper on this matter with a view to making possible proposals to government. However the Commission has a power of direction under Article 12 CIF Law and considers it may use this in respect of defective advertising. Moreover it is an offence under this law to make a misleading, false or deceptive statement or promise.</p> <p>11. Jersey has no secondary market for securities and takes the view that it has no need for law, codes or rules to cover listings, periodic reports, reports of material events, take-overs or the change in control or change of interest holders associated with a publicly traded security. Where securities of Jersey companies are listed or traded, e.g., in the U.K., Ireland, Luxembourg, or Guernsey, the Commission expects trading in these securities, and the continuous trading obligations associated with this to be subject to regulation in the jurisdiction of the listing. As noted above however there are rules of law about offer documents and periodic reporting of CIFs.</p> <p>12. The mission has noted that the timeframes for periodic reporting as stated in the law and in the terms and conditions of registration or permits do not reflect the reasonable needs of stakeholders. The requirement for the annual report to be prepared and distributed should be a great deal shorter than the 7 months or 10 months at present prescribed in some laws or conditions of the Commission. The mission also suggests that the Commission consider whether it has the right balance in its supervisory effort between the quality or standing of the offeror and quality of the offer document. This is dealt with under Principle 10.</p>
Assessment	Broadly Implemented
Comments	See Principle 10
<b>Principle 15.</b>	<b>Holders of securities in a company should be treated in a fair and equitable manner.</b>
Description	Jersey has no secondary market upon which to trade securities and the Commission considers that there is no need for legislation, codes, or rules, to cover listings, continuous reporting, take-overs, or the change in control or of substantial shareholding interests in a listed company.

	<p>Where securities of Jersey companies are listed or traded, e.g., in the U.K., Ireland, Luxembourg, or Guernsey, trading is subject to regulation in that jurisdiction. Nevertheless Jersey generally has mature rules of law about companies, investments and intermediaries, providing for regulation and supervision in respect of the rights of investors and the orderly transaction of business.</p> <p>The prospectus rules provide for full disclosure of information about the identity of the promoter and offeror and, in the case of CIFs, the functionaries of a CIF. As noted above under Principle 14 there are rules of law about offer documents and periodic reporting of CIFs. The mission considers this an important pre-condition to fair and equitable treatment. The Commission wishes to extend the rules about ownership disclosure, which currently require details of changes in beneficial ownership of Jersey tax exempt companies to be filed with the Commission. The States are expected in 2003 to consider legislative proposals that will require all changes in the legal or beneficial ownership of Jersey companies to be reported to the Commission.</p>
Assessment	Implemented
Comments	
<b>Principle 16.</b>	Accounting and auditing standards should be of a high and internationally acceptable quality.
Description	<p>1. Under the Companies (Jersey) Law 1991, public companies are required to publish audited financial statements on an annual basis. Financial statements must be filed with the Registrar of Companies within seven months of a company's year-end.</p> <p>2. The auditors' report shall state whether in their opinion the financial statements have been properly prepared in accordance with the law and in particular whether a "true and fair" view is given. Jersey companies will normally adopt GAAP in the United Kingdom and the audit will be conducted on this basis. However under a Statement of Channel Islands Accounting Practice, it is recognized that the financial statements of companies incorporated other than in the Channel Islands should be drawn up to comply with the standards of the jurisdiction, e.g., United States GAAP, or International Accounting Standards. The accounting standards adopted will be disclosed in the audit report to the financial statements.</p> <p>3. Under the Companies Law, a copy of a company's latest accounts accompanied by a report thereon by the company's auditors shall be included in any prospectus.</p> <p>4. Under the Companies Law a person is not qualified for appointment as auditor of a public company unless he is a member of a recognized professional body, in particular: the Institute of Chartered Accountants in England and Wales;</p> <ul style="list-style-type: none"> <li>• the Institute of Chartered Accountants of Scotland;</li> <li>• the Association of Chartered Certified Accountants; or</li> <li>• the Institute of Chartered Accountants in Ireland.</li> </ul> <p>and is eligible for appointment under the rules of the body as an auditor.</p> <p>5. Qualified auditors who are members of any one of the above bodies will be subject to the independence rules and audit guidelines established by it and subject to its disciplinary authority.</p> <p>6. As noted above the Companies Law does not apply in respect of a CIF where the issuer is not a company. However it is not clear to the mission in the time available to them that financial reporting law applies effectively to other fund vehicles. The Commission may wish to consider this question further.</p> <p>7. As a matter of administrative policy the Commission reviews the financial statements of all CIFs; a checklist is used to perform this review.</p> <p>8. The Commission has informed us that it has been following developments in other jurisdictions about the authority for accounting and audit standards and the regulation of the accounting profession, although it has not initiated a formal review of these matters. The mission considers this practice should continue.</p>
Assessment	Implemented
Comments	The mission recommends that 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.
<b>Principles for Collective Investment Schemes</b>	
<b>Principle 17.</b>	The regulatory system should set standards for the eligibility and the regulation of those who wish to market or operate a collective investment scheme.
Description	<p>1. When considering an application from a person for a permit to operate under the CIFL, the Commission is required to have regard to:</p> <ul style="list-style-type: none"> <li>• the protection of the public;</li> <li>• the reputation of Jersey in financial and commercial matters;</li> <li>• the best economic interests of Jersey;</li> <li>• and to this end must consider the function to be performed by the applicant, the reputation of the applicant and the CIF to which his function relates; and</li> <li>• taking into account any other functions there are or may be of the CIF.</li> </ul> <p>2. The Commission evaluates promoters in terms of reputation, track record, relevant experience and financial resources. This usually means that promoters will be of international stature.</p> <p>3. The Commission, in considering an application, will take into account to whom the offer of interests will be made from a scale of “very public” (i.e., inexperienced investors) to “very private” (institutions or wealthy, experienced investors). For the most public of funds, the promoter will normally be expected to be a member of a group of companies, the ultimate parent of which is publicly listed on a major stock exchange, with no one person controlling more than 15 percent of shares.</p> <p>4. The Commission has established criteria (covering both regulatory requirements and best practice) for assessing operators of funds. If an applicant does not already hold a permit for a similar function, the Commission will visit the applicant’s premises to assess its operating procedures. It will also undertake independent enquiries.</p> <p>5. Financial resource requirements for the principal operators of Recognized funds are determined by legislation which requires that the operator’s investment position risk requirement be taken into account in the calculation.</p> <p>6. For other operators of Recognized funds and for all operators of Unclassified funds, the requirement is for financial solvency and a minimum issued and paid up share capital.</p> <p>7. Each permit is subject to a number of conditions. Typically these are:</p> <ul style="list-style-type: none"> <li>• that prior approval of the Commission be obtained for any changes to any of the constitutive documents of the fund;</li> <li>• that prior approval of the Commission be obtained for any changes to any of the functionaries of the fund;</li> <li>• that prior approval of the Commission be obtained for the introduction of any new sub-funds of an umbrella fund;</li> <li>• that prior approval of the Commission be obtained for issue of any prospectus or similar document for the fund;</li> <li>• that prior approval of the Commission be obtained for any changes to the ownership of the functionary;</li> <li>• that the annual and any interim reports and accounts of the fund, the functionary and the ultimate parent of the functionary be submitted to the Commission; and</li> <li>• that the Commission be notified of any change of the auditor or any directors of the functionary.</li> </ul> <p>8. Operators are also be subject to ongoing supervision by the Commission. The Commission</p>

	<p>has visited all registered persons within the past two years.</p> <p>9.The Commission also aims to investigate suspected breaches of legislation, review permit conditions for operators and take remedial action in the event of a default.</p> <p>10.The operation of collective investment schemes may be carried out by delegates outside of Jersey. Guidance is provided by the Commission in the form of a policy statement. Generally the Commission:</p> <ul style="list-style-type: none"> <li>• expects to be able to continue to supervise any transferred function outside of Jersey, including having access to records;</li> <li>• will require management to retain control over outsourced activity;</li> <li>• must be satisfied that the jurisdiction in which the delegate operates has an equivalent standard of regulation and supervision in place to that in Jersey; and</li> <li>• will communicate regularly with the “host” supervisor.</li> </ul> <p>11. The mission considers that the Commission sets standards for the eligibility and regulation of CIF operators.</p>
Assessment	Implemented
Comments	As noted elsewhere in this report the mission considers that the Commission should make more explicit reference in its policy and other statements to the importance of the offer and other promotional literature.
<b>Principle 18.</b>	The regulatory system should provide for rules governing the legal form and structure of collective investment schemes and the segregation and protection of client assets.
Description	<p>Funds established in Jersey take the form of a company, a trust or a limited partnership. The relative features of these structures lie outside the purview of this report. Rules of law are contained in the CIF Law and Orders made under it, also in the Companies Law, Trust Law and Limited Partnership Law. The relative duties of the operators of these schemes and the relative rights and duties should be set out in the constitutive documents and described in the prospectus.</p> <p>There are rules of law about the segregation of client assets and these are enforced. They extend to apply to client money.</p>
Assessment	Implemented
Comments	
<b>Principle 19.</b>	Regulation should require disclosure, as set forth under the principles for issuers, which is necessary to evaluate the suitability of a collective investment scheme for a particular investor and the value of the investor’s interest in the scheme.
Description	<p>1. Regulations relating to both Recognized and Unclassified funds require that a prospectus is prepared and that it is updated from time to time as necessary.</p> <p>2. The law determines who is responsible for preparing the prospectus and who is liable to compensate any investor who suffers loss as a result of a false or misleading statement in a prospectus.</p> <p>3. The regulations list the matters which must be addressed in the prospectus and also provide for the disclosure of any other matters which investors and their professional advisers would reasonably expect to have brought fairly to their attention for the purpose of making an informed judgment about the merits and risks of participating.</p> <p>4. Under Article 9 of the CIF Law it is an offence to make a statement or forecast knowing it to be misleading, false or deceptive.</p> <p>5. The Codes of Practice applying to those registered to do investment business covers the intermediaries obligation in respect of the suitability of investment products.</p>
Assessment	Implemented
Comments	
<b>Principle 20.</b>	Regulation should ensure that there is a proper and disclosed basis for asset valuation and the pricing and the redemption of units in a collective investment scheme.
Description	1. Regulations require that the value of the fund is determined on a regular basis and that the

	<p>frequency of valuation and methods to be adopted are determined by the constitutive documents and disclosed in the prospectus.</p> <p>2. Unclassified funds are permitted to operate either single-pricing or dual-pricing, recognized funds are only permitted to operate dual-pricing, but in either case the price of units must be based upon the net value of the assets. Generally, where assets are not listed or quoted on a recognized market, value is to be determined by a professional person approved by the depositary.</p> <p>3. The depositary is normally required to be satisfied that the measures adopted by the manager for valuing the fund and determining the prices of units are in accordance with the constitutive documents, the applicable legislation and the prospectus.</p> <p>4. The procedures for redemption or repurchase of units and the circumstances in which redemption or repurchase may be suspended must be described in the prospectus.</p> <p>5. The manager is required to publish sale and repurchase prices of units, together with the amount of any preliminary charge.</p> <p>6. Dealing in the units of the fund may be suspended in exceptional circumstances that satisfy conditions set out in the constitutional documents. Investors and the Commission must be notified when a suspension is introduced and when dealing is resumed. Applications to purchase or redeem units made during a period of suspension must be dealt with at the prices calculated immediately after the suspension ends unless the application is withdrawn before the suspension ends.</p>
Assessment	Implemented
Comments	
<b>Principles for Market Intermediaries</b>	
<b>Principle 21.</b>	<b>Regulation should provide for minimum entry standards for market intermediaries.</b>
Description	<p>1. All intermediaries conducting investment business are required to be registered under the FSL.</p> <p>2. This law and the Orders and code of practice made under it set out the requirements to be met before registration to conduct investment business is given. Requirements include:</p> <ul style="list-style-type: none"> <li>• minimum capital requirements;</li> <li>• professional indemnity insurance;</li> <li>• minimum qualification levels of employees;</li> <li>• segregation of clients assets; and</li> <li>• maintenance of adequate financial resources and adequate risk management systems.</li> </ul> <p>3. A registered person is expected to deal with the Commission in an open and cooperative manner, and is required to advise the Commission promptly of any matter that might reasonably be expected to affect their registration or be in the interests of investors to disclose.</p> <p>4. The Commission undertakes checks on all principal persons of the applicant, including major share-holders (individual or corporate), directors and any other person that may have any influence over the business's activities.</p>
Assessment	Implemented
Comments	
<b>Principle 22.</b>	<b>There should be initial and ongoing capital and other prudential requirements for market intermediaries that reflect the risks that the intermediaries undertake.</b>
Description	<p>1. Minimum capital levels are required under the law, together with adequate professional indemnity insurance.</p> <p>2. Entities are required to calculate exposures to market intermediaries on a daily basis. Certain classes of registered entities are required to notify the Commission of events affecting their liquidity.</p> <p>3. Registered entities are required on a daily basis to make a resource requirement calculation taking into account counterparty and exchange rate exposures. These calculations, together with any large exposures, must be reported to the Commission if the figures fall or rise above set</p>

	<p>levels. All entities are subject to supervision in accordance with the policies of the Commission.</p> <p>4. All entities are required to submit audited annual financial statements to the Commission.</p> <p>5. Sanctions are available for failure to meet prudential requirements (see principle 9).</p>
Assessment	Implemented
Comments	
<b>Principle 23.</b>	Market intermediaries should be required to comply with standards for internal organization and operational conduct that aim to protect the interests of clients, ensure proper management of risk, and under which management of the intermediary accepts primary responsibility for these matters.
Description	<p>1. All entities are required to follow a Code of Practice which covers internal and operational matters, protection of clients interests and the management of risk (see principle 21).</p> <p>2. Day to day supervision and management of market intermediaries is the responsibility of named principal persons.</p> <p>3. All intermediaries are subject to supervision by the Commission. The Commission's supervision practices are described under Principle 10 above.</p>
Assessment	Implemented
Comments	
<b>Principle 24.</b>	There should be a procedure for dealing with the failure of a market intermediary in order to minimize damage and loss to investors and to contain systemic risk.
Description	<p>1. Where the Commission is satisfied that there is sufficient evidence to show the existence of insufficient resources to continue to carry on an effective business, the Commission may apply to the Court for the appointment of a manager.</p> <p>2. This, together with professional insurance requirements, is expected to minimize potential loss to investors.</p> <p>3. No investor compensation scheme is in place (other than for investors in Recognized funds).</p> <p>4. The Commission does not have a clear contingency plan for dealing with the failure by market intermediaries. This might include a list of agreed managers from which to select a suitable manager.</p> <p>The mission does not at present consider that Principle is fully implemented.</p>
Assessment	Partially implemented
Comments	
<b>Principles for the Secondary Market</b>	
<b>Principle 25.</b>	The establishment of trading systems including securities exchanges should be subject to regulatory authorization and oversight.
Description	The Commission considers that Principle 25 does not apply. The mission agrees. There are no stock exchanges or trading systems in Jersey.
Assessment	Not applicable
Comments	
<b>Principle 26.</b>	There should be ongoing regulatory supervision of exchanges and trading systems, which should aim to ensure that the integrity of trading is maintained through fair and equitable rules that strike an appropriate balance between the demands of different market participants.
Description	
Assessment	Not applicable
Comments	
<b>Principle 27.</b>	Regulation should promote transparency of trading.
Description	
Assessment	Not applicable
Comments	
<b>Principle 28.</b>	Regulation should be designed to detect and deter manipulation and other unfair trading practices.
Description	While there are no stock exchanges and trading systems in Jersey there are a number of brokers registered with the Commission in Jersey who are also members of the London Stock Exchange



	<p>or the Channel Islands Stock Exchange in Guernsey. These brokers are subject to supervision by the Commission in Jersey and by the relevant Stock Exchanges. The Commission, under an agreement with the London Stock Exchange, carries out enhanced supervision of Stock Exchange member firms in Jersey. The Commission is supported in this supervision work by U.K. professional firms which also assist the FSA with its equivalent supervision work in the United Kingdom.</p> <p>An offence of market manipulation is provided for in the FSL, under which the Commission has wide-ranging inspection and investigation powers, including the power to obtain written and oral explanations and to require the production of documents.</p> <p>These powers can be exercised for the purpose of assisting a relevant supervisory authority, and the Commission is able to communicate to that authority information which is in its possession, whether or not as a result of the exercise of any of its powers, subject to certain safeguards and conditions included within the law.</p> <p>To the extent that Principle 28 applies the mission considers that it is implemented.</p>
Assessment	Implemented
Comments	
Principle 29.	Regulation should aim to ensure the proper management of large exposures, default risk and market disruption.
Description	There are no trading systems in Jersey. The regulation of sharebrokers dealing on offshore markets is dealt with under Principle 10, in particular, para 7.
Assessment	Not applicable
Comments	
Principle 30.	Systems for clearing and settlement of securities transactions should be subject to regulatory oversight, and designed to ensure that they are fair, effective and efficient and that they reduce systemic risk.
Description	
Assessment	Not applicable
Comments	

Table 14. Summary Observance of the IOSCO Objectives and Principles of Securities Regulation

Assessment Grade	Principles Grouped by Assessment Grade	
	Count	List
Implemented	18	1,3,5,8,9,11,12,13,15,16, 17,18,19,20,21,22,23,28
Broadly Implemented	3	2,10,14
Partially Implemented	2	4,24
Not Implemented	-	-
Not applicable	7	6,7,25,26,27,29,30

## Recommended actions and authorities' response to the assessment

### *Recommended actions*

Table 15. 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 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>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> <p>Principle 2: The Commission and government should review the authority under which the F&amp;E Committee 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 CIF functionaries.</p>
(CP 8–10) Principles for the Enforcement of Securities Regulation	<p>Principle 9: The Commission and government should review the respective roles of the Commission, 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> <p>The Commission regularly and routinely conducts on-site inspections of registered persons and others. It relies for this purpose on its statutory authority to obtain all the information which it reasonably</p>

Reference Principle	Recommended Action
	<p>requires to perform its functions under the regulatory laws. It does not rely on its formal power of entry. The mission believes that the ability to undertake on-site inspections without resort to the formal power of entry should be clearly and unambiguously stated in the Law.</p> <p>The Commission and the government should complete their work on possible proposals to empower the Commission to levy administrative fines and the circumstances in which this may be appropriate.</p>
(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 21–24) Principles for Market Intermediaries	<p>Principle 24: The Commission should finalize and disseminate a contingency plan for dealing with the failure of a market intermediary.</p>

### C. Authorities' Response to the Assessment

#### IOSCO Objectives and Principles of Securities Regulation

##### *Overview*

138. 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.

139. The authorities note that there are only two Principles which the Fund assesses as partially implemented. For one, the Fund considers that, on finalization of Codes of Practice for fund functionaries, Jersey will comply fully with the Principle. Public consultation on these Codes is already underway. For the other, the authorities note that the Commission needs only to formalize its contingency arrangements for dealing with the failure of a market intermediary to comply with the Principle. The authorities also note that Core Principle 2 which considers whether or not the Commission is operationally independent and accountable in the exercise of its functions and powers, is considered by the Fund to be implemented with respect to accountability.

140. A consolidated action plan, prepared by the authorities, is appended to Volume I of the assessment.

### ***Responsibilities of the regulator***

#### ***Objectives (CP 1)***

141. 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 ML and the FT. 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 (CP1)***

142. The statutory responsibility of the Registrar of Companies will be recognized in the Commission's 2003 annual report.

#### ***Control of borrowing by special purpose vehicles (CP1)***

143. 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 no additional action is proposed or required.

### ***Independence and accountability***

#### ***Independence (CP2)***

144. The authorities' response to the question of the Commission's independence is set out in the general comments on Volume I (page 21).

#### ***Fee raising powers (CP2)***

145. 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.

### ***Regulatory process***

#### ***Codes of Practice (CP4)***

146. The authorities have pointed out that public consultation on Codes of Practice for fund functionaries is already underway and it is intended that the Codes will be finalized in 2004.

*On-site inspections (CP 8)*

147. The authorities agree with the Fund that the Commission has wide information-gathering powers, which allow it to carry out on-site supervisory visits. Notwithstanding this, the authorities note that the Commission will recommend amending legislation, subject to consultation and legislative approval, explicitly referring to the collection of information by the Commission through regular supervisory visits.

***Enforcement powers***

*Regulator enforcement powers (CP9)*

148. The authorities response to the recommendation that the Commission be provided with civil monetary penalties and administrative fining powers is in Volume I, page 43.

149. 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 MOU with the Attorney General to formalize existing working practices for the enforcement of regulatory legislation and management of legislative breaches. Development of this MOU was well advanced at the time of the Fund's assessment.

150. 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.

***Use of powers and implementation of compliance program***

*Communication of information to investors and prospective investors (CP10)*

151. The authorities point out 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 CIF (Unclassified Funds) (Prospectuses) (Jersey) Order 1995 control the circulation of prospectuses.

152. Notwithstanding this, in 2004 the Commission is to consult on transferring the regulation of fund functionaries to the FSL, and is already consulting on Codes of Practice for fund functionaries. Both will facilitate regulatory focus on promotional literature for retail investment funds.

153. 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.

154. The Commission will also review in 2004 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 CIFs through Codes of Practice. Any changes proposed would be subject to a period of consultation and legislative approval.

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

### ***Accounting and auditing standards***

#### ***Financial reporting and audit standards (CP16)***

156. The authorities observe 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.

157. 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.

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

### ***Failure of market intermediary***

#### ***Contingency arrangements (CP24)***

159. The authorities point 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.

160. 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.

### ***Body of assessment***

#### ***Powers, resources and capacity to perform functions and exercise powers (CP3)***

161. The authorities do not accept that Jersey's courts will have difficulty in applying regulatory legislation to particular situations. While grounds for exercising powers of the Commission may be expressed in general terms in legislation, Codes of Practice in place for trust company business and investment business establish sound principles for the conduct of business in a "fit and proper" manner.

162. Codes of Practice have been drafted for deposit-taking, CIF functionalities and for insurance business and, in the case of fund functionalities and insurance business, have already been issued for consultation. Codes of Practice for deposit-taking business are to be issued for consultation in 2003. It is intended that all Codes of Practice will be brought into force in 2004, when finalized.

#### ***Enforcement powers (CP 9)***

163. The authorities' response to the question of the Commission's fining powers is set out in Volume I (page 43).

## **V. DETAILED ASSESSMENT AGAINST THE OGBS STATEMENT OF BEST PRACTICE FOR TRUST AND COMPANY SERVICE PROVIDERS**

### **A. General**

164. In August 2002, a Working Group established by the OGBS produced a draft "Statement of Best Practice" (Statement) for trust and company service providers (CSP). It has been agreed with the Commission that the Statement will be used for the assessment of trust and company service providers in Jersey.

165. The mission is extremely grateful to the Director and staff of the Commission and, in particular, to the staff of the Finance Business Division for the assistance and cooperation that has been provided in the undertaking of this assessment.<sup>8</sup>

### **Methodology**

166. As this is the first time that the Statement of Best Practice has been used in an Offshore Financial Sector Assessment, it has been necessary to develop a methodology for the assessment based on the Statement.

167. The Statement has been drafted to be applicable to trust and company service providers whether or not they are based in a jurisdiction that has a formal licensing and supervisory regime. In the circumstances, unlike the principles applicable to banking, insurance and securities, the Statement does not require that trust and company service

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<sup>8</sup> The review was undertaken by Richard Carpenter (Consultant MFD)

providers are licensed or that they are subject to ongoing supervisory or enforcement procedures.

168. Even though Jersey has chosen to register and supervise trust and company service providers, the mission concluded that, to ensure consistency between this and future assessments of other jurisdictions, some of which may not have a formal system of licensing and regulation in place, it was not appropriate to assess issues such as the independence, accountability and resourcing of the regulator, the licensing process, ongoing supervision or enforcement except to the extent necessary to assess compliance with the Best Practice Statement.

169. Furthermore, the mission has had to make certain assumptions in the way that it has interpreted the Best Practice Statement.

170. The Best Practice Statement is expressed as a set of general principles rather than as a set of detailed criteria. In the circumstances, the mission has provided an indication of how Jersey compares with the Best Practice Statement but has not attempted to provide a specific measure of compliance as it has in respect of the Basel, IAIS and IOSCO Principles.

171. The OGBS Best Practice Statement includes the following:

- Fit-and-proper criteria.;
- Conduct of business;
- The holding and sharing of information;
- Cessation of business;
- Misleading statements.

#### **Additional issues**

172. The assessment team has, of course, had the opportunity of examining the regulation of trust and company service providers as undertaken in Jersey. Although the report contains recommendations to the Commission, it should be appreciated that it is not, and should not be considered to be, an assessment.



Table 16. Detailed Review Against the OGBS Statement of Best Practice for Trust and Company Service Providers

Definition of Trust and Company Service Business	
<b>Principle 1.</b>	The scope of trust and company service business should be adequately defined.
Description	<p>Trust company business is defined in Article 2(3) of the FSL. In summary, trust company business covers the following activities :</p> <ul style="list-style-type: none"> <li>• the formation of companies or partnerships;</li> <li>• acting as (or arranging for another to act as) the director of a company;</li> <li>• acting as (or arranging for another to act as) the partner of a partnership;</li> <li>• acting as (or arranging for another to act as) the secretary of a company;</li> <li>• providing a registered office, business or accommodation or correspondence address for a company or partnership;</li> <li>• acting as (or arranging for another to act as) the trustee of an express trust ; and</li> <li>• acting as nominee shareholder or unit holder for another person.</li> </ul> <p>As the definition of “trust company business” is so wide, it has been necessary to exempt number of classes of persons from the application of the FSL. The exempted persons are divided into two categories. Persons in the first category (which is the larger category), although exempted from the requirement to register, are still subject to most of the regulatory and enforcement provisions of the FSL. Persons in the second category are exempted completely from the FSL. The second category includes persons already regulated by the Commission and liquidators and trustees in bankruptcy.</p> <p>The exemptions in the first category include a person recognized by the Commission as an experienced personal advisor. This is discussed further in the Additional Issues.</p> <p>It is noted that executors and administrators are exempted from registration under the FSL. The mission was advised that this is intended to cover persons, particularly lawyers, who have traditionally acted in the administration of the estates of deceased Jersey residents. While this intention is not necessarily inappropriate, the exemption is unrestricted and would appear to enable a local service provider to act as executor in the estate of a nonresident.</p> <p>The Commission has advised us that it does not consider this to be a significant problem in practice. Nevertheless, it is recommended that the FSL is amended to restrict the exemption.</p>
Comments	<p>The mission recommends two further changes to the definition of trust service business in the FSL, even though these are not included in the OGBS Best Practice Statement.</p> <p>Firstly, consideration should be given to broadening the definition of trust company business to include acting as enforcer, protector and custodian. Custodians may fall within the existing definition, but this will not necessarily be the case. Furthermore, as the FSL definition includes arranging for another to act as a trustee, the protector of a trust may also fall within the definition if he has the power to appoint a trustee, but probably not otherwise. To avoid any doubt, it is therefore recommended that the definition of trust company business be amended to specifically include enforcers, protectors and custodians.</p> <p>Secondly, the definition of trust company business in the FSL does not include the provision of trust management and administration services. Although these activities would, in certain circumstances, be caught by the definition of investment business, this will not necessarily be the case. It is considered, therefore, that persons who, in the course of their business, act in a fiduciary capacity as trust administrators may not be regulated at all under the FSL. The risk to the jurisdiction would be exacerbated if the trustee was to be located outside Jersey, particularly if the trustee is not subject to regulation. Although the mission has been advised by the Commission that it does not consider this to be a problem in practice, it is recommended that the definition of trust company business is amended to close this lacuna.</p>

Fit-and-Proper Criteria	
<b>Principle 2.</b>	All countries/jurisdictions should require that those individuals holding key positions in a trust or company service provider ("key persons") should be fit and proper.
Description	<p>Article 7 of the FSL enables the Commission to require an applicant for registration as a trust company business to provide such information as it may require in respect of persons who are principal persons in relation to the applicant. A principal person is a person:</p> <ul style="list-style-type: none"> <li>• who is a director of the applicant;</li> <li>• who, individually or together with others, holds more than 10 percent of the shares in the applicant;</li> <li>• who, individually or together with others, holds or controls more than 10 percent of the voting power of the applicant; or</li> <li>• who exercises significant influence over the management of the company through his holding in the company.</li> </ul> <p>The Commission requires all principal persons to complete a personal questionnaire. Unless the person concerned has completed a questionnaire during the previous five years and there have been no material changes in his circumstances, the personal questionnaire must be completed in long form. The long form questionnaire is comprehensive and covers all the matters specified in the Best Practice Statement.</p> <p>On receipt of the personal questionnaire, the Commission carries out a police check against the individual concerned and checks his name against relevant professional body websites, the Commission's own internal databases, the DTI/UK Companies House website, which indicate disqualified Directors, a U.K. based shared regulatory database and the information held on a closed user data base run by the Viscount's Chambers. The database maintained by the Viscount's Chambers lists the Jersey equivalent of County Court judgments and bankruptcy orders, etc.</p> <p>Where a principal person comes from a foreign jurisdiction, equivalent checks are carried out in other countries using the services of commercial intelligence gatherers such as FT profile, 192.com and Equisearch.</p> <p>Inter regulatory references are also taken up.</p> <p>The OGBS Best Practice Statement provides that jurisdictions should require that "individuals holding key positions" are fit and proper. This would appear to include senior management below director level. Article 7 does not specifically extend to senior managers unless they are also directors.</p> <p>The Codes of Practice go some way to bridging this apparent gap as they require:</p> <ol style="list-style-type: none"> <li>a registered person to ensure that its senior managers and employees are fit and proper for their role (section 3.1); and</li> <li>that a registered person must ensure that a certain percentage of employees in various categories have the minimum levels of qualifications and experience specified in the First Schedule to the Codes.</li> </ol> <p>The Codes also require trust company business employees to undergo minimum levels of continuing professional development.</p> <p>The Commission satisfies itself that the principal persons and senior management staff of all applicants meet the qualification and experience criteria in the Codes. In addition the registered person is required under the Codes to ensure that it vets and monitors the competence and probity of its partners, directors, senior managers and other employees.</p> <p>Notwithstanding the above, it is recommended that senior management below director level should also be required to complete a long form personal questionnaire. The Commission may consider that this can be done without amending the FSL given that Article 8(3) enables the Commission to consider the fit and properness of "persons employed by or associated with" the applicant. However, given the explicit references to "principal persons" throughout article 7 of</p>

	<p>the FSL, it is recommended that the FSL is amended to empower the Commission in terms to seek information from applicants concerning their key (nondirector) employees. This could be achieved by extending the definition of "principal person."</p> <p>With regard to ongoing enforcement, given the language of Article 8(3) quoted above, the Commission clearly has the power to revoke a registration, or to impose other regulatory sanctions such as issue of a direction (specifically Article 20(2)(b)) requiring the removal of such persons, if it considers that any person having functions in relation to the registered person are detrimental in terms of customers interests or the reputation of Jersey.</p> <p>Article 11 of the FSL permits the Commission (on fit and proper grounds) to object to a person becoming a principal person and to object to a person continuing as a principal person.</p> <p>As indicated, the definition of principal person does not extend to key (nondirector) employees. It is recommended that such employees are also brought within the scope of Article 11.</p>
Comments	<p>The OGBS Best Practice Statement does not extend to holders of an interest in a trust or company service provider. Nevertheless, the FSL covers persons holding a significant interest as described above and to that extent it exceeds the Best Practice Statement.</p>
<b>Conduct of Business</b>	
<b>Principle 3.</b>	<p>All countries/jurisdictions should require that those providing the service of trust or company service provider exhibit evidence that their business will be or is being conducted in accordance with the proper corporate governance, customer due diligence, conduct of client business, financial soundness, and systems and controls requirements.</p>
Description	<p>The OGBS Statement provides that jurisdictions should require trust and company service providers to <i>exhibit evidence</i> that their business will be or is being conducted in accordance with the relevant conduct of business principles (emphasis added).</p> <p>In respect of an applicant for registration as a trust company business, requiring an applicant to supply the Commission with information, documentation and explanations as part of the application process that is satisfactory to the Commission will be consistent with Principle 3 as the applicant will have exhibited evidence that, as far as can be determined at the application stage, his business will be conducted in accordance with the conduct of business principles.</p> <p>The Commission required applications for trust company business licenses to be received by 1 February 2001 and has undertaken the process of assessing applications during 2001 and 2002. Pre-authorization compliance inspections were carried out in respect of some 60 trust company businesses and it is understood that conduct of business issues formed a major part of the focus of most of the visits.</p> <p>In respect of a trust company business that is registered, consistency with Principle 3 may be achieved through the filing of regular returns and/or through the on-site inspection process. Following completion of most of the licensing process, the Commission's on-site program for trust company businesses commenced in April 2003.</p> <p>The Financial Services (Trust Company Business (Accounts, Audits and Reports)) (Jersey) Order 2000 ("the Accounts Order") requires every trust company business to file on an annual basis a declaration that the registered person:</p> <ul style="list-style-type: none"> <li>• has complied with the requirements of the FSL, the Orders and the Codes of Practice relevant to the registered person and has maintained proper accounting records and adequate systems to enable the registered person to do so; and</li> <li>• has complied with the requirements of all legislation that relates to ML with which the registered person is required to comply.</li> </ul> <p>The Accounts Order further provides the a registered trust company business must furnish to the Commission on an annual basis an auditor's report in respect of the declaration and any report prepared by an internal or external auditor or by an accountant or consultant that addresses any breakdown or material weakness in the company's internal control procedures and the consequential recommendations for their improvement. The audit report, while not a positive endorsement of the declaration of the trust company business, does provide a negative assurance to the effect that, during the course of his audit, the auditor found no information</p>

	<p>which would lead him to believe that the declaration was made falsely.</p> <p>Insofar as the OGBS Best Practice Statement is covered by the Codes of Practice, the filing requirements of the Accounts Order will greatly assist Jersey to achieve consistency with this Principle. The Commission's position will be further strengthened once the on-site compliance program has commenced provided that it covers the various matters specified in the OGBS Best Practice Statement.</p> <p>In order to establish consistency with the OGBS Best Practice Statement, it is therefore necessary to consider whether there is a positive equivalent obligation on registered trust company businesses. To the extent that there is, the declaration together with the auditor's negative assurance will provide substantial consistency with the OGBS Best Practice Statement. In order for the FSL and the practice of the Commission to be fully consistent with the OGBS Best Practice Statement, it is considered that the Commission will have to have an effective on-site monitoring program in place. This program commenced in April 2003 and employs three route planners (onsite visit programs), which cover trust company business specific issues as well as AML and corporate governance issues.</p> <p>It should also be noted that, at present, there are some 30 trust company businesses operating under the transitional registration provisions. Although these companies are covered by the supervisory and enforcement provisions in the FSL, most have not yet been registered because the Commission is not fully satisfied that they meet the registration criteria. In many cases the failure relates to an inadequate span of control and the majority of firms are working actively towards merger under strict timetables imposed by the Commission.</p> <p>Those transitional companies that failed to meet the conduct of business requirements of the Best Practice Statement will not be able to "exhibit evidence" of compliance as required.</p> <p>The Commission is reluctant to refuse a trust company business registration while the applicant is still working towards full compliance and in many cases, trust company businesses have been given a limited period of time to comply.</p> <p>Nevertheless, while it is unfortunate that after a period of some 18 months since the registration system came into force there are still a number of trust company businesses operating as transitionals, it is to the Commission's great credit that it is demanding existing businesses to rise to the expected standards and has not permitted a "grandfathering" of substandard firms to populate the regulated community.</p> <p>The continuing operation of trust company businesses that do not comply with registration requirements exposes the Commission to the risk that a failure of a transitional company will tarnish the reputation of the Commission.</p> <p>In the circumstances, the Commission should to consider imposing a reasonable final deadline on every outstanding transitional (depending upon its circumstances) before which the transitional will have to meet the licensing criteria. Any trust companies businesses that do not comply should be refused registration. This will bring certainty to the situation and will enable a proper assessment to be made of Jersey's consistency with the Best Practice Statement.</p> <p>The analysis of the legislation and Codes of Practice set out below takes no account of the transitionals.</p> <p><b>Corporate Governance</b></p> <p>The OGBS Best Practice Statement in respect of corporate governance covers compliance with general standards of corporate governance, FATF Recommendations, relevant financial regulatory standards, relevant domestic statutory obligations and recognized standards in respect of directors and trustees responsibilities.</p> <p><b>Compliance with General Corporate Governance Standards</b></p> <p>It is assumed that by "general standards," the Best Practice Statement is referring to generally agreed international standards. Although much work has been carried out on corporate governance (see for example, the OECD Principles of Corporate Governance), there are currently no generally accepted international corporate governance standards. The OECD</p>
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	<p>Principles apply principally to publicly traded companies.</p> <p>The Commission is, however, properly concerned with corporate governance both at the application stage and as part of the ongoing regulatory process. Article 8(3)(a) of the FSL enables the Commission to refuse an application for, or revoke, a registration where it is not satisfied as to the structure and organization of the applicant or registered trust company business.</p> <p>The Codes of Practice set out eight fundamental principles applicable to trust company business. The following relate to corporate governance issues:</p> <ul style="list-style-type: none"><li>• a registered person must organize and control its affairs effectively for the proper performance of its business activities and be able to demonstrate the existence of adequate risk management systems; and</li><li>• a registered person must be transparent in its business arrangements.</li></ul> <p>These functions are expanded in sections 3 and 4 of the Codes.</p> <p>The Commission also has requirements concerning span of control that are covered in the section of this review concerning systems and procedures.</p> <p>The Commission's enforcement powers are sufficient to enable it to intervene where it is satisfied that the registered trust company business is not applying high corporate governance standards.</p> <p>Given the lack of internationally agreed general standards of corporate governance, it is difficult to carry out an assessment of whether Jersey is consistent with this aspect of the Principles. However, the FSL and the Codes of Conduct provide a sufficient basis for the Commission to ensure consistency with this aspect of the Best Practice Statement once international standards have been agreed.</p> <p>Compliance with FATF Recommendations</p> <p>The class of persons required to comply with the Money Laundering (Jersey) Order 1999 is set out in the Second Schedule to the Proceeds of Crime (Jersey) Law 1999. The businesses of "providing trusteeship services," "company formation" and "company administration" are all covered.</p> <p>Those persons that carry on trust company business and that fall within the definition set out in the Proceeds of Crime (Jersey) Law, are clearly covered by the Money Laundering (Jersey) Order. That Order, the AML guidance notes and the primary ML, drugs and terrorism legislation is covered in the AML/CFT Assessment and is not considered further here.</p> <p>Jersey's AML legislation covers trust company businesses. Certain persons are regulated trust company businesses under the FSL but are not subject to the Order. For example, the following regulated activities do not appear to be subject to the Order:</p> <ul style="list-style-type: none"><li>• acting as a partnership formation agent;</li><li>• arranging for another person to act as a director (assuming that acting as a director falls within the definition of company administration in the Proceeds of Crime Law);</li><li>• acting as or fulfilling the function of or arranging for another person to act as or fulfill the function of a partner of a partnership;</li><li>• providing a registered office for a partnership;</li><li>• providing an accommodation, correspondence or administrative address for a partnership (and possibly a company if it does not fall within the definition of company administration);</li><li>• arranging for another person to act as trustee of an express trust; and</li><li>• acting as (or arranging for another) to act as nominee shareholder or unit holder.</li></ul>
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	<p>Section 3.1.6 of the Codes of Practice provides that all registered persons must comply with the Proceeds of Crime (Jersey) Law, the Money Laundering (Jersey) Order and follow the standards set out in the AML guidance notes. To that extent, the AML provisions applicable to financial services businesses are brought within the regulatory regime. However, the above regulated activities are not directly subject to the Order and are therefore wholly outside the criminal sanctions for breaches of the Order.</p> <p>The definition of financial services business in the Proceeds of Crime Law does not require amending legislation but can be amended by Regulation. It is recommended that the definition is amended to precisely match the definition of trust company business in the FSL.</p> <p>Compliance with Relevant Financial Regulatory Standards</p> <p>The Best Practice Statement provides that jurisdictions must require trust and company service providers to comply with any relevant financial regulatory standards.</p> <p>Financial soundness and accounting and auditing standards are considered later in this Report.</p> <p>Compliance with all Relevant Domestic Statutory Obligations</p> <p>The domestic legislation of principal relevance to trust company businesses is the Companies (Jersey) Law 1991, the Limited Partnerships (Jersey) Law 1994 and the Trusts (Jersey) Law 1984.</p> <p>Sections 3.1.7 to 3.1.11 of the Codes of Practice require that registered persons:</p> <ul style="list-style-type: none"> <li>• comply with their statutory obligations in Jersey (in the case of Jersey companies) and in the relevant jurisdiction (in the case of companies incorporated outside Jersey);</li> <li>• ensure that they, or those providing company management services (whether its employees or others) are suitably competent and understand their duties under the relevant laws;</li> <li>• have adequate procedures to ensure that, where appropriate, relevant documentation is subject to legal review.</li> </ul> <p>Sections 3.1.13 to 3.1.14 of the Codes of Practice make equivalent provision with regard to the provision of trust service providers.</p> <p>In the circumstances, the filings required to be made under the Accounts Order provide evidence of compliance with relevant domestic statutory obligations.</p> <p>Compliance with Recognized Standards in Respect of Directors' and Trustees Responsibilities</p> <p>Although work has been carried out in some jurisdictions concerning the responsibilities of directors and trustees, there are currently no generally recognized international standards. In most common law jurisdictions, duties are imposed on directors and trustees in part through statute and in part through case law. It is understood that this is the case in Jersey.</p> <p>The Companies (Jersey) Law 1991 (Article 74) goes further than the legislation of some jurisdictions by setting out specific duties for directors of companies. These duties apply equally to trust company businesses when they act as directors as they do to other directors and are brought into the regulatory regime by virtue of sections 3.1.7 to 3.1.11 of the Codes of Practice.</p> <p>The Trusts (Jersey) Law 1984 imposes duties on a trustee (Articles 17 to 19) and imposes liabilities on trustees who act in breach of trust (Articles 26 to 30). These duties also apply to trust company businesses when they act as trustee.</p> <p>Insofar as directors' or trustees' duties are imposed by statute, the filings required to be made under the Accounts Order provide evidence of consistency compliance with relevant domestic statutory obligations. This is not strictly the case insofar as duties are imposed through case law as this would not appear to fall within the phrase "relevant laws." However, it is not considered that this goes to consistency with the Best Practice Statement.</p>
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	<p>Customer Due Diligence</p> <p>Customer due diligence is considered in the AML and CFT sections of this Report.</p> <p>Conduct of Client Business</p> <p>The OGBS Best Practice Statement in respect of the conduct of client business covers:</p> <ul style="list-style-type: none"> <li>• identification and segregation of clients' assets;</li> <li>• effective handling of clients' assets;</li> <li>• maintaining adequate accounting records of clients' affairs;</li> <li>• maintaining adequate client documentation; and</li> <li>• ensuring that all transactions and/or decisions are appropriately authorized and/or handled by persons with the appropriate knowledge, experience and status.</li> </ul> <p>Identification and Segregation of Clients' Assets</p> <p>Article 18A of the FSL requires a trust company business to segregate and identify trust property and any other assets or property not beneficially owned by the trust company business (defined as "trust company business assets").</p> <p>The Financial Services (Trust Company Business (Assets – Customer Money)) (Jersey) Order 2000 (the "Customer Money Order") prohibits trust company businesses from mixing customer money and other money and from using customer money without authority. The CMO also requires trust company businesses to reconcile customer monies and imposes requirements on trust company businesses that keep customer money in a pooled bank account.</p> <p>Although trust company business assets are not subject to any audit requirements, the declaration filed in accordance with the Accounts Order and the negative assurance of the auditor is evidence of compliance with Article 18A of the FSL and the relevant provisions of the CMO.</p> <p><b>Effective Handling of Clients' Assets, Maintaining Adequate Accounting Records of Clients' Affairs and Maintaining Adequate Client Documentation</b></p> <p>Section 3.7 of the Codes of Practice contains requirements concerning record keeping. In broad terms, the Codes require:</p> <ul style="list-style-type: none"> <li>• that orderly and adequate accounting records are kept;</li> <li>• that the records are kept in Jersey; and</li> <li>• that records are kept for at least 10 years.</li> </ul> <p>The Codes also require trust company businesses to understand their obligations under the legislation relevant to the entities for which they are providing services, whether this is legislation of Jersey or elsewhere. The Companies (Jersey) Law 1991 and the Trusts (Jersey) Law 1984 contain requirements for Jersey companies and trustees to maintain records. Additionally the Money Laundering (Jersey) Order 1999 requires records to be kept relating to customer identification and transactions. Nevertheless, it is not absolutely clear that the Codes apply to client accounting records. The Codes should be so amended to demonstrate full consistency with the OGBS Best Practice Statement concerning records of clients' affairs. The section suggests that the record keeping requirements are necessary to ensure compliance with paragraphs 3.1.3 and 3.1.5 of the Codes of Practice. These relate, inter alia, to the business and affairs of the registered person and to the registered person's business transactions and financial position. While it is accepted that this could be construed as including a reference to client assets, it is considered that because there is no specific reference to client assets, the provision is at least ambiguous.</p> <p>Article 18A requires, in general terms, that a registered person must identify trust business assets. Article 2 of the CMO requires a trust company business to keep adequate records of customer money. However, this does not apply to nonmoney assets.</p>
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	<p>In the circumstances, in order to remove any doubt, it is recommended that the record keeping requirements in the Code are amended to clearly state that they apply to records of clients' affairs, including client documentation.</p> <p>Ensuring that Transactions and/or Decisions are Appropriately Authorized and/or Handled</p> <p>In respect of the appropriate authorization and handling of client affairs, the OGBS Best Practice Statement covers the proper exercise of discretion exercised in relation to clients affairs, the handling of conflicts of interest and the expeditious handling of client business.</p> <p>It is considered that the following provisions demonstrate consistency with this Best Practice Principle:</p> <ul style="list-style-type: none"><li>(a) The introduction, through the Codes of Practice, of categories of employees with specific qualification requirements and role indicators (which is of great assistance in ensuring competent staff is responsible for the conduct of client files and transactions).</li><li>(b) The requirements for the apportionment of responsibility, supervision of employees and signatory requirements set out in paragraphs 3.1.3 and 3.1.4 of the Codes of Practice.</li><li>(c) The requirement in section 3. of the Codes of Practice for high levels of competence of staff.</li><li>(d) The requirements in section 2 of the Codes of Practice that require that a registered person only exercise discretion for a proper purpose, and on the basis of adequate information.</li><li>(e) The requirements in section 2 of the Codes of Practice that require a registered person to avoid conflict, or where unavoidable, address them through disclosure, internal "Chinese walls," etc.</li><li>(f) The requirements in section 2 of the Codes of Practice that a registered person should withdraw his services in a timely manner.</li><li>(g) The requirements in section 3 of the Codes of Practice that a registered person arranges its affairs for the proper performance of its business and in section 2 that a registered person transacts its business expeditiously.</li><li>(h) Section 3.1.4 of the Codes of Practice which requires procedures to be put in place governing sole, dual or multiple authorizations for handling trust company business assets.</li></ul> <p>Given that the above are all requirements of the Codes of Practice, the filings required to be made under the Accounts Order provide evidence of compliance.</p> <p>Furthermore, breach of the Codes of Practice is a ground for revocation of the registration of a trust company business.</p> <p><b>Financial Soundness</b></p> <p>The OGBS Best Practice Statement in respect of financial soundness covers:</p> <ul style="list-style-type: none"><li>• maintaining adequate and orderly accounting records of the business and clients' affairs;</li><li>• maintaining adequate financial resources including paid up capital and liquid capital;</li><li>• compliance with any relevant financial regulatory standards;</li><li>• compliance with international accounting standards; and</li><li>• maintaining adequate professional indemnity cover.</li></ul> <p><b>Maintaining Adequate and Orderly Accounting Records of the Business and Clients' Affairs</b></p> <p>It is considered that the FSL and the Accounts Order impose requirements on registered persons consistent with the Best Practice Statement in respect of the affairs of the trust company business.</p> <p>The position with regard to accounting records of clients' affairs is discussed under "Conduct of Client Business" above.</p>
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	<p><i>Maintaining Adequate Financial Resources Including Paid Up Capital and Liquid Capital and Compliance With Relevant Financial Regulatory Requirements</i></p> <p>Article 8 of the Law requires, in general terms, that the Commission is satisfied initially and on an ongoing basis that the registered person is of adequate financial standing.</p> <p>Section 5 of the Codes of Practice indicates that adequate financial resources means:</p> <ul style="list-style-type: none"> <li>(a) a minimum of £25,000 paid up share capital (or evidenced net assets for non-incorporated entities); and</li> <li>(b) a surplus of Adjusted Net Liquid Assets over Expenditure Requirements calculated in accordance with the Second Schedule to the Code.</li> </ul> <p>Essentially, the liquidity calculation requires the trust company business to demonstrate three months rolling expenses available as liquid capital. The Codes of Practice require trust company businesses to undertake a liquidity calculation at least once in every three months.</p> <p>Alternatively, a trust company business may place a deposit of an equivalent amount under lien to the Commission or provide an irrevocable bank guarantee.</p> <p>Different provisions apply if the trust company business is an affiliation member.</p> <p>The Commission may raise the capital requirements, either generally, or in relation to a particular trust company business by imposing a condition on its license.</p> <p>There are no international standards or best practices in relation to the amount of capital and liquidity appropriate for trust and company service providers and the mission is therefore unable to comment upon the reasonableness of this provision.</p> <p>The principal mechanism for requiring trust company businesses to evidence their compliance with the financial regulatory standards is the FSL which provides for the submission on an annual basis of audited accounts.</p> <p>Additionally, section 6 of the Codes of Practice requires every trust company business to notify the Commission of any significant event which renders the registered person unable to comply with the Codes. Failure to meet the required liquidity requirements would constitute such an event.</p> <p><i>Compliance With International Accounting Standards</i></p> <p>Article 8 (5) of the Accounts Order requires the financial statements of a trust company business to be prepared in accordance with U.K. Accounting Standards issued by the U.K. Accounting Standards Board.</p> <p>This is considered further under Principle 5.</p> <p><i>Maintaining Adequate Professional Indemnity Cover</i></p> <p>Section 5(4) of the Codes of Practice requires all trust company businesses to maintain minimum levels of professional indemnity insurance (PII). PII must include fidelity guarantee and director's and officer's insurance.</p> <p>The Codes of Practice detail the nature and extent of PII cover required and the maximum levels of excess. The minimum PII cover required is the greater of:</p> <ul style="list-style-type: none"> <li>(a) three times relevant fees and Commissions;</li> <li>(b) thirty times relevant fees and Commissions from the single largest customer of the registered trust company business; and</li> <li>(c) £5,000,000 for each and every claim; subject to a maximum of £10,000,000 for each and every claim.</li> </ul> <p>There are no international standards best practices in relation to PII cover for trust and company service providers and the mission is therefore unable to comment upon the reasonableness of</p>
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	<p>this provision.</p> <p><b>Systems and Procedures</b></p> <p>The OGBS Best Practice Statement in respect of systems and procedures covers:</p> <ul style="list-style-type: none"> <li>• effective compliance functions;</li> <li>• effective reporting requirements;</li> <li>• an effective complaints handling system;</li> <li>• the maintenance of adequate and orderly records;</li> <li>• the maintenance of a policy and procedures manual;</li> <li>• ensuring an adequate span of control;</li> <li>• ensuring minimum levels of qualifications and relevant experience;</li> <li>• ensuring that professional development requirements are met;</li> <li>• ensuring a full understanding of the duties arising under the laws relevant to the affairs of client corporate vehicles, trusts and other legal entities for which trust company businesses are acting.</li> </ul> <p><b>Effective Compliance Functions</b></p> <p>Sections 3.1.4 Codes of Practice requires every trust company business to appoint a compliance officer. Section 3.5 of the Codes sets out the responsibilities of the compliance officer.</p> <p>The Commission must be advised of any proposed change in the compliance officer of a trust company business and a completed personal questionnaire in respect of the new compliance officer must be submitted to the Commission. The compliance officer must report directly to the Jersey management Board unless the Commission permits otherwise.</p> <p>As the compliance function is a requirement of the Code, the declaration required to be furnished by a trust company business to the Commission under the Accounts Order, supported by the negative audit assurance, will provide evidence as to whether or not the trust company business has adequate compliance procedures.</p> <p>The mission therefore considers that the Codes of Practice are consistent with the OGBS Best Practice Statement in this regard.</p> <p><b>Effective Reporting Requirements:</b></p> <p>The OGBS Best Practice Statement requires that trust company businesses exhibit evidence that they have effective reporting requirements in place which include the designation or appointment of an appropriately skilled and experienced person as an AML reporting officer.</p> <p>The Proceeds of Crime (Jersey) Order requires that every financial services business appoints a MLRO. As indicated above, the definition of financial services business in the Proceeds of Crime (Jersey) Law does not include all trust company businesses.</p> <p>As the Codes of Practice require every trust company business to comply with the Money Laundering (Jersey) Order, there is a regulatory requirement on every trust company business to appoint a MLRO. However, as indicated above, to bring all trust company businesses within the criminal regime, it will be necessary to amend the definition of “financial services business” in the Second Schedule to the Proceeds of Crime (Jersey) Law and it is recommended that this is done.</p> <p><i>An Effective Complaints Handling System</i></p> <p>The OGBS Best Practice Statement indicates that an effective complaints handling system should include the maintenance of a record of complaints and the actions taken to resolve them.</p> <p>Section 3.6 of the Codes of Practice requires trust company businesses to establish “effective complaints handling systems and procedures” and in particular to maintain a adequate records</p>
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	<p>of complaint including a central register.</p> <p>Trust company businesses are required to notify the Commission if a complaint is not satisfactorily resolved within 3 months.</p> <p>The declaration required to be furnished by a trust company business to the Commission under the Accounts Order, supported by the negative audit assurance, will provide evidence as to whether or not the trust company business has an effective complaints handling system.</p> <p>In the circumstances, in this regard there is consistency with the OGBS Best Practice Statement.</p> <p><i>The Maintenance of Adequate and Orderly Records</i></p> <p>Section 3.7 of the Codes of Practice sets out minimum standards for record keeping. It has already been considered above.</p> <p><i>The Maintenance of a Policy and Procedures Manual</i></p> <p>Although section 3.1 of the Codes of Practice requires a registered person to have effective systems and procedures, there is no specific requirement that a trust company business maintain a policy and procedures account.</p> <p>In the circumstances, the declaration and the auditor's negative assurance may not cover the maintenance of a policy and procedures manual. It is recommended that the Codes of Practice is amended to require all trust company businesses to prepare and maintain a policy and procedures manual.</p> <p><i>Ensuring an Adequate Span of Control</i></p> <p>Section 3.2 of the Codes of Practice requires trust company businesses to satisfy the Commission that they have an adequate span of control appropriate to their business. Trust company businesses that are entitled to control trust company business assets are required to be controlled by at least three appropriately skilled and experienced individuals.</p> <p>The Commission has also produced a Guidance Note on span of control.</p> <p>Ensuring that applicants for registration as a trust company business have adequate spans of control has been a major focus of the registration process. Indeed, the reason for the nonregistration of many of the transitionals is their failure to satisfy the Commission that they have an adequate span of control.</p> <p>It is considered that the Codes of Practice adequately cover this matter. Clearly the Accounts Order declaration and auditor's negative assurance and the on-site inspections will provide evidence that registered trust company businesses have the necessary spans of control in place.</p> <p><i>Ensuring Minimum Levels of Qualifications and Relevant Experience</i></p> <p>This has already been covered above.</p> <p><i>Ensuring that Professional Development Requirements are Met</i></p> <p>This has already been covered above.</p> <p><i>Ensuring a Full Understanding of the Duties Arising Under the Laws Relevant to the Affairs of Client Corporate Vehicles, Trusts and Other Legal Entities for which Trust Companies are Acting</i></p> <p>This has already been covered above.</p>
Comments	<p>As indicated above, while there are still a number of transitional trust company businesses operating, these remaining businesses now represent much smaller operations and over 90 percent of the volume of this business sector has now been licensed. Accordingly, Jersey has moved to becoming largely consistent with the OGBS Best Practice Statement.</p> <p>Full consistency with the OGBS Statement also requires the implementation of an effective on-site monitoring program as this will provide the required evidence that registered trust company businesses have conduct of business standards equivalent to those specified in the Best Practice Statement. As already indicated, a program will be implemented shortly.</p>

<b><i>Holding and Sharing of Information</i></b>	
<b>Principle 4.</b>	All countries/jurisdictions should ensure that there is proper provision for the holding, having access to and sharing of information.
Description	<p>This Principle covers the following:</p> <ul style="list-style-type: none"> <li>• Availability of information on the ultimate beneficial owner and/or controllers of corporate vehicles, and the trustees, settlor, protector/beneficiaries of trusts to the service provider.</li> <li>• Monitoring of changes of client control/ownership.</li> <li>• Mechanisms in place for information to be made available to all the relevant authorities.</li> <li>• Barriers to the appropriate flow of information.</li> <li>• Location of client information.</li> </ul> <p>Information on Beneficial Owner etc</p> <p>This is covered in the AML/CFT section of this Report.</p> <p>However, it should be noted here that the Companies (Jersey) Law does not permit bearer shares. Furthermore, by virtue of the Control of Borrowing and taxation legislation, the Commission maintains a record of the beneficial owner of all companies (which is regularly updated for tax concession companies). This exceeds Best Practice Standards.</p> <p><i>Monitoring of changes of client control/ownership</i></p> <p>This is covered in the AML/CFT section of this Report.</p> <p>Mechanisms in place for information to be made available to all the relevant authorities</p> <p>STRs are covered in the AML/CFT section of this Report.</p> <p><i>Barriers to the appropriate flow of information</i></p> <p>Cooperation with foreign supervisors (called relevant supervisory authorities) is provided for under section 33 of the FSL.</p> <p>Article 33 of the FSL provides that, in order to assist a foreign supervisor, the Commission may, inter alia:</p> <ul style="list-style-type: none"> <li>(a) exercise its powers under Article 29 of the FSL to require a registered person, a formerly registered person or a principal person in relation to a registered person (or an associate of a principal person) to provide the Commission with information, documents and explanations as provided for in the Article;</li> <li>(b) appoint a competent person under Article 30 of the FSL to investigate a registered person; and</li> <li>(c) apply to the Bailiff for a warrant to enter and search premises under Article 31 of the FSL.</li> </ul> <p>Article 33 also gives the Commission the power to communicate any information in its possession to a foreign supervisor.</p> <p>The Commission may exercise its powers to communicate information to a foreign supervisor whether or not the foreign supervisor has requested assistance. However, assistance may only be provided under Articles 29, 30 and 31 if a request is made by the foreign supervisor. In either case, the Commission must be satisfied that the assistance is required by the foreign supervisor in the exercise of one or more of its supervisory functions.</p> <p>The FSL gives the Commission guidance concerning matters that can be taken into account in deciding whether to assist a foreign supervisor. These include whether assistance would be given to the Commission in the foreign country concerned, whether the case concerns a possible breach of law or other requirement that has no close parallel in Jersey or involves the assertion of a jurisdiction not recognized in Jersey and whether it is in the public interest to give</p>

	<p>assistance.</p> <p>The Commission therefore has very broad powers to assist a foreign supervisor by gathering information for it and communicating information to it.</p> <p>The ability to exchange information for the purposes of criminal investigations is considered generally in the AML section.</p> <p>Location of Client Information</p> <p>Section 3.7 of the Codes of Practice imposes record keeping requirements on trust company businesses. As indicated, the section requires that records subject to the section must be kept in the Bailiwick of Jersey and must be retained for at least 10 years.</p> <p>It is recommended that the Code is amended to clarify beyond doubt that this section applies to customer records and that it specifically provides that the 10 year retention period is applicable to trust company businesses, notwithstanding that the period specified in the AML (Jersey) Order is five years.</p>
Comments	<p>It is noted that the FSL provides that the Commission <i>shall</i> not communicate information to a foreign supervisor unless it is satisfied that the foreign supervisor will treat the information with “appropriate confidentiality” (emphasis added). The meaning of the word “appropriate” is unclear but is to be determined by the Commission. The Mission notes that such a requirement for appropriate confidentiality is determined by international standards.</p>
<b>Audit and Compliance Reviews</b>	
<b>Principle 5.</b>	All countries/jurisdictions should require proper provision to be made for audits and compliance reviews.
Description	<p>Audits</p> <p>The Accounts Order covers, inter alia, the keeping of accounting records, the preparation of financial statements and general audit provisions.</p> <p>More specifically the Accounts Order includes the following:</p> <ul style="list-style-type: none"> <li>(a) Article 4 requires every trust company business to appoint an auditor approved by the Commission and provides that a trust company business may not change its auditor without the consent of the Commission.</li> <li>(b) Article 2 requires a trust company business to notify the Commission of its the accounting period of (which may not be changed without the Commission’s approval).</li> <li>(c) Article 5 requires a trust company business to have its financial statements audited by its auditor and for that purpose to provide its auditor with such access to records and such information and explanations as the auditor needs;</li> <li>(d) Article 7 provides that the audit must be conducted and the audit report prepared in accordance with the Auditing Standards issued by the Auditing Practices Board;</li> <li>(e) Article 8(5) requires the financial statements of a trust company to be prepared in accordance with U.K. Accounting Standards issued by the U.K. Accounting Standards Board.</li> <li>(f) Article 8 requires a trust company business to furnish the Commission with its audited financial statements within 4 months of the end of the accounting period (the Commission may extend this period by up to a further 4 months).</li> <li>(g) Article 9 makes provision for consolidated financial statements.</li> <li>(h) Article 11 specifies the circumstances that trigger the “whistle blowing” provisions contained in Article 16 of the FSL.</li> </ul> <p>Article 16 of the FSL protects an auditor from breach of any duty where, in good faith, he reports any matter to the Commission pursuant to his whistle blowing obligations.</p> <p>The Commission has also issued guidance notes on “The Auditing of Persons Conducting Financial Services Business” and on the Commission’s interpretation and application of the</p>

	<p>Accounts Order.</p> <p>Sections 113 to 113E of the Companies (Jersey) Law provides for the qualifications of auditors and these sections apply in respect of:</p> <ul style="list-style-type: none"> <li>the auditors of public companies; and</li> <li>the auditors of private companies, where articles require an audit, or a resolution in general meeting provides for such a requirement.</li> </ul> <p>Although some trust company businesses may be public companies, this will not necessarily be the case. In the circumstances, the Commission has issued Guidance on appointing an auditor under the FSL. This guidance indicates the factors that the Commission will take into account in determining whether or not to approve the appointment of an auditor.</p> <p>There is no requirement for trust company businesses to have an internal audit function, although the Code of Practice indicates the Commission will “take comfort” from those trust company businesses that have one. Where internal audit reports are prepared, copies must be made available to the external auditors and (if required) to the Commission.</p> <p><b>Compliance Reviews</b></p> <p>Compliance has been considered generally in the section of this report concerning systems and procedures.</p> <p>There appear to be two aspects to this OGBS Standard - internal compliance reviews and external compliance reviews.</p> <p>As indicated, every trust company business must appoint a compliance officer. The responsibilities of the compliance officer include:</p> <ul style="list-style-type: none"> <li>ensuring that the trust company business has robust arrangements for compliance with the Law, Orders and Codes of Practice; and</li> <li>ensuring appropriate monitoring of operational performances and promptly instigating action to remedy any deficiencies in the robust arrangements.</li> </ul> <p>It is considered that the Codes of Practice provide an adequate legal framework for internal compliance reviews. It is too early to conclude whether implementation of compliance within the sector is effective.</p> <p>External compliance reviews will be undertaken by the Commission through its on-site inspection visits. Following completion of most of the licensing process, the Commission’s on-site program for trust company businesses commenced in April 2003.</p>
Comments	
<b><i>Cessation of Business and Misleading Statements</i></b>	
<b>Principle 6.</b>	All countries/jurisdictions should have proper provisions for the ceasing of business and for prohibiting misleading statements.
Description	<p><b>Cessation of Business</b></p> <p>Article 10A of the FSL enables the Commission to apply to the Court for the appointment of a manager of a trust company business, whether registered or not. Inter alia, the Financial Services (Appointment of a Manager) (Jersey) Order 2000, which specifies the circumstances in which a manager can be appointed, and which generally relate to failings of management, specifically covers the situation where a trust company business ceases business but has failed to close or transfer business in an orderly manner.</p> <p>Article 20 (power to issue directions) could also be used to achieve an orderly cessation of business.</p> <p>Finally, if necessary, the Commission can petition the Court for the winding up of a trust company.</p> <p><b>Misleading Statements</b></p> <p>Article 27 of the FSL prohibits any person from making false or misleading, or reckless,</p>

	<p>statements, or engaging in similar practices, the purpose of which is to induce another person to buy or sell financial services.</p> <p>Article 28 of the FSL facilitates an Order to prescribe standards of advertising. An Order has been drafted and is currently undergoing consultation with stakeholders. The Commission expects the Order to be in force in 2003.</p> <p>The definition of “advertisement” in the Law is exceedingly broad and includes letters and conversations as well as published advertisements.</p> <p>Articles 29 and 30 of the Law make it an offence for any person to mislead the Commission in the course of their duties.</p> <p>Additionally, section 6 of the Codes of Practice requires trust company businesses to demonstrate candor in terms of their relationship with the Commission and places various disclosure requirements on them.</p> <p>Article 8 of the FSL requires that a registered person, and its principals, maintain their integrity on an initial and ongoing basis.</p>
Comments	

## B. Action Plan

### *Definition of Trust and Company Service Business*

#### *Principle 1*

173. The Financial Services (Jersey) Law (FSL) should be amended to restrict the exclusion of executors and administrators from the definition of “trust company business” so that it is not possible for offshore trust business to be undertaken by Jersey trust service providers as executors.

174. The FSL should be amended to extend the definition of “trust company business” to specifically include enforcers, protectors and custodians and trust management and administration services.

### **Fit-and-proper criteria**

#### *Principle 2*

175. Key employees (below director level) of an applicant for registration as a trust company business should be required to complete a personal questionnaire. For fit and proper purposes, the Commission should treat key employees (below director level) of registered trust company businesses as directors.

176. While the Commission has general powers to require information under Article 7 of the FSL, these provisions should be amended to explicitly empower the Commission to seek information from applicants concerning their key (nondirector) employees. This could be achieved by extending the definition of “principal person.”

177. The FSL should be amended to bring key employees within the scope of Article 11 so that the Commission has formal powers to object to a person becoming a key employee. This may be achieved by bringing key employees within the definition of

“principal person.” The Mission notes that existing regulatory powers enable the Commission to exclude any person from employment by a regulated financial institution.

### ***Conduct of Business***

#### ***Principle 3***

178. The Commission should consider imposing a reasonable final deadline on every outstanding transitional trust company business (depending upon its circumstances) before which the transitional will have to meet the licensing criteria.

179. The definition of financial services business in the Second Schedule of the Proceeds of Crime (Jersey) Law 1999 should be extended to include all trust company businesses. This could be achieved by incorporating the FSL definition into the Law.

180. The record-keeping requirements in the Codes of Practice (section 3.7) are amended to clearly state that they apply to records of clients’ affairs, including client documentation.

181. The code of practice is amended to impose a specific requirement on trust company businesses to maintain a policy and procedures manual.

### **Authorities’ response**

#### ***Best Practice Statement for Trust and Company Service Providers***

##### ***Overview***

182. 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, in some respects, exceeds those practices.

183. As noted in Volume I of the report, Jersey is one of the first jurisdictions to regulate and supervise company and trust service providers. This has involved considering applications for registration from approximately 230 trust company businesses, a process that has now been substantially completed. All remaining transitional applicants are subject to some form of regulatory action or, due to exceptional circumstances, have committed to a particular date to either cease trust company business or resolve an outstanding issue prior to licensing.

184. A consolidated action plan, prepared by the authorities, is appended to Volume I of the assessment.



## ***Scope of business***

### ***Definition of trust and company service business (Principle 1)***

185. The authorities point out that the definition of trust company business was extensively discussed during the consultation process leading to the introduction of trust company business to the FSL.

186. 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 standards and risks presented by nonregulated activities.

### ***Fit-and-proper criteria***

#### ***“Key” employees (Principle 2)***

187. The authorities note that regulatory legislation already permits the Commission to obtain information concerning employees who are not “principal” persons (Article 8 of the FSL, and it is already Commission practice to require personal questionnaires for compliance officers and ML reporting officers. In addition, the Commission can already require that an employee of a licensed person be dismissed, or prohibit a person from becoming employed through the powers of direction (Article 20 of the FSL) or license condition (Article 9 of the FSL).

188. Notwithstanding this, the Commission will review the basis for extending the definition of “principal” person to include a licensed person’s ML reporting and compliance officers, and other key post-holders (which will be specified at the time of consultation). Any changes proposed would be subject to a period of consultation and legislative approval.

## ***Conduct of business***

### ***Maintenance of records (Principle 3)***

189. The authorities point out that the Companies (Jersey) Law 1991 and the Trusts (Jersey) Law 1984 already contain requirements for companies and trustees to maintain records. These requirements are supplemented by a CMO for trust company business and a Client Assets Order for investment business, which contain further record-keeping requirements relating to customer records. Notwithstanding this, subject to consultation, Codes of Practice will be amended to refer explicitly to record-keeping requirements for customers’ and clients’ records.

### ***Policy and procedures manual (Principle 3)***

190. The authorities note that the Commission also intends to revise its Codes of Practice to provide for maintenance of a policy and procedures manual. Codes for investment business, deposit-taking, CIF functionaries, and for insurance business will also impose such a requirement.

*Scope of Money Laundering (Jersey) Order 1999 (Principle 3)*

191. The authorities emphasize that, while Jersey's AML legislation, through its application to trust company business, already exceeds the international standards against which Jersey was assessed, certain persons that are regulated under the FSL are not also subject to the Money Laundering (Jersey) Order 1999. Subject to consultation and legislative approval, an amendment to the Second Schedule of the Proceeds of Crime (Jersey) Law 1999 will be brought forward that would extend the scope of the Money Laundering (Jersey) Order 1999 so that it covers all trust company business regulated under the FSL.